

# Right place, right time

*Marcus Hinkley of Withers KhattarWong sees a fresh dawn of opportunity for private wealth clients amid the current jurisdictional jigsaw and regulatory overhaul.*

- *Wealth planning within a new transparent world actually offers new opportunities for structures, and the emergence of new jurisdictions rather than threats*
- *There might be a smaller pool of clients to work with, but they are likely to be wealthier, and require more complex solutions so present more interesting opportunities*
- *Bespoke solutions are fast-becoming the norm rather than the exception*

The landscape of change within wealth management globally has seen regulatory authorities introduce stringent new

compliance hurdles and disclosure laws that now make the world a smaller place for 'safe haven' banking.

This certainly isn't good news for the traditionalists.

The squeeze, supported by increasing pressure from society and politics, has seen the banking industry adopt an increasingly-defensive position.

In turn, margins have come under more pressure than ever.

It also poses enormous challenges for the offshore jurisdictions, which were initially based on straightforward structuring in a confidential environment.

In a world where substance and transparency is expected, the offshore solution is being replaced by a mid-shore solution and as such offshore must adapt quickly to continue to provide a service that is needed by clients.



**MARCUS HINKLEY**  
Withers KhattarWong

Most see the structural changes as a threat; others take a more optimistic – and proactive – view, and eye the new challenges as a means to inspire. The

conversations regarding the Common Reporting Standards for example, are typically negative and defensive.

One such proponent of this new way of thinking is Marcus Hinkley, special counsel at Withers KhattarWong.

Based in Singapore, he advises trust companies and wealthy families on all aspects of their wealth structuring, with an emphasis on South-east Asia. And, rather than being at odds with the challenges ahead, Hinkley is relishing it.

“Asia is the fastest growing region for wealth, so we are in the right place. The question is what kind of things do clients want to do with their wealth. By and large, it is still what they wanted to do 30 years ago – plan for their suc-

“We are finding that people are worried about different macro issues, such as data security, regulatory issues and information sharing between Governments but essentially they are still willing to invest in a solution that will work for them and their family” explains Hinkley.

### TAILORED OFFERINGS

Despite current macro-economic uncertainties, there remain many successful individuals, families and corporates in South-east Asia which require best-in-class legal advice in as they grow their businesses and focus on dealing with trust matters.

Because of increased complexity bespoke solutions are fast-becoming the norm rather than the exception.

So whilst in the past an Indonesian client might have set up a simple BVI company, now, the same client must take into account tax law and regulation and, in the meantime, has probably got more sophisticated wealth planning needs.

A simple structure will be replaced to one compatible with current laws.

‘For the right client, this might even involve a relocation for him or members of his family, and in this regard it is a feature that global citizenship services are also on the rise.

### PIECING THE PUZZLE TOGETHER

In terms of transparency, the move has been for countries to agree collectively to exchange information they hold on each other’s citizens.

They do this by requiring the financial institutions in their jurisdiction to provide beneficial ownership and account information to the regulator (who will then hold it pending disclosure – state to state).

Hinkley sees that this is the new threat to the offshore world.

Hinkley says: “We have seen examples of data leaks, theft and hacking of financial institutions and invariably it hurts that institution for a long time. With the advent of CRS, beneficial ownership and account information of every structure domiciled in a jurisdiction will be held centrally by that jurisdiction’s regulator – so if there was a leak, theft or hack of such data, the scale of it could do such reputational harm to the whole jurisdiction that it could actually bring that jurisdiction down. We are in dangerous times indeed.”

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cession,” protect their assets from unwanted claims and mitigate taxes, he explains.

In a complex world, lawyers excel – simply put, the opportunity for sophisticated advice is what we in the profession crave.

From this point of view, the opportunity not only remains big, but it is getting exponentially larger as the trend of “international” families and transparency intersect.

Pondering some of the challenges he is facing, Hinkley is quite circumspect.

“It very much depends on the client; there isn’t a one-size-fits-all approach,” he explains.

“For example, the Indonesian tax amnesty is a big topic at the moment, so what triggers our advice are Indonesian clients’ becoming much more transparent.” For he and his peers focusing on these and similar developments, this creates new business potential.

The question of “offshore or onshore” has become a real issue.

Service providers are responding and most of the major trust companies and offshore law firms now have offices in Europe, Singapore or Hong Kong offering “mid-shore solutions”. Even the US is becoming a target to establish branches.

Singapore and Hong Kong are interesting options.

“For a lot of people, that looks like the way forward,” he adds. “The offshore centres have been hammered so much and for so long now that business centres like Hong Kong and Singapore are becoming natural choices and continue to be better equipped.”

“It is the pre-eminent jurisdiction for the funds industry, so there are no issues there,” says Hinkley. When it comes to Jersey and Guernsey, these remain quality jurisdictions for private wealth structures, which he believes will continue.

“I think there are probably only five or six jurisdictions that are likely to last, but the Channel Islands ought to thrive,” he says. “Time will tell, for example, whether Brexit turns out to be an opportunity for business or a threat.”

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The issue for the Channel Islands is that it was slow to embrace Asia and consequently now finds itself having to catch up and compete not only with its Caribbean rivals but with Singapore and Hong Kong. The trend is certainly towards a continued growth of using ‘mid-shore’ jurisdictions at the expense of offshore.

Hinkley suggests various options, and although there is no standard solution, he believes tried-and-tested options still do make sense.

The only danger for these jurisdictions is to become victims of their own success, as more financial services

In terms of tax planning, even with new rules and regulations in place to ensure transparency and try to rid the market of bad practices, minimising taxes is likely to still be a primary objective.

The BVI is still having to come to terms with a transparent world and time will tell whether it can maintain its dominance but in his view the BVI is still the go to place for a holding company with few competitors.

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Going forward, the BVI knows it has to be transparent and whilst legacy issues might present medium term challenges he expects that the BVI will resolve them.

industries flock to the region and costs rise.

However, this has to now be handled in a different manner. “It is a more careful conversation with a client, but there is still plenty of scope for tax planning,” he says. ■

In situations where the decision is either to move onshore or mid-shore, he says

The Cayman Islands, meanwhile, has always been a good location for funds.