

The Challenges Around Trusts, Trustees and Trust Litigation from a Singapore Viewpoint

The Hubbis Wealth Solutions Forum in Singapore on June 14 included a panel discussion on what the chair admitted might sound a bit dry – trust litigation – but the assembled experts made it into a far more dynamic and interesting proposition. The panel addressed a number of key issues. Is Singapore an asset protection jurisdiction in light of the La Dolce Vita Fine Dining case? What are the key takeaways from this case? What does it mean for best practices? What needs to be done about clients that are trying to evade creditors? How can the Trustee be adequately protected? What can go wrong with wealth management and estate holding structures and what can be done to mitigate weaknesses and risks? Wen Ni Aw, Partner at the Wong Partnership, a leading Singaporean law firm, was one of the experts opining on these matters. Hubbis has extracted and distilled her views for this short article. Her insights help to shed considerable light on these issues, especially around the implications of the important La Dolce Vita case on which the Singapore High Court ruled and sent in the receivers to take control of the bank accounts in the trust over which it deemed the settlor had undue and unwarranted control.

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**WEN NI AW**

Wong Partnership

The Chair Opened The Chair opened the discussion by remarking that as a structuring lawyer, if litigation was later involved in any of the structures he had worked on, he would essentially feel he had failed at his job.

Wen Ni Aw explained that as a partner at the private wealth group, her practice is unique in that she is involved in front-end succession planning, advising HNW and UHNW clients and families in structuring their succession planning, whether via a trust, or family office, but at the same time he is also a litigation lawyer.

"If things do go wrong, I also litigate on behalf of these high net-worth clients," she explained, "so I have a very clear perspective on the issues and the problems that can arise, and then how to deal with them."

The Chair then noted that he had read an excellent summary by Wen Ni Aw of the La Dolce Vita case and asked her to offer delegates some brief insights into the case and the implications.

"When the decision was made by the Singapore High Court, I received a lot of frantic calls from wealth planners, from trustees, and from high-net-worth clients asking if it means that my Singapore trust structures were henceforth vulnerable and susceptible to claims by creditors, spousal claims, and so forth," she reported.

But actually, and without going into immense detail about the case, she said the case is very much confined to its facts, where the principal defendant had injected bank accounts of their China business into a trust but retained enormous control over

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those bank accounts as if they still belonged to her.

"The High Court was really not too concerned as to whether the trust was validly set up," she explained, "but it was concerned as to whether the settlor effectively retained beneficial interest over the bank accounts, which are actually owned by the trustees."

The decision went against the principal defendant, and receivers were appointed over the bank accounts in question. "Crucially," she explained, "the case highlights

the importance of ensuring the proper settlement of assets into trusts. It also demonstrates the inverse relationship between control retained by the settlor over trust assets and the asset protection capability of the trust – the more unfettered control the settlor has over the trust assets, the greater the impediment to the trust achieving its objective of asset protection."

She then pointed to some of the key takeaways from the case. Number one, wealth planners or advisors working with clients on succession planning often meet clients who not only want structures for succession planning

and at the same time asset protection, but at the same time, they find it difficult to relinquish the control necessary.

"It is then for us to ascertain the level of control that can sensibly be retained because as I said, there is an inverse relation between the amount of control retained and whether the trust structure would then be vulnerable," she said. "In short, we need to have a very balanced approach, and the level of control retained by the settlor has to be reasonable."

Additionally, she said there needs to be proper documentation. “Insofar as the bank accounts are being operated by someone else other than the trustees, the trustees should have proper documentation as to why this third party can operate the accounts, to help prevent the view that they retain the beneficial control.”

Wen Ni Aw then linked the discussion back to some of her discussions with new clients, many of whom are not so familiar at the outset with the concept of trusts, for example, Mainland China clients, where trust concepts are somewhat different.

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She then turned her gaze on Singapore and its future as a trust centre. “Singapore is trying to grow the family office market, their trust industry, but there can be pressure points where Singapore needs to carefully balance the regulatory perspective with actual client needs,” she said.

In this regard, she noted the La Dolce Vita case judgement is quite

recent and said she personally does not think it sounds the death knell for Singapore trust or asset protection structures or robust wealth planning and structuring in Singapore. “I think as a whole, Singapore has got a very robust structure ecosystem, so no, I do not think that this case should cause too much concern amongst clients,” she stated.

“Our team has many decades of experience between them. We are here to work positively and collaboratively with the wealth management and family office and professional advisory community in Singapore and far beyond. Our doors are open, so please come and talk to us.” ■

