

Asset ownership – a simple concept convoluted by laws and practices

Ownership of assets and accounts might appear to be simple. But, in reality, most people know that national and international laws and practices, even religious principles, make ownership a complex matter, especially when death and transition planning are concerned. Peter Brigham, Managing Director, Rosemont International, addressed the Asian Wealth Solutions attendees to touch briefly on many such issues.

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ROSEMONT FOCUSES ON HELPING clients around the world understand the nature of the assets that they own, so that they can plan accordingly. The firm's especial focus within Asia is on clients that have assets outside their home country.

Rosemont has offices in Hong Kong, Singapore and Vietnam in the Asia region, as well as offices in Mauritius, Monaco, Andora and the British Virgin Islands.

“A simple starting point for this discussion might be whose bank account is it and who has ownership of that account,” says Brigham. “It might seem very simple at first, but we also need to consider who else might have claims on this asset.”



PETER BRIGHAM
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Do you own what you own?

Brigham noted that a bank account is in fact a liability of the bank toward the client and is found represented on the balance sheet of the bank. This means that in the simplest of terms if the bank cannot recover the loans it makes it cannot reimburse the clients.

Of course, Brigham noted, some countries have state guarantee schemes in place, for example in the EU it is harmonised at €100,000. But even then, there is plenty of small print - for example, Brigham notes that some EU countries have already given themselves the right in the event of certain events to suspend withdrawal from the accounts, meaning that, effectively, the banks in those jurisdictions have some sort of ownership on the account.

Rosemont is expert at assessing the many different forms of ownership of accounts; for example, there are individual accounts, joint ownerships, accounts held for minors by guardians or by trustees or by agents, accounts held by insurance companies on behalf of the beneficiary of an insurance policy and so forth. Some of these roles may or may not be disclosed to the bank, despite the obligations in the account opening forms to do so. There are accounts that are held by companies, trusts, either directly or through different chain of ownership.

The concept and practice of 'Trust' raises critical issues; legal title is owned by the trustees, generally on behalf of the beneficiaries. But Brigham highlights two key issues are always at the forefront of any discussion - is this a correctly structured trust arrangement, and were the assets properly settled into the

trust in the first place. For example, a husband might settle assets in a trust without the spousal consent of his wife and accordingly the assets will not be properly settled into the trust.

Beneficial and ultimate ownership

There are other issues regarding beneficial ownership, for example controlling persons for FATCA, for CRS, as well as ultimate beneficial ownership registers. Sometimes definitions of ownership conflict with real economic ownership of the assets.

In the case of corporations, Brigham explains that the relevant authorities in any jurisdiction may look at the true controlling parties, for instance for CRS, so that reporting can be conducted on people for tax purposes. The controlling parties for a company will depend on many other issues, particularly on the shareholding structure, the control structure, the voting rights and the reality of the way in which family members may vote.

Public and private registers

Definitions of controlling parties for trust includes set laws, beneficiaries, trustees and protectors. There are new registers of beneficial ownership in various jurisdictions, these might either public like in the UK, or in Hong Kong and Singapore private registers of controlling persons are being created. Definitions and rules naturally vary from country to country.

Brigham notes that in the event of death all this is usually crystallised, so it should be a key concern in a well-structured estate. There are many considerations, for exam-

ple whether there is a valid will in place, and even questions such as religious principles - for example Shariah - or even customs within districts, within countries.

Brigham observes that that there are many considerations in common law, making the correct treatment of accounts and assets much more difficult to determine than one might imagine at first glance.

Beware the unforeseen claims

Bankers, he explains, must be aware not to pass assets to the wrong heirs and there are many facets. For example, much might depend on marriage regimes, marriage contracts, the origin of the funds that have been put into the common accounts, where are the assets located, the domicile of the account holders and so forth. All these issues may lead to unexpected claims on those assets. There can also be other types of claims, such as common claims, debts on the accounts, personal guarantees, bank guarantees, general pledges and others. Divorce laws lead to different claims.

Another claim of course is a money laundering claim, or even in Singapore a Kidnapping Act whereby the public prosecutor could freeze the payment if he thinks the money is going to be used as a payment for ransom for the release of the person. Taxes due can lead to claims by local and overseas jurisdictions. Rosemont has deep veins of expertise in these areas and is working with clients across Asia to identify the issues and to put into place the appropriate structures that will simplify ownership, estate structuring and succession planning. ■

