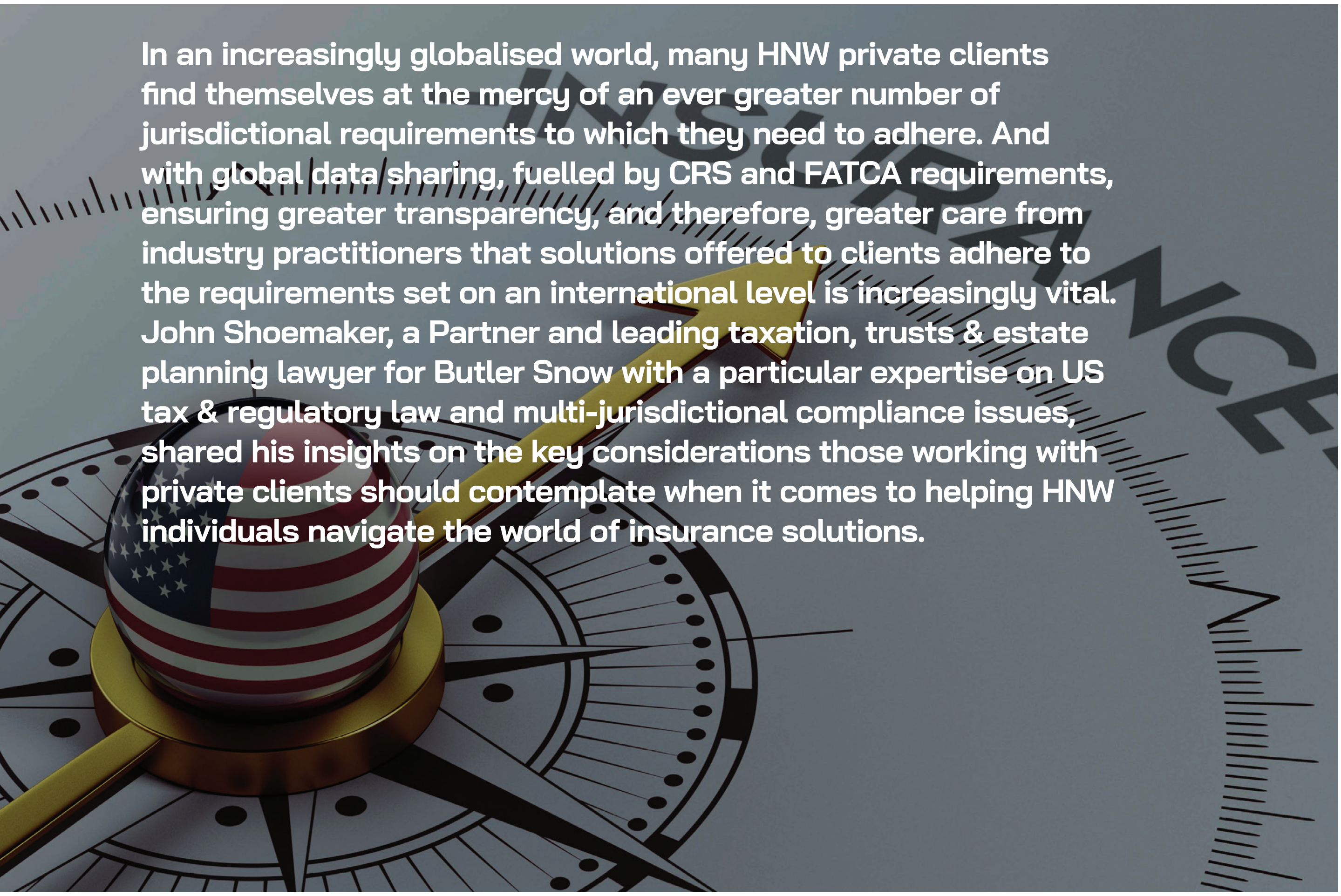
Butler Snow's John Shoemaker on the Key Considerations for Ensuring HNW Insurance is US Regulatorily Compatible



In an increasingly globalised world, many HNW private clients find themselves at the mercy of an ever greater number of jurisdictional requirements to which they need to adhere. And with global data sharing, fuelled by CRS and FATCA requirements, ensuring greater transparency, and therefore, greater care from industry practitioners that solutions offered to clients adhere to the requirements set on an international level is increasingly vital. John Shoemaker, a Partner and leading taxation, trusts & estate planning lawyer for Butler Snow with a particular expertise on US tax & regulatory law and multi-jurisdictional compliance issues, shared his insights on the key considerations those working with private clients should contemplate when it comes to helping HNW individuals navigate the world of insurance solutions.

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JOHN SHOEMAKER
Butler Snow

Opening the discussion,

John honed in on the first major port of call from his professional perspective: whether the insurance policy being considered for a US-connected individual is US or non-US compliant. “Event with a non-compliant policy, you may still be able to achieve a good outcome, but you want to know that going in,” he highlights. The key here is ensuring that whether a policy is compliant where it needs to be, so as to avoid headaches manifesting later down the succession planning road.

Considering the Products

Turning to what he terms the ‘second element’, John notes that advisors need to be able to translate what is the opportune product for the clients, considering US compliancy requirements. This involves translating the proposition of whole of life insurance versus that of term life insurance (term insurance) products. “Term insurance,” he says, “tends to more naturally fit within the definition of US compliant life insurance.” And while term insurance may not prima facie seem as appealing at its oft lauded cousin, John reports that it can be a better planning tool, offering liquidity for the next generation when used to cover key individuals, a valuable arrow in the proverbial quiver in the context of the modern day; as banking and jurisdictional transparency comes to the forefront, and the days of chasing zero tax are coming to a close, these benefits of term insurance make it ever more appealing, reports John.

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Protecting the Key Man

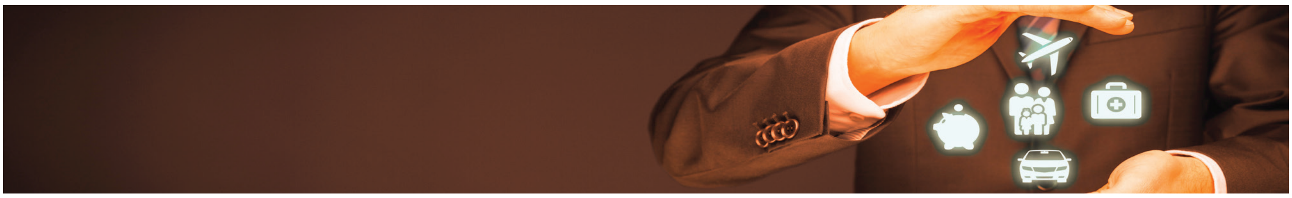
Moving on, John turned his attention to the distinction between individual and corporate approaches to insurance solutions. He highlighted the importance of considering the role of ‘key man’ policies for key individuals within a family office structure, something which has yet to be effectively ported over to the realm of family offices. Namely, in the current competitive climate of key person movements, having key man insurance to cover key personnel – such as CFOs, COOs, and so forth – is crucial in allowing a family office to cope should one of these individuals suffer from an unfortunate incident.

The Investment Piece

John then turned his attention to the role of insurance policies when viewed from an investment perspective. “Insurance is a portion, but not a totality of what you’re looking at from an investment and a succession planning perspective,” he noted. “So find what percentage allocation is appropriate to be looking at an insurance product or using insurance as a ring-fence.”

Further still, John noted that due consideration be given to who is going to be covered by a life insurance policy. “Straightforward insurance planning typically the owner of the policy is the life insured, but there are some good opportunities to be unearthed.” He reports that by nominating an owner of the policy which differs from that of the life insured, it allows for some surety to be offered to those next generations who own a policy on their forebears.

However, in giving ownership of a policy to someone other than



the life insured, one creates time passage complications that require quality advice to navigate. And in the context of a modern regulatory climate defined by the constant global sharing of CRS and FATCA data, proper planning to ensure that a policy is fully compliant prior to purchase has never been more essential.

Stepping Back

Taking a wider view, John notes that his comments are relevant far beyond a US context. "Almost every high net worth or ultra-high net worth family is going to have a multi-jurisdictional element to their planning. So don't take any element for granted," he warns. "Look at where the premium financing, where the insurance issuer and the carrier are located. Where is the broker located? Where is the life insured located? Who are the beneficiaries and recipient?"

Bringing the discussion to a close, John notes that whilst the hurdles faced when assessing what insurance policy to pursue may be intimidating, the ramifications of frustrating the purpose of the policy by failing to, at least lightly, consider the jurisdictional requirements at play and consulting a relevant subject matter expert, or experts, where required prior to purchase. "Sometimes you don't need to drill down all the way to the very bottom of a very detailed analysis, it can be enough simply to have enough awareness to know where there's big potholes as opposed to just tiny bumps along the road," John concludes. ■