

# Is the Singapore Trustees Act Perpetually Unfit for Purpose?

The development of Singapore as a leading global financial centre is a testimony to the hard work and vision of the Government, its businesses and its people. When my Father sat at his desk in the old Chartered Bank building in Battery Road (now Standard Chartered) some 63 years ago, he would have been astonished at the progress and success, and pleased.

Nevertheless, with success comes the concern that complacency can develop, and opportunities are overlooked. Furthermore, whilst a focus on high margin and profitable aspects of business are rightly focused on, in order to ensure a quality product, particularly in the financial services arena, a holistic approach must be adopted, and complementary activities, services and businesses of a high quality must be maintained to support the core business activity.

In this article I look at a subject that has been talked about for some time - The Singapore Trustees Act. Last substantially updated nearly 20 years ago, it is high time this Act was revisited, and this article will focus on the three significant failings in the Act.

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### Introduction

A glance at the financial press in Singapore, and one sees a well-deserved and continuous accolade for the progress in the single and multi-family office arena which leads to assets under management and good revenue for the private banks, fiduciaries, custodians and asset managers in Singapore.

the services they seek extend substantially beyond simply the asset holding, custody, product access, asset management and trading opportunities. High Net Worth families are explicitly concerned with intergenerational succession planning and effective asset protection from potential creditors.

For a family office to be established in an effective manner the first question that needs to be answered by the family and their advisors is “What is the succession structure?”. One cannot build a house without solid foundations in place – without a solid succession structure, the house will fall.

High Net Worth (HNW) families’ succession structuring solutions may range from the simplicity of a Will to the complexity of a trust or other longer term and often multi-generational structure. The larger the wealth involved the more robust the structure must

The Duchy of Lancaster finds its origins in A.D. 1265, whilst the Duchy of Cornwall was founded in A.D. 1337 - both are still going strong.

To this end, whilst Singapore is highly successful in attracting assets, and has shown adaptability in adjusting the tax rules as they apply to the wealth managed by family offices, there are three glaring failures in the Singapore Trustee Act to keep up with the times and the success being achieved elsewhere.

### The Trust Period

Firstly, as alluded to above, HNW families wish to put in place succession plans which may be multi-generational. The problem is that under Common Law there is a long-standing Rule Against Perpetuities which prevents people utilising legal instruments to control property beyond a certain time limit.

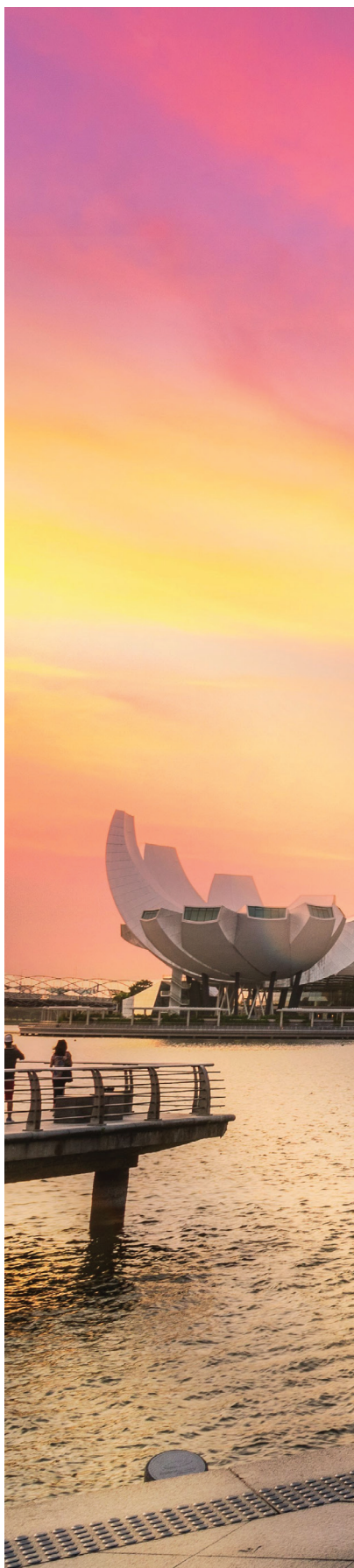
**« HNW families and their advisors are forced to act like a chop shop, getting bits of Mercedes, BMW and Porsche and trying to put together a nice-looking car – it cannot happen – the result is not “nice”. »**

Legislation has been introduced and updated regularly to ensure that where High Net Worth families are seeking to have their wealth managed in Singapore, the intricacies of a mid-shore location are managed, and potential tax affects are neutralised whilst immigration opportunities are targeted.

Notwithstanding this success, the demands of the clients and

be and the longer its duration is likely to demand. Any family looking for inspiration as to what can be achieved with properly structured trusts and inheritance plans, only needs to look at the Duchy of Lancaster and the Duchy of Cornwall which respectively hold the assets of which the King of England (King Charles) and his eldest son (Prince William) derive their income.

In most of the sophisticated trust jurisdictions the Rule Against Perpetuities has been abolished, and this includes Hong Kong. Whereas in Singapore the Rule Against Perpetuities remains and the trust period cannot extend beyond 100 years. This is clearly entirely unsatisfactory for the HNW Family which is likely to wish to put in place a structure that could be multi-generational and extend far



beyond 100 years as evidenced by the UK Royal Family (and many others).

### Purpose Trusts

Secondly, for the HNW families seeking long term and potentially multi-generational structures, many are establishing a Private Trustee Company (PTC) to act as the Trustee of their family trusts. The PTC is particularly attractive to families in Asia, as it allows families who are accustomed to being in control, to retain control of the Trustee (by in effect being the trustee). The problem with a PTC is that there must in turn be an owner of the PTC itself, and the succession of the owner must be managed.

The simple solution to the PTC ownership is to utilise a specialised form of trust called a Purpose Trust. The principal advantage of a purpose trust is that unlike other forms of trust where there are Beneficiaries and where the Beneficiaries have enforcement rights over a trustee, a Purpose Trust does not have Beneficiaries, and the solution to enforcement rights (which is a requirement of a trust) is handled by a party called the Enforcer (which will typically be a committee of family members with appropriate succession rules as to how to maintain this governance feature in the long-term). The Enforcer has the ability to exercise some controls over the Trustee of the Purpose Trust (which is usually the regulated Trust company which is required for regulatory/AML purposes to administer PTCs). So, in the perfect world, a simple solution: Singapore Purpose Trust – Singapore PTC – Singapore Regulated Trust

Administrator – Singapore Trusts – Singapore Bank and Custodial Accounts – Singapore Trading Companies – the potential is for the entire eco-system to be located in one high quality jurisdiction. Great for Singapore and great for the family seeking to concentrate their foot-print.

However! The Singapore Trustee Act does not allow for the use of Purpose Trusts. So not only is the HNW family not in a position to use Singapore Trust law for multi-generational planning due to the limited Trust Period, but they cannot hold their Singapore PTC under a Singapore Purpose Trust. So what do they do?

HNW families and their advisors are forced to act like a chop shop, getting bits of Mercedes, BMW and Porsche and trying to put together a nice-looking car – it cannot happen – the result is not “nice”. Typically to resolve the Purpose Trust issue the Singapore Trustee will have to use the Purpose Trust law of another jurisdiction, such as Jersey, and then perhaps another jurisdiction for the law pertaining to the underlying trusts. Once can only imagine the mess this can create in the long term for the family.

....and to make matters even worse...

### Trust Powers

The third issue is that for HNW Families it is vital that the Trust, and the structure it relates to, can stand up to scrutiny and attack. With the HNW families in Asia a core factor of their succession planning is the protection of the wealth they have generated. To attack a Trust on behalf of a

creditor client, the first thing a good Barrister is going to look at is to see if he/she can prove that the Trust is invalid and does not exist, and one of the best ways to do this is to show an abuse of power by parties to the Trust such as Settlers, Protectors and Beneficiaries which would invalidate the trust.

The question of the powers exercised by parties such as the Settlor or Protector are therefore raised and for the Trust Law to be effective it must explicitly state the level of these powers and what they apply to – what can or cannot be done. So, whilst the Singapore Trustee Act deals with investment powers fairly explicitly, it does not have robust language as it relates to other powers of the Settlor or Protector such as the power to revoke, vary or amend, add or exclude beneficiaries and consent to trustee's actions.

If this detail is not included in the Act, then the Singapore Courts are placed in a quandary as it relates to litigation – if the law is not explicit, then the basis of Common Law is to look for precedent under the Common Law system elsewhere, the most obvious choice being the United Kingdom, and it is apparent from litigation occurring elsewhere that interpretations and means of attack are evolving. The answer to this is to make the Singapore Trustee Act far more explicit as it pertains to reserved powers which will then ensure that a confused and uncertain situation does not result, and will no doubt be a relief to the Singapore Judiciary.

### Conclusion

Singapore is enjoying considerable success, however, to ensure the longevity and continued growth of that success it is vital that it addresses the holistic

nature of its offering. In a world where transparency has become excessive with CRS and FATCA and electronic, highly personalised information travelling around the world, the HNW family and their advisors want to concentrate their foot-print where possible to reduce leakage and obtain efficiencies. Currently the Singapore Trustee Act has some fundamental flaws as has been illustrated which forces the families and their advisors to put together a patch work that resembles the product of a chop shop, and not a beautifully tailored and aesthetically pleasing product that Singapore is widely regarded for.

Nobody is perfect, and the Singapore Government has been very busy, but it is time to seriously address the deficiencies in the Singapore Trustee Act. ■



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