

The Revival of the Employee Benefit Trust

James Russell, Director of First Names Group in Singapore, addressed the audience at the Hubbis Independent Wealth Management Forum. With the popularity of employee benefit trusts (EBTs) on the rise in Asia, Russell explained the key advantages and a few possible pitfalls for advisers and their clients. With the right strategy, Russell believes Hong Kong can remain at the forefront of the market.

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FIRST NAMES GROUP IS A leading independent provider of trust, fund, real estate and corporate administration services. Part of SGG Group, the firm operates globally with offices in 24 jurisdictions worldwide, including Hong Kong, Singapore, India, the Philippines and Japan. Russell has spent 16 years with First Names Group, and much of the past five years has been in Asia. “We are experiencing an increased interest in EBTs, and this welcomed resurgence brings opportunities for advisers throughout Hong Kong.”

An EBT is usually a discretionary trust established for the benefit of employees of a particular company or group of companies. In an EBT, the company usually acts as settlor, with employees typically comprising the beneficiaries. An independent trustee such as First Names Group is responsible for the safe-



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guarding and management of the trust on behalf of the beneficiaries. Typical assets in this context include deferred compensation, loan benefits and cash bonuses but are most commonly company shares.

Hong Kong's vibrant IPO market driving EBT interest

In looking at the reasons behind the revived interest in EBTs, Russell noted that Hong Kong IPO market activity surged to a record high in the third quarter of 2018, with four out of ten so-called 'Unicorns', i.e. billion-dollar start-ups, in China picking Hong Kong as their preferred IPO listing destination.

"Most Chinese unicorns prefer to raise capital in Hong Kong than in any other market," he reported. "Hong Kong retains the crown above New York as the number one market for raising funds for these companies. But what we are most interested in as a trustee is that many of the IPOs listed in Hong Kong involve the establishment of an EBT."

There are several reasons, Russell observed, for these predominantly Indian and Chinese companies to set up an EBT structure. "There are some core benefits," he explained. "First, they are designed to incentivise talent. When business is built on the strength of a number of key individuals it is in everyone's best interests to make

sure those people stay after the IPO has occurred."

The role of the trustee

Russell noted how essential it is to be involved in the early stages of the IPO life cycle with clients, making it easier to create an EBT scheme that ties everything together to suit the long-term plan.

"A client can be focused on the objectives for their business for the next several years but may not have considered other eventualities such as a merger or an acquisition. Trustees and advisers working with such clients need to be thinking ahead to these other outcomes and proposing appropriate courses of action," he advised.

Understanding who your client is within the company is also key and something that Russell believes is commonly overlooked. "We might be working closely with the founders of a business," he noted, "but our fiduciary duty is to the EBT beneficiaries and not necessarily to those directors of the business."

Russell emphasised how the responsibility of a trustee is to act in the best interests of the beneficiaries. "In most cases," he continued, "these best interests are entirely aligned with those of the employees of the business. However, 'beneficiaries' and 'employees' are not necessarily synonymous groups, so this is not always the case. At times

there could be a risk that someone offers a substantial price for a business but sees no future for those employees in the EBT. As a trustee we must act for the beneficiaries and sometimes there are conflicts between that and acting in the best interest of all employees."

The trustee must also work with third-party advisers to appreciate market conditions and other factors in order to make sound decisions. "In addition to receiving the third party advice, trustees need to ensure the correct premise and the correct assumptions of that advice," he advised.

A bright future

"In line with the rise of EBTs, our industry in Asia is witnessing a marked shift towards trustees recognising and taking ownership of their fiduciary responsibilities and being much more proactive," Russell noted.

He closed his presentation by remarking how positive the EBT growth has been for the advisory community in Hong Kong. "The resurgence of EBTs creates a great opportunity for advisers and trustees, with EBTs becoming a critical part of pre-IPO planning. We will continue to mentor our clients through this process while building solid and enduring relationships with them along their IPO journey and beyond." ■