

Withers Partner Tim George on Picking the Best Path for Wealth and Legacy Structuring

As one of the world's leading private client law firms, London-headquartered Withers timed its entry into Hong Kong to perfection - even before the pandemic hit, more and more wealthy Asian private clients and their families had realised the importance of properly structured estate and legacy planning, but then came the pandemic which has turbocharged demand for the firm's expertise. Withers partner Tim George arrived in Hong Kong in 2018 bringing his expertise in wealth, estate and legacy planning, Wills and testaments, and since his arrival has been seeing rising demand amongst wealthy private clients who are ever more urgently striving towards more professional, structured, and well-executed estate and legacy planning. Consequently, both Tim and the firm are enjoying surging demand for their services from HNW and UHNW clients in Asia, including a rapidly growing number of Mainland Chinese clients. Hubbis 'met' with Tim recently to learn more of his role and the key trends he sees emerging in the world of wealth, succession, and legacy planning. The big picture, he says, is that he and his colleagues are helping their clients and families track their way through what is an increasingly complex and dense forest of worldwide regulations and practices.

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Tim is of Welsh parentage, was born in Bermuda, grew up in Jersey and completed his law studies in Oxford. But his father is surprisingly neither a lawyer nor in the world of offshore finance. “Actually, he is a nightclub owner, and my mother is an artist,” he reports, “but somehow, my history led me into law and quickly into the world of offshore financial and global wealth and estate planning and advisory.”

And one soon learns from talking with Tim that he is a round peg in a round hole. “In my career, I have worked across the three core areas essential for private client work, including many years in London as a tax lawyer, then some years as a trust and estates lawyer, and now with a focus more on the realm of family governance,” he explains.

Empathy and expertise

Armed with this experience and repertoire, George approaches the whole topic of estate and legacy planning with considerable understanding and empathy. He knows that to arrive at the right solutions is not an easy journey for anyone, anywhere, and perhaps especially for some of the wealthier and more complex families he works with. “I would sum it up as saying that with this background, I aim to provide clients with a genuinely holistic approach and solution to their wealth planning and succession issues,” he reports.

Having joined Withers in 2004, and having become a Partner in 2012, Tim’s move to Hong Kong in 2018 has raised his profile as a leading private client legal expert in the field of wealth and legacy planning.

The Hong Kong office in the region now complements the firm’s strong presence in Singapore – its second-largest office globally after London – and Withers’ offices in Tokyo and Sydney. As a result, he reports that the firm now offers the largest international private client legal team in Asia. And the presence across Asia Pacific is set against the firm’s historical strength out of the UK, continental Europe, and the US.

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Multi-faceted and multi-jurisdictional

His expertise includes advising entrepreneurs in relation to the structuring of their businesses, considering issues including business continuity, succession, investment treaty planning and remuneration strategies; advising families in relation to the protection of their wealth, using trusts, foundations, partnerships, companies and funds; assisting with the establishment and operation of family offices; defining sophisticated strategies for individuals moving between jurisdictions, and advising on multi-jurisdictional estate planning with single or multiple wills.

“This enables us to provide a wide range of services in multiple languages in the same time zone as our clients, making the legal advice both cost and time-efficient,” Tim explains. “To obtain the very best legal advice, you need a team that understands both domestic and international issues and how different legal regimes interact and impact on each other. In order to take account of such different, often conflicting, taxation and regulatory

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Private clients at front and centre

He adds that while the firm is multi-disciplinary with, as he says, all the bells and whistles expected of a global law practice, the Withers USP is centred on the gravitational pull of the private client.

“We are probably the largest private-client focused law firm



TIM GEORGE

Withers

in the world today,” he reports. “For over 120 years, Withers has focused on advising HNW and UHNW individuals and families on how to negotiate the wide range of legal issues they face in their business and personal lives. During that time, globalisation along with increased regulation, financial transparency and media exposure has made our clients’ lives ever more complex and legally challenging.”

Mortality and mobility

Tim observes that the two main themes he sees in his core legal work in Asia since the pandemic hit are mortality and mobility. “From a mobility perspective, wealthy families are today far more international, which brings with it far more tax complexities,” he says. “And as people are now stuck in particular jurisdictions, perhaps against their plans or wishes, it brings more and unexpected tax and other issues into focus.”

And he explains that as the pandemic has been the catalyst for a far more intense appreciation of mortality and

Getting Personal with Tim George

George is British, was born in Bermuda and his parents hail from Wales originally. He moved to Jersey when quite young and later studied law at Southampton University, then completed his law studies at Oxford and in London.

Although born in Bermuda, he grew up in Jersey, later attending Southampton University, followed by Law School in Oxford. “You might think that the combination of Bermuda and Jersey mean my father was in the trust or financial services arena, but actually he runs a nightclub, and my mother is an artist,” he quips. “I guess the Bermuda and Jersey history meant the offshore world rubbed off on me.”

His career has been in law throughout, and he reports the highlights as becoming a partner of Withers in 2012 and moving out to Hong Kong in 2018 “I have really enjoyed this role here, and the whole environment,” he reports, “and the work involves both very local and thoroughly global matters and people.”

Although not married, George has been with his partner Sandar for some 18 years, roughly as long as his career with Withers thus far. “This is what happens when you’re a private client lawyer and you spend your life sat next to a team of matrimonial and family lawyers,” he quips, jovially.

He spends a lot of time in sports when on his down time, with triathlons and Iron Man competitions something he professes to truly enjoy. “I did the Challenge Roth in Germany in 2019, for example,” he reports. “I saw a video of it, and incredibly there were crowds of about 300,000 people. I never thought I would even get into the competition, usually one waits years, but I got in first time, then ensued a year of very hard training and even a few months of complete abstinence from alcohol. But honestly, while it was amazing to participate, I can genuinely say never again!”

He is also an avid fan of the Welsh rugby team, and last year had bought tickets for the British Lions tour of South Africa of 2020, a tour that has only just begun due to the wrecking ball of the pandemic.

Although he has only been in Asia about three years thus far, George has grown to love the culture, the dynamism, and the energy. “I have been meeting some amazingly interesting clients and others outside work,” he reports. “It is incredible to see up close wealth made so rapidly and by people who are then genuinely appreciative of the professionalism and competence we bring to the table. It has been very rewarding. So, certainly, we’re still growing here more than we are anywhere else. And Hong Kong is a wonderful place, a combination of metropolis and coast, and wild landscapes, and far less built up than so many people think, offering so much in terms of hiking, landscapes, seascapes and islands.”



Key Priorities

Amongst Tim's priorities, he reports he is helping the firm refine its approach to and practice of remote and flexible working. "We are tackling this on a global basis, with major investment on the technology side to facilitate the necessary advances," he reports. "My second mission is to do more for existing clients, as we have an incredibly extensive and fascinating client base, and we need to build out our coverage, for example we might cover their private client work, but do not pay enough attention to their litigation work, so they might do that with another firm. We want to offer and promote more services for our existing client base."

The third mission is growth, with the aim to derive approximately one-third of revenues from each of the key regions - the US, Europe and Asia. "We are already well into the high 20s in Asia already, Singapore is now our second biggest office after London, bigger even than New York, and Hong Kong is not that far behind. Growth in Asia is outstripping all other markets for us."

vulnerability, the firm's work and teams have expanded significantly as people focus more time, energy and money on getting their affairs in order.

Sharpening the legacy tools

"There is a wider recognition of the need to address the intergenerational shift of wealth and control, as well," he observes. "There are more Asian families now prepared to bring in the next generation; that whole process is now finally happening, as people's minds are so intently focused on the unpredictability of the world we are in, and as they have more time to discuss these things as a family. In short, they've finally got round to the to-do lists they've been putting off for ages and ages."

Moreover, he observes that there is genuinely an increased sophistication in terms of the need

to get this right, especially when looking at multiple residencies, multiple business locations, with family members spread here and there, perhaps foreign spouses living overseas, and so forth. "The solutions need to be multi-faceted," he reports. "To achieve those aims, it often requires experts from a variety of jurisdictions to ensure that no stone is unturned."

To each client their own (approach and solution)

Tim explains that there is no single defined approach, as every situation is different and dynamic, and it of course all depends on which parties and decision-makers are involved, whether a dominant patriarch or a more multi-generational approach from the outset. "I could however say that the work is split roughly between the structures for life and wealth planning – trusts, foundations,

partnerships, shareholders agreements and so forth – and the mortality side, such as Wills, powers of attorney and so forth.

“Very often, clients will come to us and look at it from a clean slate perspective, laying out the family situation, and often those cases are the most interesting to work on,” he reports. “There is both science and art involved in handling such clients, and as a

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Reverse engineering

Another approach is to begin at the structuring end of the equation and design solutions that align to the characters and to the characters who want to control the assets now or in the future.

“For example, with a strong patriarch type character, you might for example start with the trust, looking at your protection mechanisms, and looking at how they might gradually hand over the reins of control and influence to the next generation. And from there, you can then work back to the ‘softer’ aspects of family governance and family con-

stitutions. In short, the angle of approach for these assignments really depends on gauging the situation of the characters and family involved and reading the types of clients and their expectations of us.”

He also notes that it is essential to work with the right external partners and professionals, but that this is done on a case-by-case basis, depending on the assignment, the objectives and the scale and breadth of the expertise required.

Where there is a Will...

Tim turns his focus onto the more rudimentary requirement for Wills, remarking that he all too often sees very poorly executed documents that are not fit for purpose. Some of them might have been written long before the individual made real wealth, many take no account of assets located in foreign jurisdictions and their tax or other laws, even to the extent of a Hong Kong family with extensive wealth in Hong Kong imagining that if they pass that wealth to children resident in the UK, those offspring would not be hit hard with UK taxes on those assets. Another major stumbling point is sometimes a complete misunderstanding about issues around forced heirship in the event of inappropriately drafted Wills or in the absence of effective legacy documentation.

Side-stepping future crises

“The simplest errors are so often there, and we see some real horror stories,” he reports. “The list of examples I could offer is quite troubling, really. This is a real issue that we see nowadays, and the risks are huge for the next generations in getting all this wrong.”

He cites the example of a client who had some significant assets in the PRC, and other major assets dotted around different jurisdictions. “Although they have a Will drafted that works in Hong Kong, the way it has been executed means it will fail to cover the assets in the PRC, so those assets would in fact follow China’s intestacy rules, which are incredibly complex. This is just a simple example of the vital need for different execution formalities in different jurisdictions.”

When one (Will) is far from enough

Tim recently prepared a paper highlighting how wealthy families need to think about the issues at hand, especially those with international assets and members in different countries. “A simple Will drafted by lawyers in their country of residence is often not enough for many individuals and families,” he explains. “So, there must be different Wills or more complex documentation when the family has assets in different countries, when they have multiple residencies, citizenships or domiciles, if they married overseas, perhaps if they wish to leave assets to family overseas, and so forth.”

Estate tax pitfalls

Presenting short hypothetical case studies one by one, the document points to some common problems and potential solutions. Regarding estate tax, he cites the hypothetical example of a fictitious Mrs Tan, which with her entire family is resident in Singapore. She owns one property in the US and one property in the Philippines. She decides to leave the properties to her children under her Will. Upon her death, the US and the Philippines would both impose estate tax. Her children would be responsible for paying this tax and may need to sell the properties to do so. "This," Tim explains, "could have been avoided had she left her US property in a special type of trust for the benefit of her husband and children and her property in the Philippines in trust for her grandchildren."

Income tax issues

Regarding a typical income tax problem, he imagines a Mr Wong who lives in Hong Kong and only has assets in Hong Kong. He executes a Hong Kong Will leaving his assets to his only son. However, his son has lived in the UK for 15 years and as such he is 'deemed domiciled' there. "Upon inheriting, he will therefore be subject to UK income tax on all new Hong Kong investment income, including the underlying income of any companies he inherits, at a rate of up to 45%," Tim reports. "Through careful trust planning within Mr Wong's original Will this investment income could have remained tax-free."

Forced heirship - really?

Forced heirship is a significant issue that so many people do not

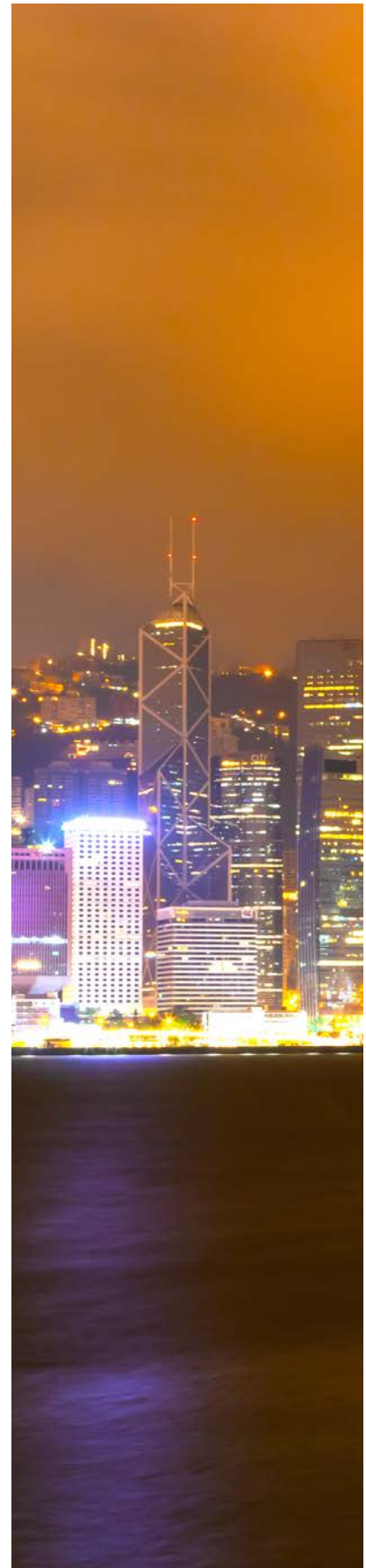
consider. The imaginary Mr and Mrs Lee live in Hong Kong and own properties in France and Italy. They execute a Hong Kong Will in relation to their worldwide assets, each one leaving their entire estate to each other. However, France and Italy both have forced heirship regimes which may prevent owners from freely disposing of their property. Mr and Mrs Lee's children may therefore claim a share of the properties. "This," Tim elucidates, "could easily have been prevented by Mr and Mrs Lee making specifically worded elections in their Wills for their Chinese (Hong Kong) nationality to govern succession."

Matrimonial issues

Matrimonial property regimes are also thorny issues to resolve. Despite now living in Singapore, Mr and Mrs Chaya were married in Thailand. They do not have children and so they agree to leave the wealth they created throughout their marriage to their respective families. However, Thailand has a matrimonial property regime under which the wealth accrued during their marriage may be treated as being owned by them jointly. This could take precedence over their Wills such that their wealth could pass to each other and then solely to the family of the second to die, instead of being divided equally as they intended. "Pre- or post-nuptial agreements in conjunction with carefully constructed Wills could potentially mitigate this," Tim observes.

Avoid the slow-train through probate

"There are often probate delays after an individual passes, some



of which are caused by poorly drafted and documented Wills. A Mr Chan has many assets in countries throughout Asia and the BVI. He executes a single Hong Kong Will in relation to his worldwide estate. Upon Mr Chan's death his Will must be submitted to probate at each of the probate registries and/or courts in each different country where he holds assets, sometimes sequentially rather than simultaneously. If assets are held in civil law jurisdictions, the local succession procedures may involve using public notaries or other local experts."

"All of this can take years," Tim comments. "During that time, Mr Chan's family may not have free access to the assets, which can cause untold difficulties at an already stressful time for the surviving family members. This process could have been expedited by selecting key assets and executing separate local Wills in those jurisdictions, or by consolidating certain assets

within holding structures in particular jurisdictions."

Diminished capacity and the ramifications

And of course, when older people are concerned, there are often mental capacity issues. A certain Mrs Ng executes a Will which covers her worldwide assets. Unfortunately, Mrs Ng loses mental capacity and as the provisions of her Will only take effect on her death, no one can take any decisions on her behalf in relation to her assets whilst she is alive but incapacitated.

"These issues could have been simply avoided had she appointed one or more persons under lasting powers of attorney (or, in some jurisdictions, enduring powers of attorney) who could manage her affairs in the event of a loss of her mental capacity," Tim explains. "Unfortunately, in my daily work, I see many such examples of pitfalls and errors to illustrate the vital need to address these points."

Coping with a complex world

Tim closes the conversation by reiterating the scale and scope of the firm. Since before arriving in Hong Kong, Tim had already become a member of the partnership board of Withers, meaning he has had a sharp focus on the broader business aspects of the firm as well as acting as a lawyer for his clients. And the business has progressed well. He reports that in Europe, for example, Withers has represented 60% of The Sunday Times top 100 Rich List, in the US over 25% of The Forbes World Billionaires List, and in Asia, Withers acts for 30% of the top 20 Hong Kong billionaires on the Forbes World Billionaires List.

"We bring that level of commitment and expertise to each of our private clients, not just the billionaires," he concludes. "These are difficult times in an already complex world and bringing our depth of expertise truly helps clients find their ways through the dense forest we call life." ■

