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FOREWORD



On behalf of Amicorp, we are delighted to be the lead sponsor for Hubbis' Guide to Wealth Planning 2013.

According to the 2013 Asia-Pacific Wealth Report by Capgemini and RBC Wealth Management, the HNWI population and overall wealth, reached record levels in 2012, driven by gains across the region, but in particular in Hong Kong and India. Although the investable wealth of HNWI's reached US\$12 trillion in 2012, and was just shy of North America's US\$12.7 trillion, Asia Pacific is expected to bounce back and become the world's largest HNWI wealth market by 2015, experiencing 9.8% compound annual growth to 2015 (versus 5.3% across the rest of world), putting the region's estimated HNWI wealth at US\$15.9 trillion by 2015. The report reflected that a large part of this accumulated wealth is vested in family controlled businesses.

However, this accelerated growth in accumulated wealth across Asia, comes at a time where there is an increasing focus on tackling tax avoidance and addressing the transition of business wealth to the next generation. Throughout 2013, the promotion of tax transparency and facilitating automatic exchange of information has remained firmly on the agenda of G20 and G8 meetings. The international network for gathering and exchanging information is being implemented through the introduction of the Foreign Account Tax Compliance Act (FATCA) and Bi-lateral Tax Conventions for automatic information exchange. This process has gained further momentum from recent data leakages and publishing of client information from financial institutions and fiduciary businesses.

Whilst the objective of improving tax enforcement is clear, the result has been to impose greater obligations on financial institutions and fiduciary businesses to monitor, assess and possibly report clients in respect of their transactions. Simultaneously, the same businesses are facing challenges concerning the handling and security of customer data arising from employees, contractors, government agencies and the general public.

These are profound and all-pervasive in their impacts and will affect all of us in the wealth management industry, particularly in the areas of wealth planning and structuring. Simply put, all clients will need to be identified, and should have compliant structures, not only where the structure is set up, but also according to personal tax reporting requirements in the home country where the client is tax resident. The perennial issue of estate planning and business succession also received attention through high-profile family disputes throughout 2013 in the media, as well as the release of an Asian study, recognising that Asian family businesses lose on average 60% of their value during the business succession phase.

Such issues give pause to reflect on the depth of solutions being offered in the marketplace. Once again, we thank Hubbis for the opportunity to support this timely publication and we look forward to working with you and your clients across the region.

Peter Golovsky
Global Head of Private Clients
Amicorp Group, Hong Kong

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Asia's expanding ranks of high net worth and ultra-high net worth families are increasingly reaching out to specialists for advice on structuring their wealth – for a variety of different reasons.

12 THE BROADER NEEDS OF WEALTHY CLIENTS

As the region's wealthy grow even richer, there is a need to provide more holistic advice that addresses the complex needs of the wider family. The question, though, is whether clients are willing to pay.

22 CATERING TO THE NEEDS OF CHINA'S WEALTHY

China's high net worth individuals are young and mobile. Their investments are also very international. Wealth planners are therefore seeing increased interest among mainland Chinese clients in cross-border structuring for asset holding purposes.

30 WHAT IT TAKES TO SERVE FAMILIES IN ASIA

While the family office model remains in its infancy in Asia, the region's wealthiest are increasingly turning their backs on private banks and embracing the concept of working with independent advisers that can meet the specific needs of their families, said panel members at Hubbis' Wealth Planning Forum 2013 in Singapore in early November.

34 WHERE TO START WITH WEALTH STRUCTURING

To help a client implement an appropriate and suitable wealth plan, it is imperative that he or she discloses certain information to the trustee, declared panel members at Hubbis' Wealth Planning Forum 2013 in Singapore in early November. Yet the trustee also has a duty to educate clients, in order to manage their expectations.

50 CONTEMPLATING JURISDICTIONS

Many jurisdictions are promoting themselves as centres for financial, corporate and fiduciary services. When deciding where to set up a particular structure, it is imperative to determine what the client wants to achieve, as well as what their main priorities and concerns are.

58 ONSHORE, OFFSHORE AND MID-SHORE STRUCTURING

Hong Kong and Singapore have much to offer as centres for structuring. But choosing a jurisdiction really comes down to meeting the needs of the client and his or her family, said panel members at Hubbis' Wealth Planning Forum 2013 in Singapore in early November.





Asia's Leading Trust and Corporate Services Team



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According to practitioners, some independent trust companies are better positioned than banks to deliver the right levels of service and advice on succession planning. However, price, brand, reputation, and size continue to be important considerations for clients in Asia.

76 **KNOWING THE COST OF EVERYTHING BUT THE VALUE OF NOTHING**

A major challenge for wealth planning practitioners is getting clients to pay for their services. For this reason, most private banks don't charge for wealth planning advice. But there is only so much they can throw in for free, and often, sending the client to see an external specialist would be in everyone's best interests.

80 **CONSEQUENCES OF THE RAPID PACE OF REGULATORY CHANGE**

As the international regulatory playing field levels out, firms will have no choice but to comply, and the industry will become a fairer place. But the changes are raising a number of concerns among clients relating to the privacy and security of their personal data.

88 **WHAT GLOBAL TAX TRANSPARENCY MEANS FOR WEALTH MANAGERS**

As more and more countries sign up to FATCA and inter-governmental agreements, clients need to realise that their data will not be kept secret, said panel members at Hubbis' Wealth Planning Forum 2013 in Singapore in early November. While most wealth management firms are not qualified to give tax advice, they should encourage clients to speak to specialists.

Hubbis Excellence in Professional Services Award

18 **THE FUN AND FASCINATION OF PRIVATE CLIENT WORK**


Marcus Leese, partner at Ogier and a winner of Hubbis' "Excellence in Professional Services Award", outlines what it takes to work with the diverse range of wealthy clients and families he meets in Asia, and what is so appealing about this type of work.

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40 **WHAT'S ON THE CARDS FOR WEALTH PLANNERS IN HONG KONG?**

As the wealth in Asia matures, there's a growing need across the region for holistic wealth planning. But activities that involve dealing with families and investigating their problems require time. And as most banks don't attach a fee for wealth planning services, finding ways to monetise these resources can be a challenge.





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There is a growing need to help families in Asia write the next chapter of their story of entrepreneurial success. As an independent consultancy focusing on helping families to deal with challenges relating to the transfer of wealth, Withers Consulting Group is well positioned to help these families – leveraging on experience and knowledge gained from working with families in Europe and the US.

46 **BVI: BUILDING ON ITS COMMITMENT TO ASIA**

In September 2013 the British Virgin Islands (BVI) opened BVI House Asia, a representative office for the BVI government. 40% of the jurisdiction's financial services business comes from Asia, according to Lorna Smith and Elise Donovan – and the BVI is now focused on deepening and building on its relationship with the region.

54 **IS MALTA AN EMERGING CENTRE FOR WEALTH STRUCTURING?**

Malta, a small island state at the heart of the Mediterranean, has quietly emerged as one of Europe's most stable and innovative financial centres. The country's wealth management sector is particularly attractive to wealthy individuals from all corners of the world, says Bruno L'ecuyer, head of business development at FinanceMalta.

60 **STRIVING TO LEAD THE WAY IN OFFSHORE STRUCTURING**

With around 13,000 people employed in financial services, and a long, prosperous history of trusts and other structuring solutions, Jersey clearly remains attractive for offshore wealth structuring – as outlined by Geoff Cook, CEO, Jersey Finance.

68 **WHAT IT TAKES TO BE A LEADER IN THE INDEPENDENT TRUSTEE SPACE**

As more and more private banks exit the fiduciary services space, or reduce the scope of their wealth planning-related services, independent providers like Trident Trust are receiving more business. But where they will stand out is in providing service to clients that meets all of their requirements, and brings real value.

72 **GUERNSEY: ARE ASIAN CLIENTS MISSING OUT?**

While the BVI and Cayman seem to be the Coca Colas and Pepsis of the offshore world for Asian clients, Fiona Le Poidevin, chief executive of Guernsey Finance reveals the ways in which Guernsey might be particularly attractive to wealthy Asians.

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40%

The amount of estate duty levied on UK and US assets upon the owner's death.
Page 4

40

The average age of entrepreneurs in China.
Page 8

520,000

The number of super-rich in China that own their own business.
Page 22

US\$20,000

"Some banks will charge a flat fee of US\$20,000 per annum – just to get clients on their books."
Page 43

40%

"At least 40% of the BVI's financial services business comes from clients in Asia."
Page 46

€1,500

The cost of setting up a fully-fledged trust in Malta.
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2047

The date when the "one country, two systems" policy will no longer apply to Hong Kong.
Page 59

1,184

The number of STEP qualified practitioners in Jersey.
Page 60

US\$47 billion

The combined net worth of Indonesia's billionaires.
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CONNECTING ASIA'S ECONOMIES

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LABUAN IBFC GROWING WITH ASIA



THE NEED FOR WEALTH STRUCTURING IN ASIA

ASIA'S EXPANDING RANKS OF HIGH NET WORTH AND ULTRA-HIGH NET WORTH FAMILIES ARE INCREASINGLY REACHING OUT TO SPECIALISTS FOR ADVICE ON STRUCTURING THEIR WEALTH - FOR A VARIETY OF DIFFERENT REASONS.

As the industry in Asia matures, and the region's wealthy approach old-age, there is a fundamental need to preserve, protect, and transition the wealth to the next generation.

For many years, there has been a perception among wealth advisers that Asians are not prepared to talk about death. This is changing.

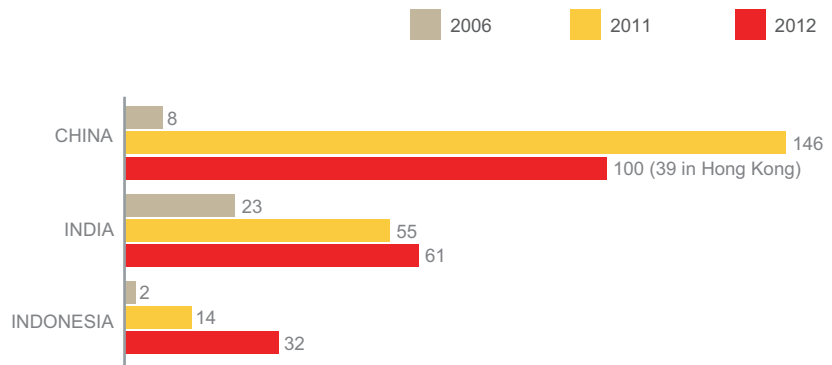
Families across Asia are very concerned about the succession of the wealth they've worked hard to accumulate, and in particular, sustaining the businesses they've created. This means there's actually a lot more willingness to talk about issues like death.

The media has played a significant role in raising awareness of what can go wrong if families fail to plan.

Newspapers in Hong Kong and Singapore frequently report high-profile cases of families squabbling over assets in the event of the death of the patriarch or the matriarch, as well as marital disputes over large amounts of family wealth.

No family wants to suffer the humiliation of a scandal. Clients are therefore

ASIA'S BILLIONAIRE BOOM



Source: Forbes billionaire list

keen to make provisions that will help to minimise their chances of losing face in public. They also want to avoid relationships breaking down, as well as dissipation of the family wealth.

"There is a huge opportunity for players in this industry. But for many of the newly wealthy, the concept of wealth planning and structuring is not something they're used to. There's therefore a huge need for education," says Marcus Leese, partner at Ogier.

Families are typically not familiar with structures like trusts, foundations, and charitable investing vehicle; many just have a will at the most.

And a will may not be sufficient for protecting the family wealth.

An effective way of communicating this to clients is to explain that while they usually love their children and grandchildren, they may not love their children's friends and future spouses.

OFFSHORE FIDUCIARY SPECIALISTS IN SINGAPORE

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FEATURE ARTICLE

"This often gets clients talking about how they don't like their daughter-in-law or their mother-in-law, and leads to discussions about how much wealth – and which assets – the client wants certain family members to receive," explains Woon Hum Tan, partner & head, trust, asset & wealth management practice at Shook Lin & Bok LLP.

Often, patriarchs and matriarchs leave the wealth to two children or two siblings, expecting them to think as one. They don't. And that's where problems kick in.

One of the historical issues has been that families here are quite large, says James Bertram, consultant at Deacons.

"Some of the wealthy patriarchs had multiple spouses, and so families have multiple strands. This means that one strand of the family may feel they have a greater claim to the family fortune."

It is common for disputes to arise between family members from first, second, and even third or fourth marriages. A formal succession planning tool such as a well-drafted trust deed can help to minimise ambiguity in terms of who gets what from the estate.



Jay Krause
Withers

"In Asia, wealth planning is about asset protection and control – who will make investment decisions, who will run the family business, and how the proceeds will be allocated."

But wealth planning isn't just about how the proceeds will be allocated. "This is about asset protection and control – who will make investment decisions, who will run the family business," says Jay Krause, partner, head of wealth planning in Asia at Withers.

BUSINESS SUCCESSION

Business succession is a top priority for many clients. To avoid a standstill or a dispute after the death of the patriarch

– which could affect the value of the shares – many families want to make provisions detailing who will obtain control of the business when they are no longer in a position to run it, and who will inherit ownership.

Valerie Wu, partner at Lee & Lee in Singapore, explains how one of her clients implemented planning prior to the listing of the family business. The estimated value of the IPO was S\$90 million (US\$72 million). Three sub-funds were set up to share the wealth between three different branches of the family – so each branch got S\$30 million of seed capital. "This eliminated any potential perception of inequality," Wu points out.

INTERNATIONAL ASSETS

Many wealthy Asians are very international in terms of their investments. If they have property in the UK or the US, or shares in US or European companies they must beware of the tax implications of owning these assets. For example, if an individual has direct ownership of US assets, those assets will be subject to an estate tax of 40% upon the owner's death.



Paul Christopher
Mourant Ozannes

"The Asian love affair with the BVI is well known. The flexibility of the jurisdiction seems to suit clients in Asia."

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FEATURE ARTICLE

Another example might be a client that owns a business in Dubai through a Ras al-Khaimah (RAK) company. If he or she passes away, the succession of the company shares will be subject to Shariah law – which has various implications that may not be in line with the client’s expectations or wishes.

Such problems can easily be avoided by putting proper succession plans in place, says Keith Corbin, executive chairman, Nerine Trust.

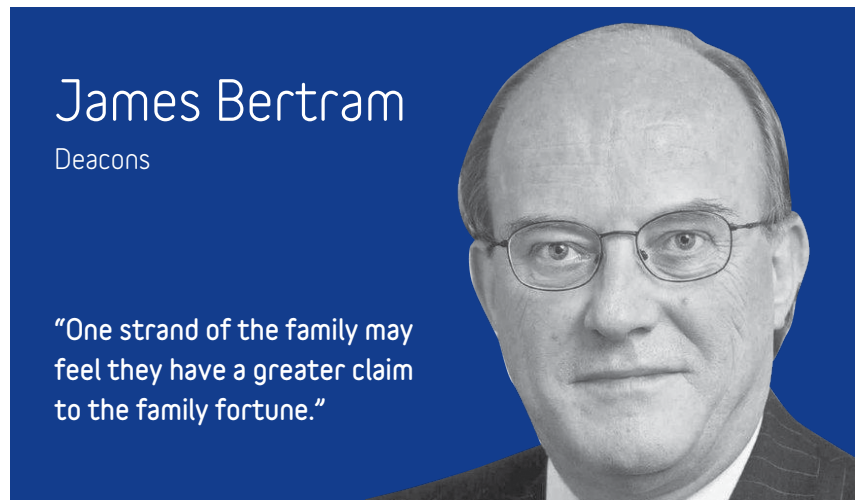
“The Asian love affair with the BVI is well known,” says Paul Christopher, managing partner, Hong Kong at Moutant Ozannes.

“The flexibility of the jurisdiction seems to suit clients in Asia.”

But clients need to understand the potential implications of directly holding shares in BVI companies. Regardless of whether or not the individual has a will, upon that person’s death, the shares in that company will be dealt with by a BVI court.

INTERNATIONAL FAMILIES

In addition to having assets overseas, many families have members who opt



to live and work abroad, after having received an international education.

“We continue to see high immigration out of Asia – predominantly driven by a desire for education in western countries,” says Nigel Rivers, managing director, Hong Kong and regional

director of private clients, Asia Pacific at TMF Group.

The continued globalisation of Asian families is presenting these clients with multiple new challenges. “There has been a growing desire for structures that can provide security of the

“Domicile is something that must be factored into a wealth plan; particularly if beneficiaries of a trust are domiciled in a high-tax jurisdiction, for instance.”



client’s assets and also provide some supporting income for the family members in the foreign jurisdiction,” continues Rivers.

“Domicile is something that must be factored into a wealth plan; particularly if beneficiaries of a trust are domiciled in a high-tax jurisdiction, for instance.”

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FEATURE ARTICLE

Initially this involved sending money back to villages or clans, to pay for graves, temples and schools.

The philanthropy taking place in Asia today builds on these values.

"Giving away a proportion of the wealth has always been a part of Chinese culture, but it has evolved over time and taken on a new face," says Wu.

Clients are accepting that to make a real impact, philanthropy needs to be done in a structured way.

If the patriarch or matriarch dies, for example, the structure and the direction of his or her philanthropic pursuits will quickly disintegrate.

However, if a trust or other related vehicle is set up, the contributions can continue after the settlor's death.

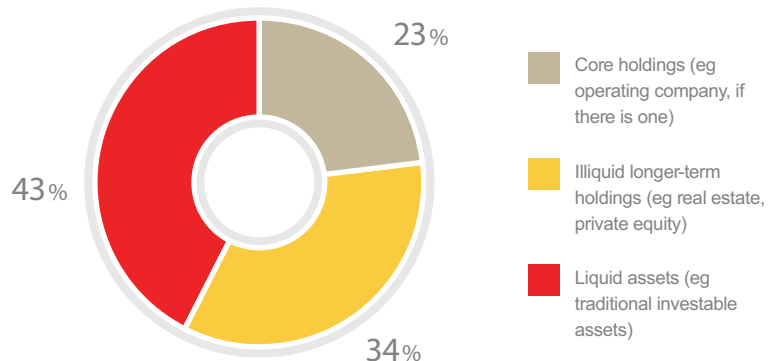
This is now becoming a consideration for Asian clients when looking to set up vehicles for structuring their wealth.

DIFFERENT STAGES OF MATURITY

"While tycoons from Hong Kong and Singapore are now in their 70s and 80s, and are starting to think about passing on the vast amount of wealth they have accumulated, in mainland China we are looking at newly created first generation wealth," observes Mark Smallwood, head of strategic initiatives, Asia Pacific, Deutsche Asset & Wealth Management.

"The average age of the entrepreneurs in China is probably around 40. Most of these individuals have been educated overseas, and typically understand better some of the ideas being proposed around succession planning and

AVERAGE DISTRIBUTION OF THE FAMILY'S TOTAL WEALTH



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

"Most [mainland Chinese entrepreneurs] have been educated overseas, and typically understand better some of the ideas being proposed around succession planning and wealth structuring."

wealth structuring, particularly within the context of asset protection."

It's important that wealth planners are sensitive to a client's appetite and

tolerance. For example, structuring to create elaborate tax plans can become extremely complex, and some clients feel this either isn't necessary – or it's too expensive. ■

Woon Hum Tan

Shook Lin & Bok

"[It's important to discuss] how much wealth – and which assets – different family members should receive."





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GLOBAL TAX TRANSPARENCY - HOW ARE WE IMPACTED IN ASIA?

THIS TIME LAST YEAR, MANY PEOPLE WITHIN THE WEALTH MANAGEMENT INDUSTRY WERE SCEPTICAL ABOUT THE GLOBAL ADOPTION OF TAX TRANSPARENCY. HOWEVER, 2013 HAS SEEN A NUMBER OF DEVELOPMENTS THAT HAVE CHANGED THEIR THINKING, SAYS AMICORP GROUP'S PETER GOLOVSKY, MANAGING DIRECTOR AND GLOBAL HEAD OF PRIVATE CLIENTS, AND ERIC BOES, INTERNATIONAL TAX SPECIALIST.

Some of the more influential developments in 2013 which have shaped thinking around global tax transparency and its wider implications have included the finalisation of regulations for the Foreign Account Tax Compliance Act (FATCA), and negotiations around Intergovernmental Agreements (IGAs). 11 countries have now signed such IGAs, and 50 other countries are in negotiations. Moreover, the UK has taken the decision to mirror the FATCA concept for its UK taxpayers, and many countries may follow.

A number of tax information exchange agreements (TIEAs) have also been signed, and the G20 has put tax transparency at the top of its agenda.

At the G20 Summit in St-Petersburg in early September, the G20 countries committed to adopting an automatic exchange of information (EOI) system by the end of 2015.

Sixty-one countries have signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, including recently China, Switzerland and Chile.

"There is clearly a trend towards global tax transparency. And the new ex-

change regimes rely on financial institutions (FIs) to act as cross-border tax agents," says Peter Golovsky, managing director and global head of private clients at Amicorp Group.

EOI: METHODS, STANDARDS AND RULES

EOI is governed by a certain legal basis, methods and agreed standards. Authorities can obtain information on request or automatically, depending upon the type of agreement countries have entered into, explains Golovsky. A key EOI standard is that the requested information must be foreseeably relevant. The party asking for information should only do so on the basis of suspicion of wrongdoing. This means that "fishing expeditions" are not acceptable.

Another standard is reciprocity. If one country provides information to another, the requesting country must also share similar information with that country, explains Golovsky. And banking secrecy cannot be used as a reason not to provide information. Plus, the information collected cannot be passed onto a third country except when it is a special approved case.



Peter Golovsky

Amicorp Group

These methods and standards include restrictions for a successful EOI, which is why various governments, the EU, OECD and G20 are pushing for automatic EOI. This is where financial institutions worldwide are required to report certain financial information, up to the level of the Ultimate Beneficial Owner (UBO).

DEVELOPMENTS WITH FATCA

FATCA, as a US initiative that targets tax non-compliance by US taxpayers with foreign accounts, is applicable to anybody with a US passport or green card – even if they're living in Asia. These people must report all of their financial information to the US, including that relating to offshore structures. From 1st July 2014, foreign financial institutions must register with the US Internal Revenue Service (IRS) and report certain information on their US client accounts to the IRS. Financial institutions will be able to register from 1st January 2014 and are encouraged to complete their registration before 25th April 2014.

A FI includes depository banks, custodians, brokers, funds, certain insurance companies and pension funds. But it also includes trusts and underlying investment entities, whose gross income comes primarily (50% or more) from financial assets and who are professionally managed by other FIs like asset managers and corporate trustees. Under the sponsoring facilities these entities can be supported by other FIs to become FATCA compliant.

If parties do not comply, there is a 30% withholding on certain US-sourced payments including bank deposit and other interest, dividends and gross proceeds on the disposition of U.S. debt or equity securities. "Firms have been granted a longer transition period to ensure all of their existing client accounts are FATCA compliant," says Eric Boes, head of international tax. "Even if a client doesn't have a US passport, banks should look for certain so-called US Indicia."

These include: the US being the place of birth; having a US residency, mailing address or telephone number; standing orders to US accounts; power of attorney or other signatory authorities to

a person with a US address; and providing in-care or hold-mail addresses to the US. If one of these Indicia has been identified, the account holder is deemed a US person, unless he or she demonstrates counter evidence.

USE OF IGAs

The US has so far actual signed IGAs with 12 countries and is in negotiations with 50 others. "These IGAs exist to facilitate FATCA and take away legal barriers in local jurisdictions like privacy and banking secrecy requirements," says Boes. Countries can choose between two IGA models, he explains. Model 1 requires foreign financial institutions to report US accounts to the IRS via local tax authorities. Model 2, which Switzerland has signed, requires them to report US accounts directly to the IRS.

Singapore, for example, which is one of the 50 jurisdiction still in negotiation with the US, has announced that it will introduce Model 1. Hong Kong is negotiating Model 2 but the negotiations with the US are not as advanced as those between Singapore and the US. China and Indonesia are negotiating Model 1, and Taiwan is likely to take this route. IGA model 1 also includes a reciprocity element, which has implications for foreigners with US bank accounts, adds Boes. "Tax authorities in the client's home jurisdiction will automatically get all financial information about that client's US bank accounts."

OBJECTIONS

It has been reported that many US banks aren't happy about the fact they're losing business through clients moving their money to other jurisdictions. Also, many smaller banks cannot handle the administrative burden. In addition, a number of other countries are raising questions over whether lo-

cal banks and pension plans might be exempt from some of the rules, adds Boes. And there are issues around data protection and discrimination.

"GATCA"

In St Petersburg, the G20 committed to introducing a Global FATCA, and requested all countries worldwide to sign up to this Convention without delay. The Convention is multi-lateral, meaning participating countries have agreed to exchange information with the other 60 countries. It covers all EOI methods, although an extra agreement is yet to be added to cover automatic exchange of information.

IMPLICATIONS IN ASIA

So what does all this mean for the private wealth community in Asia? "Banks and trust companies will have to collect the required information, but they also need to support and guide their clients through this process," says Golovsky. "A lot of time and care must be taken to ensure that clients' investment structures are compliant with the regulations in the UBO's country of residence." This means advisers must know their clients' nationalities and tax residencies, and must inform clients of all changes in transparency standards and regulations. Nominee structures, for example, are very primitive and won't help. Trust solutions and private foundations work in many cases, but not if the UBO "has his cake and eats it too".

If firms are found to be assisting individuals in tax evasion, they face significant penalties. "Advisers, banks and service providers must not be complacent, and must definitely not hide behind banking secrecy and privacy laws – because those concepts which have been relied upon until now are set to disappear," explains Golovsky. ■

THE BROADER NEEDS OF WEALTHY CLIENTS

AS THE REGION'S WEALTHY GROW EVEN RICHER, THERE IS A NEED TO PROVIDE MORE HOLISTIC ADVICE THAT ADDRESSES THE COMPLEX NEEDS OF THE WIDER FAMILY. THE QUESTION, THOUGH, IS WHETHER CLIENTS ARE WILLING TO PAY.

According to Marcus Hinkley, group partner of Collas Crill's private client business in Singapore, the industry is moving away from simple wealth structuring solutions, towards more complicated ones that can address more of clients' objectives.

Wealth protection is a top priority, both for Asia's aging tycoons and the up-and-coming entrepreneurs that have made their first few million.

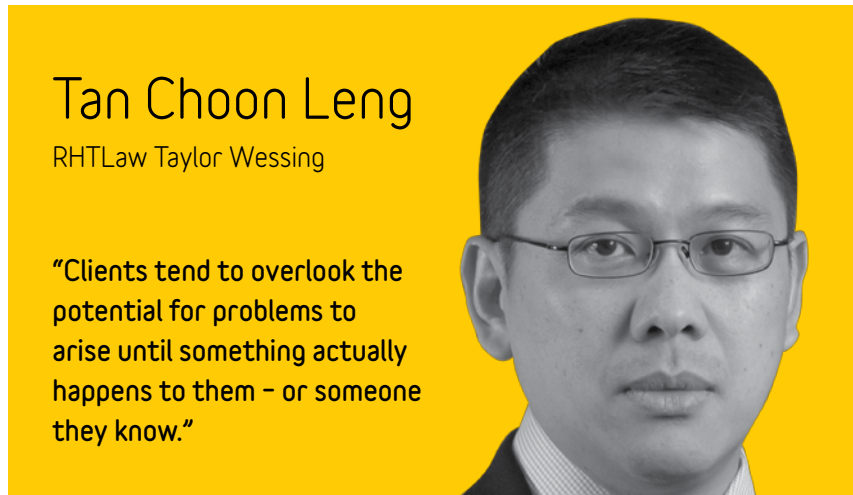
"The issues that clients face today are around business succession and avoiding dissipation of the family's wealth," says Michael Olesnick, partner at Baker & McKenzie.

PRACTICAL THINKING

Patriarchs and matriarchs often express concern about their son or daughter marrying someone unsuitable, adds Nisha Singh, senior associate at Berwin Leighton Paisner.

They therefore want to protect the family wealth from being dissipated through a breakdown in the marriage.

In divorce settlements in some parts of the world, for example in Hong Kong,



"The industry is moving away from simple wealth structuring solutions, towards more complicated ones that can address more of clients' objectives."

50:50 splits are common – meaning a client could be at risk of losing half of their wealth to their ex-spouse.

This can be prevented through the use of a prenuptial or postnuptial agreement, or a trust structure – to ring-

fence the family assets, but this requires careful planning.

"If there is a significant difference in the wealth between the two parties, it is sensible to consider entering into one of these types of agreements, to

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FEATURE ARTICLE

protect the wealth of the financially stronger party,” advises Marcus Dearle, partner and office managing director for Asia at Withers in Hong Kong.

However, many clients tend to overlook the potential for problems to arise until something actually happens to them – or someone they know – such as the death or divorce of a family member or friend, points out Tan Choon Leng, partner at RHTLaw Taylor Wessing.

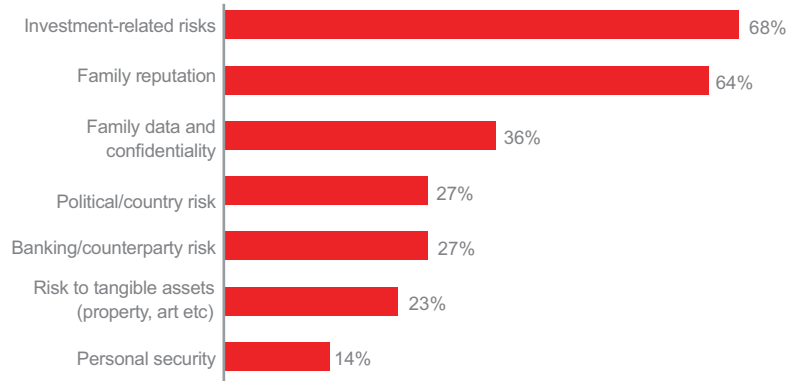
Family offices provide a forum for families to sit down and discuss the family business and other family issues in a very transparent way, says Olesnicky. “Keeping the family together like glue is important in order to avoid fragmenting the family’s assets.”

If shares in the family business are distributed to different individuals, through inheritance, the value of the business will simply dwindle away.

Keeping the majority ownership together and intact through a family office will help to protect the business and the wealth.

Unfortunately, though, many patriarchs and matriarchs are reluctant to pay for these sorts of services because

WHAT RISKS WORRY YOU THE MOST?



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

“Despite all of the litigation proceedings that make headlines, most families still do not appear to take governance sufficiently seriously. They are generally not prepared to pay a specialist to help them with this part of their holistic wealth planning and wealth preservation.”

they don’t recognise the value that advisers bring.

These entrepreneurs have spent their whole lives building up their fortune. They’ve been fairly successful so far,

and therefore can’t understand why they now need to change things.

“Despite all of the litigation proceedings that make headlines, most families still do not appear to take governance sufficiently seriously. They are generally not prepared to pay a specialist to help them with this part of their holistic wealth planning and wealth preservation,” says William Ahern, principal, Family Capital Conservation.

Many are preoccupied with thinking about the returns they are getting on their investments. According to Tan, the Asian mentality is all about building the business and trading.

However, some firms are finding that if they can position the services they’re offering in the right way, they can engage these entrepreneurial types.



Nisha Singh
Berwin Leighton Paisner

“Patriarchs and matriarchs want to protect the family wealth from being dissipated through potential breakdowns in children’s marriages.”

"In the past, the trust company used to work closely with the private bank. But now trust companies are also working with the investment bank and the commercial bank. The solutions we're providing to clients are evolving – in tandem with our clients' needs. And in addition, we're now seeing more demand for family business solutions," says Michelle Lau, senior director, head of wealth planning, private wealth solutions at HSBC Trustee.

Private banks can also facilitate business networking for these sorts of clients, in order to bring about opportunities such as private equity, mergers and so on, for their clients. But according to Noor Quek, founder and managing director of NQ International, this is only possible if they can create the right connectivity. And this requires listening to what it is their clients want to achieve.

IMPORTANCE OF THE YOUNGER GENERATION

"In South-East Asia, the opportunity lies in engaging multiple generations within a family," declares Lawrence Wong, alternate chief executive and head of sales, BOC International.



Lawrence Wong
BOC International

"In South-East Asia, the opportunity lies in engaging multiple generations within a family."

Michael Olesnicky

Baker & McKenzie

"The issues that clients face today are around business succession and avoiding dissipation of the family's wealth."



In most cases, the patriarch or matriarch who established the family firm will never admit to needing advice on how to run a family business.

But the younger generation, in contrast, are likely to want to maintain the level of wealth and success that their parents achieved, and are therefore more willing to pay for advice.

Unlike their parents, this generation are keen to learn as much as possible how to manage, preserve, and further build the family wealth.

Preparing the next generation to take over the management of the family wealth, and potentially, the family business, is much more complex than patriarchs and matriarchs often realise; and this is something that's frequently overlooked.

According to Mandeep Nalwa, founder and chief executive officer of Taurus Wealth Advisors, this includes psychological preparation.

"When this is achieved, the next generation is in a position to move the family business to the next level. When it isn't achieved, it is a recipe for future disputes to arise in the management of the company," says Nalwa.

But not everybody is suitable to take on the responsibility of managing the family wealth and the business, warns Nigel Rivers, managing director, Hong Kong, and regional director of private clients, Asia Pacific at TMF Group.

"Competence and character are key. It's important to explore whether younger family members are right for taking on this role, or whether they would be better suited to doing something else." ■

AN OFFERING THAT MEETS THE NEEDS OF THE ASIAN MARKET

MARCUS LEESE, PARTNER AT OGIER, EXPLAINS WHAT DIFFERENTIATES THE OFFSHORE LAW FIRM FROM ITS COMPETITORS, AND WHY IT IS WELL-POSITIONED TO MEET THE GROWING NEEDS OF THE ASIAN MARKET IN TERMS OF PRIVATE CLIENT ADVICE.

The vast increase in wealth and in the number of wealthy individuals in parts of Asia, combined with the increasing complexity of the issues those clients face, means that there is a growing need for private client advice in this part of the world.

But when deciding whether to engage a third party such as a law firm, there are a number of factors a client ought to consider.

Technical expertise is an obvious starting point; many would say this is a given. But according to Marcus Leese, partner, Ogier, there is a big range of abilities amongst providers.

"It's important for a client to make sure he or she is satisfied that the firm has the necessary expertise and skills in the relevant practice area," says Leese.

It's also useful to do a bit of research to find out whether the firm is a large global organisation or whether it just specialises in one jurisdiction.

Ogier provides legal advice in respect to five leading offshore jurisdictions: the BVI, Cayman Islands, Guernsey, Jersey and Luxembourg. These are ju-

risdictions that specialise in providing structuring solutions for private clients. With over 850 people providing advice on law and fiduciary services in these key locations, Ogier is able to cover clients in all time zones and key financial markets.

The firm is able to advise clients on various areas of law, including the formation of investment funds; corporate and commercial work such as M&A and IPOs; banking and finance for companies operating in the offshore jurisdictions; litigation or dispute resolution; and private client matters.

DEMAND FOR PRIVATE CLIENT ADVICE

"As the assets that wealthy individuals own become more complex, and the number of jurisdictions with which they have relationships increases, there is a pressing need for proper planning and structuring of their affairs," says Leese.

As an example, Leese recently worked on a case in which an ultra-high net worth South-East Asian client wanted to purchase a GBP2 million (US\$3.2 million) property in the UK. The client



Marcus Leese

Ogier

wanted to avoid the UK's Annual Tax on Enveloped Dwellings (ATED) and Capital Gains Tax (CGT).

He intended the property to be available for personal use by members of his family – and also wanted to be able to retain the asset in the long-term.

Plus, he also wanted to retain certain powers in relation to the management of the property.

Leese assisted with the establishment of a Guernsey reserved powers trust, meaning that the trustee took ownership of the asset and the structure avoided ATED and CGT. The family members were named as beneficiaries, allowing them to use the property, and the power of investment was reserved to the settlor, meaning that the client was the only person who could make decisions about selling the property – or buying more property.

In Hong Kong, in terms of private client work there is a lot of demand for trust documentation, particularly for BVI VISTA trusts, says Leese. Guernsey and Jersey reserved powers trusts and also foundations are also used extensively. Clients also come to Ogier seeking assistance on legal matters relating to offshore companies in the BVI and the Cayman Islands as well as Guernsey and Jersey that hold their assets.

And in addition, the private client lawyers draft wills for the assets and investments in those offshore jurisdictions – as well as doing probate upon the settlor's death.

But it is very rare for a client to only have issues in the offshore jurisdictions. Most clients will face challenges in multiple jurisdictions, including or course, the onshore ones. For this reason, Ogier works alongside a number of leading onshore law firms (especially in England and the US) who specialise in different onshore jurisdictions.

DIFFERENTIATION

As well as its jurisdictional capabilities, Ogier stands apart from other offshore law firms because of the strength of

its private client practice, and also the quality of its people.

In the private client area, many of Ogier's competitors don't have a substantial practice in Asia. The firm has chosen to focus on this as an important growth area.

Ogier's most significant differentiator, though, is its people. Leese believes that many clients often overlook the importance of personal relationships when thinking about working with professional advisers. Large global organisations often have high levels of staff turnover – and so the client could end up dealing with a number of different individuals. For many clients, there is real value in developing a long term relationship with a legal adviser who is familiar with their specific requirements and circumstances. This is something which Ogier and its people focus on.

CHALLENGES

A large proportion of clients in Asia still do not fully appreciate that they have a need for planning and structuring. And those that do recognise it frequently don't appreciate how complex the structuring may need to be in order for it to be effective.

Many are very fee-sensitive, and don't understand the true value they are getting for the price they are paying. Clearly, price is a relevant consideration when choosing a third party.

"It would be unwise to select a third party provider solely on the basis of price," says Leese, "as there are many other crucial factors to bear in mind."

Instead, clients should think about overall value that they are deriving from the work – and the quality of the work being provided.

Ogier's private wealth legal services:

- Structuring and establishment of trusts, foundations, limited partnerships and companies
- Structuring, establishment and on-going operation of family offices
- Regulatory issues
- Operational issues, as well as amendment and restructuring of private wealth structures
- Advising beneficiaries, trustees, protectors, other fiduciaries and other service providers
- Disputes among beneficiaries, settlors, trustees, protectors, and others
- Termination of existing private wealth structures
- Drafting of wills and obtaining grants of probate and letters of administration

Another misconception many clients have is that once a structure is in operation, it can simply be set aside and left alone. This is not the case.

"A structure must be periodically reviewed, to assess whether it is still appropriate and in line with the client's goals," explains Leese.

"If the client's wishes and or circumstances have changed, then the structure may need to be altered. Plus, changes to tax and regulatory laws can mean that a structure that was effective and legally correct at the time of its establishment may no longer be appropriate at a later date." ■

THE FUN AND FASCINATION OF PRIVATE CLIENT WORK

MARCUS LEESE, PARTNER AT OGIER AND A WINNER OF HUBBIS' "EXCELLENCE IN PROFESSIONAL SERVICES AWARD", OUTLINES WHAT IT TAKES TO WORK WITH THE DIVERSE RANGE OF WEALTHY CLIENTS AND FAMILIES HE MEETS IN ASIA, AND WHAT IS SO APPEALING ABOUT THIS TYPE OF WORK.

Marcus Leese cannot be described as anything less than a genuine expert in his field of work.

He is qualified as a solicitor in the BVI, an advocate of the Royal Court of Guernsey, a solicitor in England and Wales, and a barrister and solicitor of the High Court of New Zealand.

With this breadth of capabilities and cross-border knowledge, he seems apt that Leese specialises in advising on a broad range of offshore private wealth and related commercial matters.

(many of which may be competing and seemingly irreconcilable)," says Leese.

"But today, there are a whole range of tools available that can be used to provide solutions to meet their needs."

Earlier this year, for example, Leese worked with a South East Asian expatriate living in Singapore, who had amassed a large amount of very diverse assets.

The assets included shares in family companies, financial assets and more,



Marcus Leese
Ogier

"Pretty much any lawyer can get the law right. The differentiating factor is being able to find a solution that is legally correct [and] meets the client's objectives."

Leese has worked for offshore law firm Ogier since 1999, and what he enjoys most about his job, he says, is the problem solving involved in private client work.

"Clients often have challenging requirements and objectives around the structuring of their wealth and assets

and were held in a whole variety of different arrangements.

The client wanted to retain control and management of the assets and remain involved in the day-to-day management and operation of the companies; he didn't want to pass the management to a trustee.

But he also was also concerned about asset protection. And in addition, the client stated that his eldest daughter should not benefit from the structure.

Leese helped the client to design and establish a BVI VISTA trust, enabling him to limit the role of the trustee to a role of ownership, and not man-

agement, of the relevant assets. The eldest daughter was not named as a beneficiary of the trust – and in addition, was named as an “excluded person” under the terms of the trust so as to ensure she could not benefit from the trust.

DAY-TO-DAY VARIETY

“Pretty much any lawyer can get the law right. The differentiating factor is being able to find a solution that is legally correct but fits the client’s commercial requirements and meets their objectives around time-frame and costs. That means finding a practical, commercial, and cost-effective solution,” Leese explains.

And tied to this is the joy of interacting with an extremely diverse range of people.

“The clients I get to meet are incredibly interesting, and have a wide variety of backgrounds and experiences,” says Leese.

For example, Leese recently advised the family office of an ultra-high net

worth PRC client on the acquisition of a private jet. As the aircraft was acquired using a BVI company, Leese advised the client on all relevant BVI law matters.

These included the terms of the aircraft sale and purchase agreement; the terms of the loan agreement to fund the acquisition; the terms of the numerous documents required to grant satisfactory security over the aircraft and related contracts and assets; and the registration of the security.

TRICKY CONVERSATIONS

Leese’s role involves a lot of hand-holding and education for clients.

“A client might come in asking for a particular structure,” he explains, “but that structure may not actually be what’s best for them.”

It’s vital to get a client to explain why they think they need a certain tool or solution, and what their exact objectives are. This takes a lot of time and patience – but a structure is only useful if it achieves the client’s objectives.

Key questions Leese recommends clients should ask when engaging third parties

- How long has the firm been in business?
- How big is the firm?
- How many jurisdictions does it cover?
- Range of services or practice areas? And does this cover my specific needs?
- How is the firm regulated?
- Do I have confidence in the individuals?
- What is its staff turnover like?

“If you simply tell a client what they want to hear, they will believe that you’re a great lawyer... until something goes wrong.”



HUBBIS EXCELLENCE IN PROFESSIONAL SERVICES AWARD

What it really takes to be a good lawyer is being able to tell the client that they shouldn't do whatever it is they want to do – and explain what would be better to do and why.

Obviously the ultimate decision is down to the client at the end of the day, says Leese, but a lawyer's role involves outlining the risks and being able to give frank and honest advice.

says Leese. The client must have an appreciation of how much the work will cost them, so that they are aware of the position and the adviser can show them the value he or she is bringing to them.

"Many clients assume that when using an offshore centre, things will be simple, quick, cheap, and they will be able to do whatever they want. It's impor-

"What it really takes to be a good lawyer is being able to tell the client that they shouldn't do whatever it is they want to do – and explain what would be better to do and why."

Simply agreeing with whatever the client says (no matter what) is not genuinely helpful to a client or in their best interests.

BEING UP-FRONT ABOUT COSTS

Price is something that must be discussed early on in the conversation,

tant to make them aware that today, this is not the case," says Leese.

Good and robust private wealth planning (offshore or onshore) requires high quality and thoughtful advice. And as in any other situation, quality bears a cost. "In our experience," says Leese, "that cost is always repaid many, many times over due to the



Commitment to the industry

Marcus is a member of the following organisations and associations:

- Society of Trust and Estate Practitioners (STEP)
- Hong Kong Joint Committee on Trust Law Reform
- Hong Kong Trustees' Association

Achievements:

- Named in the 2009 and 2010 editions of The Legal 500 (United Kingdom) as a leading lawyer
- Recognised in The Legal 500 Asia Pacific (2013 and 2014 editions) for his trust expertise
- Ranked in the Chambers Asia-Pacific 2012 and 2013 editions
- Recognised in the Asia Law 2013 Leading Lawyers
- Leese's trust practice has been recognised in Citywealth Magazine's "Leaders List" for five consecutive years (2009-2013)

very considerable benefits it provides. In short – cheap advice is worthless; quality advice is invaluable."

If clients want a structure that is robust and that will meet the increasingly difficult requirements of the relevant tax authorities, putting it in place will take some time and will have certain costs. ■



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CATERING TO THE NEEDS OF CHINA'S WEALTHY

CHINA'S HIGH NET WORTH INDIVIDUALS ARE YOUNG AND MOBILE. THEIR INVESTMENTS ARE ALSO VERY INTERNATIONAL. WEALTH PLANNERS ARE THEREFORE SEEING INCREASED INTEREST AMONG MAINLAND CHINESE CLIENTS IN CROSS-BORDER STRUCTURING FOR ASSET HOLDING PURPOSES.

China's story is all about wealth creation. According to the GroupM Knowledge / Hurun Wealth Report 2013, while the moment of greatest happiness for female millionaires is when they fall in love, for male millionaires it's the day they set up their own company.

This means that China's wealth, and its owners, are still very young. The average age of the super-rich individuals (those worth over RMB 100 million) surveyed was 40, with approximately half of them aged 45 or over.

The study found that 80% of China's super-rich own their own business – which equates to around 520,000 people, a 5% on the previous year. Their businesses account for 75% of their total assets.

"In contrast with Hong Kong and Taiwan, China's wealthy are making their fortunes at a much younger age than entrepreneurs elsewhere in the region.

"For this reason, there is not an immediate need for succession planning in China," says Li-Lee Tan, local head of private client and trusts for Asia at Appleby.



China's wealth is no longer just in China. Mainland Chinese clients are becoming increasingly international in their investments. Many now have assets spread across the globe; particularly illiquid ones such as properties and companies.

According to Katherine Chiu, deputy managing director at Intertrust, Chinese families who have been relatively

successful on the mainland are now looking to list their businesses and expand abroad. Many of them choose to come to Hong Kong to do an IPO, for example.

"It is common for families to consider putting their shares into a trust – for wealth protection and confidentiality purposes, and to defer tax payments," says Chiu.

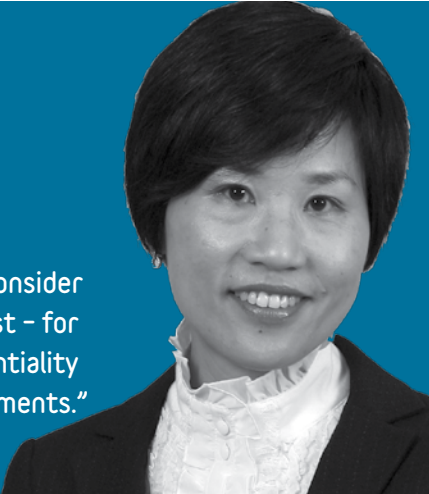
IMMATURE MARKET

One reason that many clients are looking outside of their home country for wealth planning advice and solutions is that China's fiduciary services industry is at a very early stage of maturity.

Firms currently offering PRC trustee services are very limited in terms of the solutions they provide. At the moment, nominee structures are widely used. But these can be problematic, as nominees who may have no investment knowledge or experience can be left in complete control of vast amounts of wealth and financial products – meaning that the family wealth can easily be destroyed.

There are certain challenges for international service providers wanting to serve PRC clients. As China has restrictions on outbound capital flows, for instance, firms without a domestic trust licence in the country can only concentrate on assets that flow into non-domestic jurisdictions.

Once the assets have become authorised foreign assets, though, firms can work with mainland clients to imple-



Katherine Chiu
Intertrust

“It is common for families to consider putting their shares into a trust – for wealth protection and confidentiality purposes, and to defer tax payments.”


“[Mainland Chinese clients] are very mobile and may not know where they will settle in the long-term – and so they're looking for professional advice on the regulatory and tax issues impacting their financial affairs.”

ment appropriate wealth plans to meet their goals.

“For firms that are not regulated to provide services within China, it's

about the Chinese clients doing structuring outside of China,” says Nigel Rivers, managing director, Hong Kong and regional director of private clients, Asia Pacific at TFM Group.

And according to Chiu, the fact that many Chinese entrepreneurs have already extended their businesses outside of the mainland means that they have portfolios of wealth that was in fact created elsewhere. This wealth may therefore be invested overseas.



Li-Lee Tan
Appleby

“In contrast with Hong Kong and Taiwan, China's wealthy are making their fortunes at a much younger age than entrepreneurs elsewhere in the region.”

CROSS-BORDER CONSIDERATIONS

A number of China's successful entrepreneurs have received an overseas education in the US, the UK, or Canada. And many more are open to the concept of moving overseas in the near

FEATURE ARTICLE

future; either for wealth or business diversification reasons, or for their own children's education.

This globalisation within families brings a number of challenges. International tax considerations must be factored into families' wealth planning.

"These individuals are very mobile and may not know where they will settle in the long-term," says Tan, "and so they're looking for professional advice on the regulatory and tax issues impacting their financial affairs."

"There's a growing need amongst mainland Chinese high net worth individuals for holistic wealth planning," says John Wong, partner, PricewaterhouseCoopers.

In addition, China is considering introducing a domestic inheritance tax.



The Ministry of Finance released an inheritance tax draft in 2004 and revised it in 2010. It has not come into force. "If China implements inheritance tax, there will be a huge – and sudden –

need for tax planning tools and solutions," says Wong.

"The tax environment in Asia is likely to increase substantially," declares Mark Smallwood, head of strategic initiatives, Asia Pacific, Deutsche Asset & Wealth Management. "This provides huge opportunities for us. Clients will pay for this service, because they will be able to quantify the value."

"There's a growing need amongst mainland Chinese high net worth individuals for holistic wealth planning."

EDUCATION

Some of the international trust companies have been working with intermediaries like law firms and private banks for some time – to help to educate clients in mainland China about the various wealth planning tools available and the benefits they can offer.

"Building relationships with intermediaries is key, in order to get referrals," says Martin Crawford, chief executive officer, Offshore Incorporations Limited (OIL). "We've got relationships with all of the Chinese private banks and most of the international private banks. Those that don't have their own trust businesses engage us when clients require fiduciary services." ■

Top 10 cities by HNWI population

		2012	2022	Change
1	Beijing	2,285	5,262	130%
2	Shanghai	1,415	3,704	162%
3	Shenzhen	1,070	2,289	114%
4	Guangzhou	955	2,261	137%
5	Hangzhou	775	1,736	124%
6	Chengdu	432	1,139	162%
7	Xiamen	385	903	135%
8	Changsha	330	674	104%
9	Fuzhou	275	577	110%
10	Suzhou	270	588	118%

Source: Wealth-X (wealthx.com)

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HELPING FAMILIES DEFINE THEIR VISION OF SUCCESS

THERE IS A GROWING NEED TO HELP FAMILIES IN ASIA WRITE THE NEXT CHAPTER OF THEIR STORY OF ENTREPRENEURIAL SUCCESS. AS AN INDEPENDENT CONSULTANCY FOCUSING ON HELPING FAMILIES TO DEAL WITH CHALLENGES RELATING TO THE TRANSFER OF WEALTH, WITHERS CONSULTING GROUP IS WELL POSITIONED TO HELP THESE FAMILIES - LEVERAGING ON EXPERIENCE AND KNOWLEDGE GAINED FROM WORKING WITH FAMILIES IN EUROPE AND THE US.

Many private banks today – both international and local – are focusing their energies and resources purely on the investment piece within wealth management. This is where they generate their revenue.

Banks tend to direct clients to a range of external professionals for their more complex needs; professionals such as lawyers, accountants, tax advisers, mediators, and now, family governance specialists.

Withers Consulting Group (WCG), launched in April this year, is owned by Withers but is an independent non legal consulting business. WCG helps families and entrepreneurs decide what future success means for them and how best to organise and run their affairs to achieve that success.

Many families get “stuck” when faced with challenging situations such as generational change. By guiding them through a clearly defined process, WCG enables families to come out of the process with a clear blueprint for the future.

Founded by leading family business consultants Ken McCracken in the UK and Amy Renkert-Thomas in the US,

WCG plans to leverage on the Withers network by placing specialists in the various jurisdictions where the law firm has a presence.

Katie Graves, a Withers partner who has been on the ground in Hong Kong since 2010, is the initial WCG representative in Asia – working closely with McCracken, who has existing clients in the region.

Graves’ background is in advising international families in relation to the creation of trust structures, family offices, tax and succession issues. This expertise is immensely valuable as she expands to provide consulting support to families.

“I am very excited by my role with WCG as there is a natural synergy between the work I will do as a WCG consultant and my experience as a Withers lawyer,” says Graves. “As a lawyer I often see clients who want to put in place a structure for the ownership of the family wealth but they need to get organised as a family to enable them to decide how to implement the structure.”

The family business sector is substantial in Asia, and as entrepreneurs in places like Hong Kong, Singapore,



Katie Graves

Withers Consulting Group

Taiwan, and elsewhere reach old-age there is a growing need to help families write the next chapter of their story.

Global studies have found that transitions from one generation to the next are often unsuccessful. When a family is unsure how to navigate discussion over succession it can lead to business

conflicts over strategy and direction; family conflicts between siblings and cousins and spouses; conflicts between family and non-family shareholders; and tensions involving key non-family personnel.

“While many family businesses in the west have been through one or more generational transitions, this is a new challenge to many Asian families,” explains Graves.

“In our experience” adds McCracken, “the first transition is often the hardest to negotiate – and with so many Asian families facing this challenge we feel that we can be of immense help to these families.”

Business succession is a top priority for many families in Asia today. To avoid a standstill or a dispute after the death of the founder, many families want to detail who will become the next owners and leaders and the role of the wider family in governance of the enterprise.

As many patriarchs in Asia wish to retain control of the business for as long as possible, the second and third generation often do not know when they will be expected to take over. Asking

ness – and possibly move the family and their enterprise on to a new stage, such as setting up a family office.

A UNIQUE APPROACH

“There is no such thing as best practice in this line of work,” says McCracken. “All families are unique. Our approach involves exploring what each family wants to achieve through their enterprise and then helping them implement the governance that will enable them to get there.”

What differentiates WCG from other consultancies offering these services is its consistency.

All of the consultants use a framework that has been developed as a result of years of working with families across the world.

“One of the exciting things about working in Asia is that the challenges we explore with families here also relate to the Asian families we’ve worked with in the West,” says McCracken. “When it comes to family, the culture of origin is always an extremely influential factor.”

“One of the exciting things about working in Asia is that the challenges we explore with families here also relate to the Asian families we’ve worked with in the West.”

Dad when he will retire is a difficult conversation – and death is very rarely discussed in this part of the world.

As well as intergenerational transfer, families face a variety of other choices during a succession, including whether or not it is time to sell the family busi-

ness. Another of WCG’s strengths is internal knowledge sharing across the group.

The sharing and discussion of current and past cases, as well as internal whitepapers, ensures that all consultants keep abreast of developments in the rapidly expanding field of practice.

Things families should think about before engaging a consultant or adviser:

- Will this adviser be a safe custodian of our values and our wealth?
- Will we get on with them?
- How adaptable are they to our ways?
- Will they seek too much independence from the family?
- Will they be approachable?
- Are they comfortable communicating with family members (including different generations)?
- Will they be willing to stand up to the different interests in our family and act with uncompromising independence when required – balancing the best interests of everyone with a stake in our family enterprise?

“We are committed to ensuring that our advice connects with and offers incisive solutions to real questions, problems, tasks and issues faced by clients,” says Graves.

“We can be sure that the content of what we offer is right because it is based on reliable knowledge research and experience.”

WCG also shares information with clients and peers through our on-line

Specific questions clients should ask before engaging a consultant or adviser:

- What is your experience of working with family businesses?
- What contribution have you made to developing this field (presenting at events & seminars, articles, publications etc)?
- What type of family businesses have you worked with?
- What processes do you follow when advising family businesses?
- In what areas would you expect the governance of a family business to differ from other types of business?
- What is your experience of helping families create a Family Constitution, a Family Assembly and a Family Council?

newsletter, publishing and we do a lot of teaching for families and advisers.”

When a client engages WCG, the consultants follow the bespoke and clearly defined WCG consulting framework. The process includes due diligence and the completion of a number of questionnaires by the relevant family members in advance of meetings.

This enables WCG to understand if the family have a shared purpose, how the family operates now, and how it would like to operate going forward – culmi-

nating in blueprints for the future governance of the family.

“Cultural and religious views must always be taken into account – because the values that have motivated the family and driven the success of the business are embedded in a culture. Due diligence is therefore a must,” states McCracken.

The firm does not provide financial or trustee services. “We decline invitations to become members of family boards or to act as their trustees,” explains McCracken.

“This is because we can add more value by offering independent and candid advice and mentoring.”

CREATING THE DREAM TEAM

As well as training Graves to work with McCracken in Asia, in the longer term, the firm plans to bring in talent on a needs-basis.

This type of work involves dealing with a range of family members of differ-

ent ages, and WCG is therefore open to recruiting younger staff who will be relevant to younger generations; as well as bringing in more experienced talent – both from Europe and locally.

Clearly Mandarin and Cantonese speakers will be an asset.

The work also requires a totally different skillset to that needed to be a



Ken McCracken

Withers Consulting Group

good lawyer, private banker or accountant. A good family business consultant should have a deep interest in working with families, along with curiosity, optimism, empathy and a willingness to listen to different people’s points of

“We can be sure that the content of what we offer is right because it is based on reliable knowledge research and experience.”

view. Individuals must also have the ability to de-jargonise, so that the client can fully understand the concepts being discussed.

Consultants also need to understand the technical side of wealth structuring, says McCracken. It’s important to be comfortable talking about the various tools that might be involved in wealthy families’ long-term planning. ■

REALISTIC THINKING: THE FUTURE OF FAMILY WEALTH

VALERIE WU, PARTNER AT LEE & LEE, DESCRIBES HOW FAMILIES IN ASIA ARE COMING TO TERMS WITH THE FACT THAT THEY MUST MAKE PROPER PROVISION FOR WHAT WILL HAPPEN TO THEIR WEALTH - AND THE FAMILY BUSINESS - IN THE LONG-TERM.

Families in Asia are becoming increasingly aware of the need to make provision for the passing of their wealth from one generation to the next. And some are very under-prepared, says Valerie Wu, partner at Lee & Lee.

In one case, says Wu, the patriarch of the family had an estate of S\$100 million (US\$80 million), but all he had in place was a will. Everything was left to his wife, who was in her 70s, with no provision for the couple's six legitimate children. The children ended up engaging their own lawyers and arguing for their rights to a share of the wealth.

Some of these extremely wealthy families don't even have a will, Wu reveals.

At the other end of the extreme, there are families who have implemented planning on the advice of their bankers – but for some, it may turn out to be hodge-podge & poorly organised, without addressing the fundamental issues pertinent to themselves.

Many are now thinking about consolidating the different structures and portfolios they have, says Wu, through family offices. A family office can be

anything from an investment holding company for the assets, or a one-stop shop that provides holistic management of the family wealth and the family business. Increasingly, families are exploring the use of private trust companies (PTCs) in Singapore.

This allows the family to dictate the business strategy, the investment strategy, and who the investment managers are. The family may select the private banker they most enjoy working with, and take them out of the bank to work in the family office.

A certain critical mass is required in order to set up a family office, though. Wu recommends a minimum of S\$50 million as a starting point.

Family offices also facilitate activities like philanthropy. Giving away a proportion of your wealth has always been a part of Chinese culture, says Wu, but it has evolved significantly over time.

The first generation of immigrants who moved to Singapore from mainland China liked to send money back to their villages in China, Wu explains. Their children developed clan associa-



Valerie Wu

Lee & Lee

tions – such as the Hokkien clan. These clans fund domestic projects, such as setting up schools and other infrastructure. And today, there's a new trend in giving money to particular causes and charities outside of Singapore that are meaningful to the individual. ■

WHAT IT TAKES TO SERVE FAMILIES IN ASIA

WHILE THE FAMILY OFFICE MODEL REMAINS IN ITS INFANCY IN ASIA, THE REGION'S WEALTHIEST ARE INCREASINGLY TURNING THEIR BACKS ON PRIVATE BANKS AND EMBRACING THE CONCEPT OF WORKING WITH INDEPENDENT ADVISERS THAT CAN MEET THE SPECIFIC NEEDS OF THEIR FAMILIES, SAID PANEL MEMBERS AT HUBBIS' WEALTH PLANNING FORUM 2013 IN SINGAPORE IN EARLY NOVEMBER.

Many families around the world have successful businesses and have accumulated a good amount of wealth. But the wealth may not necessarily be divided into the right asset allocations – and they may not have sufficient structures and plans in place to enable a smooth succession of the business and the assets to the next generation.

Family offices in Asia are only managing a small fraction of the total assets that exist here, said Mandeep Nalwa, founder, chief executive officer, Taurus Wealth Advisors.

This is because over the last couple of decades, most of the wealth has been first generation wealth, controlled by the patriarchs. These entrepreneurs have spent their whole life creating the wealth, and many feel that they don't need advice on what to do with it.

However, the younger generation within these families are likely to have aspirations to exceed whatever their parents managed to achieve, said Nalwa. They are wealth inheritors, not creators – and they're more likely to be willing to pay for advice. So this generation represents a huge opportunity.



While markets like China and Indonesia are still at the wealth creation stage, the wealth in Hong Kong and Singapore is now maturing, and is in the hands of the second generation – who are in their thirties.

"[These clients are also] mature in terms of knowledge and information," stated Seb Dovey, managing partner, Scorpio Partnership. "They want to know what it takes to be successful – which includes learning how they can

better manage the family business and family office."

CAN PRIVATE BANKS COMPETE?

Private banks have always provided wealth management services for families, pointed out Noor Quek, founder and managing director of NQ International. But serving a wealthy family involves addressing a whole plethora of issues – beyond just managing their

investment portfolio and helping the client to execute trades.

"The existence of family offices shows that there has been a failure in the private banking model," said Dovey.

"The emergence of family offices is a movement of customer action; clients believe that setting up their own entity will give them better access to the financial markets, more control over the management of their wealth, and more consistency."

The preference for independent advice stems from the lack of trust many clients have in private bankers.

This lack of trust is not necessarily because they've been misled, but down to the general perception that the individual they're dealing with is a counter-party, representing the institution.

The wealth management industry needs to understand what wealthy families really want and need in order to re-connect with them. "Many institutions have become supermarkets for financial products. And sadly, many advisers care not about the institution,



"[Clients] want to know what it takes to be successful - which includes learning how they can better manage the family business and family office."

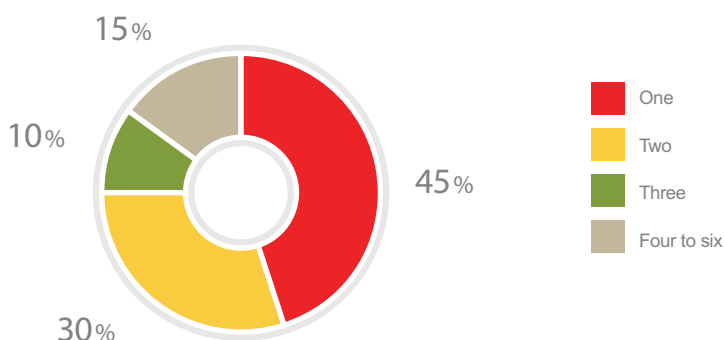
nor the client, but about providing for their own family and their own needs," said Nalwa. "Until this mind-set changes, banks won't be able to do what family offices do."

Some of the larger players in the private banking space have established family office units to meet the needs of their clients. But according to panel members, some banks are struggling to monetise this.

"Everybody wants to provide as many services as possible - so that their clients don't go elsewhere. However, the reality is that clients in Asia multi-bank, for diversification and risk management reasons. And they will continue to do so," said Nigel Rivers, managing director, Hong Kong, and regional director of private clients, Asia Pacific at TMF Group.

"Banks need to re-examine which services they're providing - and why. They also need to rethink how they're charging clients for those services," said Dovey.

HOW MANY CUSTODIAN BANKS DO YOU USE?



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

FEATURE ARTICLE

FUNDAMENTALS OF FAMILY ADVICE

A core competency for advisers is the ability to listen. One of the biggest challenges families face is finding advisers that really understand them.

"It's the client's money, not yours – so you need to look beyond the investment portfolio and understand who they really are and what they want to achieve. You also need to explore why they want to do this, as well as when, how, and who with," said Quek.

Rivers underscored the importance of knowing your client. "You have no hope of being a trusted adviser to a family if you don't know and understand them," he said.

"And this should be followed by knowing your limitations. If you don't have the skills or expertise to help the client, let them know – so that they can engage somebody who does."

Clearly, no individual is in a position to provide relevant and suitable advice

on all issues or to solve all of the problems a family encounters.

"But you should be well positioned to seek the answers," said Nalwa. "Advisers should act as co-ordinators, bringing in relevant specialists who can help their clients where necessary."

For the majority of families, a key objective is to grow their business. Many want to expand into less mature markets like China and Indonesia, for example, as well as places like Cambodia, Vietnam and Myanmar.

Some organisations facilitate business networking in order to initiate investment opportunities – private equity, mergers and so on, for their clients.

This will not necessarily result in a trade – but the adviser will earn the right to deeper relationships with his or her clients.

"If you can facilitate business deals, both parties will thank you," said Quek. "But it only works if you can create the right connectivity. And that requires listening to what your clients want."

Three KYCs advisers should obey:

- Know Your Client
- Know Your Characteristics
- Know Your Corporation

"If you don't understand your client and their goals; you don't have the skills, experience and characteristics to help the client; and your organisation does not have what the client is looking for, there is no point in trying to serve the client's needs," says Noor Quek, founder and managing director of NQ International.

COMPLEXITY AND CULTURE

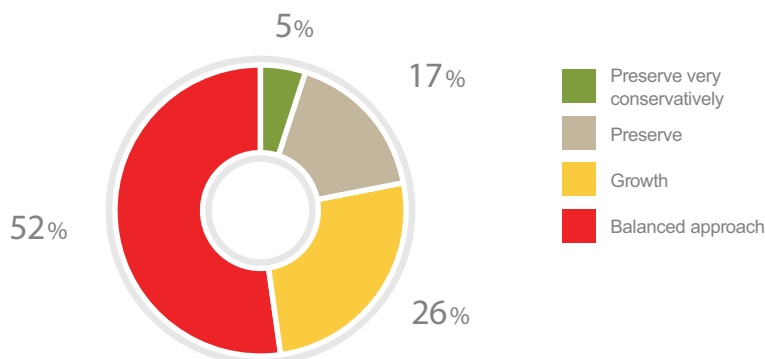
Family issues can be very complex – and so it is important to remain culturally sensitive, as well as objective.

"An adviser must be careful not have any ties to particular members of the family, as this could undermine the trust of other family members," said Rivers. "No family member should feel ostracised or unhappy about the way in which decisions are made and the wealth is managed."

Different families will have different approaches to who may work in the family firm, who may sit on the board, and who should be trained to take over – as well as different approaches to concepts like philanthropy.

"Things often get difficult when the in-laws are involved – or want to be involved – in the family business," said Quek. "In these situations, objectivity is key."

HOW WOULD YOU DESCRIBE THE MAIN INVESTMENT OBJECTIVE OF YOUR FAMILY WITH RESPECT TO ITS WEALTH?



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

Advisers must establish the fact that they are an independent counsellor. Family businesses are not immune from things like misconduct; and family members do commit fraud and other offences. Blood is thicker than water; and whether their decisions are justified or not, people stick by their family members.

Preparing the next generation to take over the business or the investment portfolio is an important consideration for family firms. "The best way to learn is from your mistakes," said Nalwa. Taurus often advises clients, for instance, to put a couple of hundred thousand dollars into a trading account so that the younger generation (university-age family members) can have a go at trading. The hope is that the kids will lose all – or most – of the money.

Another option is to set up new projects and ventures for the next generation that may be deemed to fail – as long as this doesn't involve putting too much capital up front. This teaches the younger family members about the reality of entrepreneurship and how the market treats investors.

However, not every family member is suited to running the family business.

Nigel Rivers

TMF Group

"You have no hope of being a trusted adviser to a family if you don't know and understand them."



"The existence of family offices shows that there has been a failure in the private banking model."

"Historically, son number one would be expected to take over the running of the family business. But this is now changing. Many members of the younger generation who have been educated in the US, Canada, or UK are opting to remain overseas – because they prefer the work they're doing there, or the lifestyle in that jurisdiction," explained Rivers.

It is crucial to consider who has the competence and the character to take the reins.

The adviser's role is to facilitate discussions or engage specialists to help families create a succession proper plan. ■

What to consider when selecting service providers:

- How independent is the provider?
- How professional is the provider?
- Does the provider have the required knowledge and skills?
- Does the firm have a good reputation?
- How long will the provider be around?
- Is the client able to connect with the team on a personal level?

Mandeep Nalwa

Taurus Wealth Advisors

"Many institutions have become supermarkets for financial products."



WHERE TO START WITH WEALTH STRUCTURING

TO HELP A CLIENT IMPLEMENT AN APPROPRIATE AND SUITABLE WEALTH PLAN, IT IS IMPERATIVE THAT HE OR SHE DISCLOSES CERTAIN INFORMATION TO THE TRUSTEE, DECLARED PANEL MEMBERS AT HUBBIS' WEALTH PLANNING FORUM 2013 IN SINGAPORE IN EARLY NOVEMBER. YET THE TRUSTEE ALSO HAS A DUTY TO EDUCATE CLIENTS, IN ORDER TO MANAGE THEIR EXPECTATIONS.

Choosing a structure really depends on what the client needs, said David Stone, director, structuring and product development, Asia, Amicorp Group.

A full understanding of the client's financial and personal circumstances – as well as being clear over their aims and wishes – is absolutely fundamental to wealth planning.

This involves building enough trust to ensure the client will open up to you as the adviser, and then digging deep by asking the right questions.

"It's not polite to ask a potential client how their marriage is going in the first meeting. But this sort of information must be shared, as it's relevant to the planning," said Britta Pfister, head of wealth planning, Asia Pacific, Rothschild Trust (Singapore).

"And it's also important to understand the family's spending patterns."

As well as being clear over the client's objectives and motivations, before implementing any kind of plan, the adviser will also need to know the situs of the client's assets, where the benefi-



ciaries are resident, where the settlor is resident.

REGULATORY CONSIDERATIONS

Prior to 1st July 2013, firms in Singapore had various different standards in terms of which clients they took on and what information they requested.

Now that tax crimes are a predicate offence of money laundering in Singa-

pore, financial institutions cannot take the risk of having non-compliant clients on their books; and so the playing field is much more level. Plus, as governments and tax authorities around the world join forces in the global fight against secrecy and tax evasion, international regulatory standards are also levelling out.

"In five years' time, we can expect to see automatic disclosure of information between every jurisdiction in the

world,” declared Alan Taylor, managing director of EFG Trust.

Trustees often have to work with wealth advisers rather than the end-clients themselves, Taylor explained. The trustee therefore has a duty to educate the adviser on what’s required in terms of compliance.

Nobody wants to disclose their financial affairs and how much they’re worth, stated Garry Frenklah, co-founder, chief executive officer, Real Assets Exchange.

The challenge, therefore, is in communicating to clients the message that they need to be much more transparent and frank about things like their residency, nationality, and personal financial situation.

“If you don’t feel comfortable and you have doubts over whether the client is disclosing everything they should be, you should either investigate further or refuse to take the business on board,” advised Taylor.



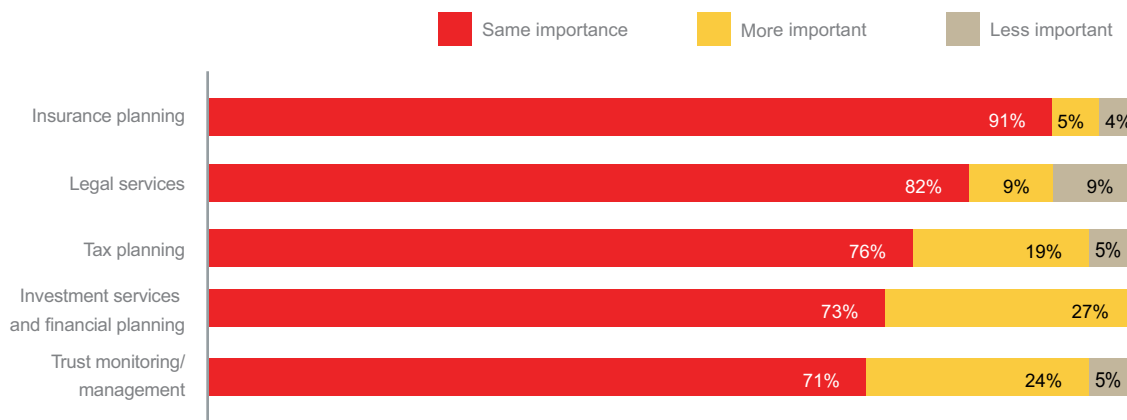
As this information can be very personal, clients typically ask whether it will be kept confidential. But putting assets in a trust no longer guarantees confidentiality, Taylor stated.

“Trustees are bound by law and if the law or a court order says that they must disclose information, they have no choice.”

MANAGING CLIENT EXPECTATIONS

One conversation that can sometimes be tricky for wealth planners is talking about fees. Clients in Asia are typically quite price-sensitive. “Clients must be aware that trustees are not a one-stop shop,” stated Taylor.

WHICH FINANCIAL ADVISORY SERVICES DO YOU SEE AS BECOMING MORE/LESS IMPORTANT OVER THE NEXT 12 MONTHS?



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

FEATURE ARTICLE

"There's no cookie-cutter approach to wealth planning."

"Clients want everything," added Frenklah. "They want a structure that will give them control, as well as protection from creditors, and tax optimisation. Meeting all of your clients' objectives is impossible," he continued, "and so you should start off by outlining the risks before you discuss the rewards."

Many clients are under the impression that once they've put a structure in place, they will have complete control over and access to the assets. Obviously there are structures that allow some management and control. But clients must understand that once the assets have been put into a structure, the trustee owns the assets and is responsible for decisions over when and how they are distributed.

"In terms of educating clients, information must be presented in a way that it's digestible," suggested Pfister.

"The trustee's role is to make sure that the important aspects are explained – but that doesn't mean presenting the client with a 25-page catalogue."



Garry Frenklah

Real Assets Exchange

"Meeting all of your clients' objectives is impossible; and so you should start off by outlining the risks before you discuss the rewards."



Another misconception that wealth planners should be aware of is the assumption that once a structure has been set up, it will look after itself and they don't need to worry about it. However, it's often after the structure's been set up that problems arise, explained Stone.

It is therefore crucial to educate clients about the importance of periodically reviewing and updating structures. In addition, the structure itself should be

respected for what it is. For example, a structure that was set up for asset protection or tax purposes should not be used as a piggy bank.

The client may not necessarily be to blame for the mis-use of a structure. While regulators across the region have heavily clamped down on mis-selling of financial products, there are instances where structures are sold to clients for the wrong reasons.

A lot of clients have good relationships with their bankers – and are happy to be guided by that banker. But bankers have financial targets and may be inclined to explore which solutions can be put in place that will get more AUM, thereby earning them a larger bonus.

"What needs to be understood by both the client and the banker is that trusts and other structures are not products that can be sold; they're a long-term commitment," said Taylor.

For a trust structure to be effective, the trustee should have an independent relationship with the client – separate from the relationship between the client and the banker, said Stone. ■

INDONESIA: KEEPING IT IN THE FAMILY

NISHA SINGH, SENIOR ASSOCIATE AT BERWIN LEIGHTON PAISNER, EXPLAINS HOW INDONESIAN CLIENTS ARE KEEN TO PRESERVE THE FAMILY WEALTH AND THE FAMILY BUSINESS - AND HOW SOME ARE NOW TAKING A MORE PROACTIVE APPROACH TO ACHIEVING THESE GOALS.

Wealthy clients typically receive plenty of advice around their investment portfolios – but the advice private bankers give doesn't always address all of their wealth planning needs, says Nisha Singh, senior associate at Berwin Leighton Paisner (BLP).

Many of these wealthy families have a large proportion of their wealth tied up in illiquid assets such as real estate investments and businesses.

FAMILY WEALTH IN INDONESIA

In Indonesia, for example, much of the wealth is first generation, and the entrepreneurs who have created it want to preserve it for future generations.

Members of BLP's Singapore team have been working in Indonesia for over 20 years, particularly in the energy and natural resources sector, says Singh. Given the private ownership structure of many Indonesian companies, this has involved working closely with Indonesian families. The firm advises them on corporate matters, as well as family and private wealth issues.

As well as wealth preservation, many clients also want to leave a legacy through their family business, says

Singh. If shares in the family business are distributed to multiple family members via a will, for instance, the ownership and control of the business will become fragmented.

This can make it difficult for key decisions to be made, leading to instability in the running of the business. It can also create tensions between family members, for example, between those family members who are actively involved in running the business and those who merely enjoy the economic benefits derived from the business.

Through structuring, clients can plan for the succession of the management and control of the business so that it can continue to thrive. In addition, the family wealth can be shared in a way that helps avoid disputes and ensure that the family's values are adhered to.

INVESTMENT MANAGEMENT DIY STYLE

In terms of the management of their portfolios of assets and investments, some wealthy Indonesian families are starting to look outside the banks.

According to Singh, managing some family wealth in-house enables fami-



Nisha Singh

Berwin Leighton Paisner

lies to be more aggressive in terms of seeking connections and opportunities for growing their wealth, such as by direct private equity or venture capital.

However, the marketplace for family offices is not yet as advanced as it is in Singapore or Hong Kong – where family offices provide a more holistic range of functions. ■

THE DO'S AND DON'TS OF INTERNATIONAL PLANNING

KEITH CORBIN, EXECUTIVE CHAIRMAN, NERINE TRUST, AND MELANIE RIHOY, DIRECTOR, NERINE TRUST, EXPLAIN WHICH OPTIONS ARE AVAILABLE TO CLIENTS AROUND WEALTH PRESERVATION AND PROTECTION - AND WHAT CLIENTS SHOULD THINK ABOUT BEFORE SETTING UP A STRUCTURE.

Clients in more mature markets like Europe are used to fairly sophisticated wealth succession mechanisms – because the wealth has already reached the third or fourth generation.

But in Asia, clients are facing these needs for the first time.

According to Keith Corbin, executive chairman of Nerine Trust, many clients don't fully understand the risks associated with both their commercial and their personal operations.

For example, a client may have a business in Dubai through a Ras al-Khaimah (RAK) company. If he or she passes away, the succession of the company shares will be subject to Shariah law.

This could have various implications that may not be in line with the client's expectations or wishes.

Such problems can easily be avoided by consulting a specialist and putting proper succession plans in place.

"Trusts are still a fairly new concept for certain areas of Asia; particularly in places like China," says Melanie Rihoy, director, Nerine Trust.

"The idea of giving away assets to a third party – and losing the management and control of those assets – is a very alien concept to many clients in this region."

Bespoke trust laws in certain jurisdictions are designed to overcome some of these concerns.

Reserved powers trusts, foundations, and private trust companies offer clients the ability to retain some management and control of the underlying assets. These types of solutions are particularly appealing to Asian clients.

"It's important that clients aren't shoe-horned into setting up a trust," warns Rihoy, "as it may not be the right structure for them."

Each and every client will have very specific and unique needs. Wealth planning, therefore, is something that cannot be standardised.

"You can't ram a square peg into a round hole," states Corbin.

By getting to know and understand the client, and asking questions to clarify their needs, a professional trustee can



Keith Corbin
Nerine Trust

establish exactly what will work for each individual.

It's up to the adviser or the trustee to ask the right questions of the client: how they feel about the structure and whether it's right for them. It's crucial that the client fully understands the

arrangement being recommended to them, and that the adviser is there to support them through both good times and bad times.

And the role of the trustee goes way beyond merely helping to pick out the right trust.

It's the trustee's responsibility to work with the client and their family to ensure they get the most out of the trust structure they've selected.

"Open communication should be there from day one," says Rihoy.

This doesn't just mean the odd conversation between the trustee and the matriarch or patriarch.

The whole family should be involved in discussions – particularly younger generations.

JURISDICTION SHOPPING

Over the past decade, Hong Kong and Singapore have emerged as leading centres for private wealth management and wealth structuring.

In terms of their trust law, both have opted for models that more closely resemble that of onshore jurisdictions like the UK and New Zealand.

"While Hong Kong and Singapore are growing in attractiveness as centres for structuring, there are various other jurisdictions whose trust law is more comprehensive; such as Jersey, Guernsey and the BVI," states Corbin.

Pricing is becoming less and less important in jurisdiction choice. Costs are levelling out as regulation becomes standardised across the globe.

One consideration when choosing where to set up a structure is whether

the client has access to the required legal support.

For many years the BVI has been the most popular jurisdiction for structuring among Asian clients. Hong Kong and Singapore have therefore attracted a number of specialist lawyers who can assist clients and trustees by advising on structures.

REGULATORY CONSIDERATIONS

Clients will continue to want to take advantage of jurisdictions in emerging markets where standards around transparency and disclosure are lower than elsewhere in the world – because they are concerned about privacy.

"Privacy is not the same as non-disclosure," he explains. "Very wealthy clients want privacy and discretion – because they don't want the details of their wealth to be public knowledge."

In some countries, the possibility of information about an individual's wealth to becoming public knowledge could represent personal security risks to that individual and their family.

TAX PLANNING

In terms of tax planning, while tax evasion is illegal, there are legal means of avoiding tax, according to Corbin.

In the UK, for example, inheritance tax can be avoided by placing assets in a trust, because the assets are owned by the trustee and not the settlor. But tax schemes that are designed simply to take advantage of loopholes in a country's law are now becoming less and less feasible.

Governments that have budget deficits are now actively pursuing individuals using such schemes. ■



Melanie Rihoy

Nerine Trust

Nerine Trust. The firm is an owner-managed independent trustee company specialising in fiduciary services for high-net worth clients. It is headquartered in Guernsey.

Nerine has been in Asia since 2007, serving clients in Singapore and other South East Asian regions from its hub in Hong Kong. It has a presence in India, offering domestic onshore services – and the group also caters to the needs of the non-resident Indian market.

The firm has a clear business succession plan in place for the group so that it may continue to thrive through the generations. This mirrors what Nerine does for its own clients – giving them comfort that the relationship is on-going.

WHAT'S ON THE CARDS FOR WEALTH PLANNERS IN HONG KONG?

As the wealth in Asia matures, there's a growing need across the region for holistic wealth planning. But activities that involve dealing with families and investigating their problems require time. And as most banks don't attach a fee for wealth planning services, finding ways to monetise these resources can be a challenge.

While many clients continue to opt for bank-owned trust companies – for their perceived security and balance sheets – getting the optimum structuring solution really depends on what

the client is trying to achieve and what matters most to that individual. Also, the global push for greater tax transparency and a more level regulatory playing field has resulted in firms being much more cautious over which business they can and can't take on. And clients aren't always clear over the importance for the banks of the many checks and procedures.

These were some of the views of leading wealth planners in Hong Kong at Hubbis' wealth-planning focused roundtable in early October.



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Regional Director of Private Clients
Asia Pacific
TMF Group

Richard Grasby
Head of Trusts and Private Wealth, Asia
Maples and Calder

John Wong
Partner
PricewaterhouseCoopers

Clifford Ng
Partner
Boughton Peterson Yang Anderson

Katie Graves
Partner
Withers

WHY MONETISING WEALTH PLANNING ACTIVITIES IS A CHALLENGE

Simon Ng: Clients really appreciate the value when the bank is able to provide all-round, holistic wealth planning advisory services where they are given professional advice for their business, family and private wealth needs.

Most banks are only interested in the private wealth element, simply because that's where revenue is being made. They would direct the client away to external professionals for their more complex wealth planning needs. However, we believe in offering comprehensive solutions to clients by meeting their wealth and succession planning requirements.

This needs to be supported at the senior management level. The bank is required to allocate adequate resources in order to deliver sophisticated wealth and succession planning services to clients.

Jonathan Hubbard: Banks currently don't attach a fee for wealth plan-



Simon Ng
BSI

ning advisory activities; our advisory services are part of the bank's holistic offering to our clients. Fees are generally charged only if a structure is established with the bank.

If this work was directed to an external service provider, the service provider would obviously charge a fee.

Nigel Rivers: It really depends on the bank's resources and the services

the organisation is able to offer. Some private banks have a broader range of capabilities – such as dedicated philanthropy advisers, for example. Others are purely focused on the investment management piece. Generally, it is often difficult for such organisations to identify to clients their cost or price for the wealth planning element.

Dealing with families and investigating their problems require time. Finding ways to monetise that time is up to the organisation.

Lawrence Wong: We launched our trust business as a result of client demand. What it's really about is offering a holistic solution to our clients – and engaging their children too, so that we build long-standing relationships with the next generations.

Jonathan Hubbard: At UBS, the wealth planning function is about retention too. We're not driven by profit from the fees for the structure alone, but look at the relationship as a whole. We also have a separate unit that's focused on family governance. Those specialist advisers aren't always able to charge; generally, clients are en-



Jonathan Hubbard
UBS Wealth Management

ROUNDTABLE



Clifford Ng

Boughton Peterson Yang Anderson

titled to such services if they've got high AUM with the bank.

Ideally, we'd like to charge a fee for these professional services. But the worry is that clients wouldn't be prepared to pay.

Clifford Ng: Some banks have a holistic wealth management offering that encompasses wealth planning and

structuring, but others have a more narrow scope of services. This means clients sometimes have gaps in their planning because their bank doesn't provide certain services. And unfortunately they're not willing to pay external providers like us for those services.

Katie Graves: This is the challenge that we face. We have to charge our clients for advice, and some potential

clients will say to us, "No thank you – I can get this thrown in for free by my private bank."

Jonathan Hubbard: While we have seen an increase in interest in clients seeking wealth planning advice in recent years, sadly, many client advisers within private banks are not comfortable starting conversations with clients about long-term succession planning. It will take some time for this to change, especially in Asia.

Also, while the wealth planning team is focused on building stickiness and retention for the bank, some client advisers may potentially have a different agenda, preferring to encourage clients to use independent providers.

Clifford Ng: Some bankers will recommend their clients set up trusts with independents, so that when they move to another organisation, it's easier to take the AUM with them.

Some of them actually come to service providers like us to ask which independent trustees they should refer their clients to.



Katie Graves

Withers



Lawrence Wong

BOC International

INDEPENDENT VERSUS BANK-OWNED

Richard Grasby: Clients who use more than one bank don't want one bank to know details of the assets they hold with another bank so are wary of using bank-owned trust companies. Independent trust companies can therefore be an attractive option for these clients. And clients not only use multiple banks; they also have

relationships with multiple trust companies. A client might go to one firm to set up a Hong Kong structure, and then approach a different specialist for another structure in another jurisdiction – or for a structure for a different family (e.g. after a divorce).

Clifford Ng: Clients often ask us whether the bank is charging them the right price for various services. We don't know the answer to that because we don't know the full extent

of the banking relationship the bank has with the client and different institutions have different business models for their trust operations.

John Wong: There's a big range in terms of the fees different firms charge for trustee services. Some banks will charge a flat fee of US\$20,000 per annum – just to get clients on their books and bring in AUM.

Clients want to understand how structure A is different from structure B, and why some options are priced higher than others. The information isn't transparent enough and trustees are currently not differentiating their services clearly enough.

Jonathan Hubbard: A lot of well-established private banks are marketing themselves on their size and scale. Some clients are concerned that independents will not be able to offer the long-term security they need, because they don't have the balance sheets.

Lawrence Wong: We have big clients from mainland China, South-East Asia, India – and we also have western clients. What they're all looking for, among other things, is a safety net.



John Wong

PricewaterhouseCoopers

ROUNDTABLE

Loretta Kan: Also, clients here in Asia are still very reluctant to give up control of their assets. These clients will tend to lean towards bank-backed trust companies.

Katie Graves: But different clients have different priorities. Some like the idea of a bank having deep pockets; others are more concerned about flexibility on assets. Independents tend to have less “red tape” governing what types of assets the trustee can take on and are generally more flexible in their dealings with clients. Ultimately, the decision comes down to what matters most to the client.

Simon Ng: It is important to remain very open-minded when making recommendations to clients. Every client situation is unique. At BSI, whether we work with an independent trustee or our internal trustee, we stay impartial and focus on the client’s wishes and preferences.

Nigel Rivers: When clients are considering their options for using bank-backed or independent trust service providers, they usually balance the benefit of the independent being conflict free in relation to asset manage-

ment versus the perception that a bank-backed provider is supported by a bigger balance sheet. Some banks have ceased providing trust services.

IMPLICATIONS OF TODAY’S REGULATORY ENVIRONMENT

John Wong: In recent months, the global push for greater tax transparency and increased regulatory measures at a country level have led banks to step up their internal compliance and risk policies, making them much more cautious over which clients they’re willing to take on.

Some clients are put off by the lengthy and tedious on-boarding processes that banks are required to carry out. It’s important to ensure they understand why they’re doing those compliance and suitability checks.

Cynthia Lee: Lots of trustees are offloading risk and consolidating trust jurisdictions. A number of banks have closed offshore trust businesses.

Everybody’s tightening up on cross-border activities, redefining what can and can’t be done in offshore markets.



Nigel Rivers

TMF Group

The reality is that banks can’t take on every client. More and more, clients will be turning to independent providers to explore whether they can provide fiduciary services that will cater to their structuring needs – in particular, relating to non-financial assets in various jurisdictions.

Nigel Rivers: Choosing where to do wealth and succession planning is no longer a question of which jurisdiction offers the best secrecy. It’s about



Cynthia Lee

JPMorgan Private Bank

meeting the needs of the family and what the client wants to achieve.

Simon Ng: At BSI, we're very careful about which service providers we work with. The service providers have to fulfill our internal due diligence requirements before we include them in our panel list. We even require our global security and IT experts to perform on-site visits to ensure that their offices maintain high-level internal controls to prevent possible unauthorised access to client information.

Well-established policies and procedures within banks for selecting third-party service providers are likely to become an expectation from the regulator, going forward – including a selective list of service providers.

THE OPPORTUNITIES ASIA PRESENTS

John Wong: Across the region, there's a difference in the age of tycoons. In places like Hong Kong and Taiwan, the first generation entrepreneurs are in their 70s or 80s; their

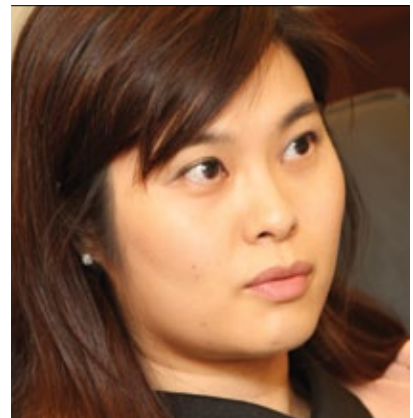
wealth was created 20 to 30 years ago. In China, the average age of tycoons is about 50 something; theirs is newly created wealth.

There's a growing need amongst mainland Chinese HNWs for holistic wealth planning: succession planning, family corporate governance, philanthropy, and so on.

Many clients are not aware that they need these services until they are "educated" of what the other HNWs have done or are doing. And Hong Kong is well positioned to take advantage of this opportunity.

If China implements inheritance tax, there will be a huge – and sudden – need for tax planning tools and solutions. Firms currently offering PRC trustee services are very limited in their offerings; they do basic portfolio trusts, but they do this cautiously – and may be limited in the types of assets they will take on. The market is still in the developing stage.

Lawrence Wong: The opportunity lies in providing Chinese HNWs with



Loretta Kan

BOC International

wealth planning and structuring for their offshore assets.

In South-East Asia, the opportunity lies in engaging multiple generations within a family. And this could be time-consuming. It's up to firms to decide which opportunities they want to pursue.

Richard Grasby: For many years, there have been certain cultural barriers preventing Asian families from implementing succession plans or even having conversations about wealth planning. Now, however, families are becoming increasingly international, with the second and third generations going overseas to study and work.

This means that some of the concepts and conversations that might be difficult to broach with Grandfather can be discussed with Grandson or Granddaughter. They will typically be more open to the ideas being proposed around wealth and succession planning, and can relay the concepts to the rest of the family. There is, however, no guarantee of success. ■



Richard Grasby

Maples and Calder

BVI: BUILDING ON ITS COMMITMENT TO ASIA

IN SEPTEMBER 2013 THE BRITISH VIRGIN ISLANDS (BVI) OPENED BVI HOUSE ASIA, A REPRESENTATIVE OFFICE FOR THE BVI GOVERNMENT. 40% OF THE JURISDICTION'S FINANCIAL SERVICES BUSINESS COMES FROM ASIA, ACCORDING TO LORNA SMITH AND ELISE DONOVAN - AND THE BVI IS NOW FOCUSED ON DEEPENING AND BUILDING ON ITS RELATIONSHIP WITH THE REGION.

In OIL's 2013 survey of more than 200 offshore industry participants, respondents rated the British Virgin Islands (BVI) the most important centre globally for offshore structuring – a position which it has maintained for several years, according to OIL's data.

"The BVI is the most recognised offshore jurisdiction in the region," says Elise Donovan, director of BVI House Asia. "It's been tried and tested – and in terms of international wealth structuring, the BVI will always be an option clients will consider."

At least 40% of the BVI's financial services business comes from clients in Asia. And in September 2013 the BVI opened its Asia Pacific regional office: BVI House Asia.

Located in Hong Kong, BVI House Asia aims to expand and deepen the BVI's footprint in the region.

"Asia is now the fastest growing region in the world. Now is the right time for us to be here," says Donovan.

The BVI is probably best known for company formation. It has 450,000 active companies on its register. BVI business companies are fast to set up,

cost-effective, reliable and efficient as the region offers robust infrastructure and technology.

There is no requirement for BVI companies to have a corporate secretary, local directors or audited accounts.

"There was a time when clients were prepared to wait 24 hours to do business," says Lorna Smith, director of BVI House Asia. "Now, people want to do business in real time. The BVI grants them that power."

In the OIL study, the BVI was ranked as the most cost-effective jurisdiction for setting up and maintaining offshore structures in 2013 – ahead of Hong Kong, the Seychelles, Singapore, Cayman, Cyprus, Guernsey, and Jersey.

Confidentiality has been a key driver for setting up a BVI business company. Information about company beneficial owners, directors and shareholders are currently not kept on public record. Register of members, register of directors and all minutes and resolutions by the company are kept only at the offices of the registered agent.

"We are known for company formation," states Smith. "We want people to



Elise Donovan

BVI House Asia

truly embrace the concept of increasingly using the BVI as a place to manage their complete wealth."

The BVI is currently ranked second in the world as an offshore domicile for funds – and in addition, the jurisdiction's trust structures are gaining in popularity.



Lorna Smith

BVI House Asia

THE APPEAL OF A BVI TRUST

The Virgin Islands Special Trusts Act (VISTA) is almost tailor-made for Chinese families who do not want to relinquish the day-to-day management of their companies.

“Through VISTA, those clients can continue to be directly involved in that management – rather than handing it over to a trustee,” explains Smith.

In May 2013 the BVI enacted the first substantive changes to its trust regime in ten years.

These amendments will strengthen the VISTA regime – and ensure it remains an important tool for international wealth planning.

And the increase in the potential application of PTCs will enable BVI trusts to be promoted more readily outside of the BVI.

One of the amendments is that trustee licence holders and PTCs may now be recognised as trustees of VISTA trusts – and may be the sole trustee of a BVI purpose trust.

This allows families to provide the trustee in the form of a PTC when establishing philanthropic trusts that are not exclusively charitable. And in addition, it is now possible to have multiple trustees of a VISTA trust.

“The Virgin Islands Special Trusts Act (VISTA) is almost tailor-made for Chinese families who do not want to relinquish the day-to-day management of their companies.”

Another change is that trust companies that do not have a BVI licence may now be involved in the administration of VISTA structures.

This amendment aims to incentivise foreign service providers to create VISTA trusts.

The Trustee Act has been modified, with the perpetuity period being ex-

tended from 100 years to a period not exceeding 360 years.

This move enables BVI trusts to be used for more multi-generational dynastic planning.

HIGH REGULATORY STANDARDS

In 2013, the offshore industry in general faced significant challenges in

terms of its public image. This year has brought greater regulatory pressure from G8 countries and the OECD – as well as heightened political scrutiny regarding the use of offshore structures.

According to the research by OIL, the BVI – a market leader – has reason to query whether its popularity can be sustained. Many would argue, however, that the BVI, and others in the



JURISDICTION PROFILE

offshore world, suffer from misperception issues.

For its part, the BVI is committed to complying with international transparency standards.

The jurisdiction's financial industry has been assessed and approved, not only by the Caribbean Financial Action Task Force (FATF), but also by the global FATF.

jurisdiction's fine reputation," Smith points out.

Having signed up to a pilot initiative of multilateral automatic tax information exchange with five countries in Europe (the UK, France, Germany, Italy, and Spain), the BVI's financial services industry is transparent.

It has also agreed to join the Multilateral Convention on Mutual Admin-

"For its part, the BVI is committed to complying with global transparency standards ... Entities that lend money to other entities use BVI companies because of the jurisdiction's fine reputation."

It is also regulated by the International Organization of Securities Commissions and the International Monetary Fund.

"Entities that lend money to other entities use BVI companies because of the

istrative Assistance on Tax Matters. In addition, an inter-governmental agreement between the BVI and the US has been proposed, to comply with the Foreign Account Tax Compliance Act (FATCA).



Building on success

BVI House Asia is committed to building on the success it has already enjoyed in Asia. As a regional hub, the office will:

- Represent the BVI government in the Asia region
- Promote investment into the jurisdiction from Asia
- Strengthen ties with government authorities and the financial community
- Provide timely access to services for BVI business companies users
- Expand its relationship with Mainland China in financial services, education, and culture
- Respond to social, political and economic enquiries in Asia

This involves educating industry participants in the region about the advantages of using the BVI for financial services. The BVI has already engaged specialists to talk to financial intermediaries in Asia about the various structures available, the jurisdiction's capabilities, and the latest legislative developments.

The BVI will also sign a similar agreement with the UK.

The BVI officials believe that regulation is good for business and they are committed to doing their part to help in the global battle against tax evasion, money laundering and other crimes. ■

PLANNING FOR THE SUCCESSION OF BVI-BASED ASSETS

MANY ASIAN CLIENTS HAVE SHARES IN BVI COMPANIES - BUT SOME ARE NOT AWARE OF WHAT WILL HAPPEN TO THOSE ASSETS IN THE EVENT OF THEIR DEATH, SAYS PAUL CHRISTOPHER, MANAGING PARTNER, HONG KONG AT MOURANT OZANNES. IMPLEMENTING A PROPER SUCCESSION PLAN IS HIGHLY ADVISABLE.

Many Asian clients have shares in BVI companies – but they themselves are not domiciled in the BVI.

“The Asian love affair with the BVI is well known,” says Paul Christopher, managing partner, Hong Kong at Mourant Ozannes. “The flexibility of the jurisdiction seems to suit clients in Asia.”

But clients need to understand the implications on death of directly holding shares in BVI companies (as opposed to holding them through a trust, for example).

If the deceased had a will, a grant of probate will be necessary. If the deceased did not have a will, representatives will need to apply for a grant of letters of administration. In each case, the grant must be submitted to the court in the BVI.

But if representatives in the country where the deceased was domiciled such as executors or administrators – try to deal with the assets in the estate without having the necessary type of grant, they may be considered liable for intermeddling.

This also concerns registered agents, who may not wish to transfer shares

even in accordance with any will without a BVI court’s grant of probate.

Christopher describes the consequences for one client, a majority owner and sole director of a BVI company, who failed to implement sufficient succession planning.

The client had a will, but in the BVI probate takes three to six months; and so following the client’s death, the bank froze the client’s account.

Whilst it could be argued that the bank inappropriately froze the company account, it meant that the business had no means to pay the staff employed in the company or to pay the rent. But debts owed to the company were still being paid into the account.

The minority shareholder therefore had to go through the process of making a request to the BVI courts to appoint a new director.

If this client had implemented a more considered plan – either by appointing another director, or considering the quorum for appointing directors – these issues could have been avoided, says Christopher. “The client simply didn’t ask practical questions about



Paul Christopher
Mourant Ozannes

what would happen in the event of his death,” he explains.

There are a range of options in planning for these circumstances. But there are also a number of misconceptions and bad practices in the market. Clients should be talking to their advisers about these issues. ■

CONTEMPLATING JURISDICTIONS

MANY JURISDICTIONS ARE PROMOTING THEMSELVES AS CENTRES FOR FINANCIAL, CORPORATE AND FIDUCIARY SERVICES. WHEN DECIDING WHERE TO SET UP A PARTICULAR STRUCTURE, IT IS IMPERATIVE TO DETERMINE WHAT THE CLIENT WANTS TO ACHIEVE, AS WELL AS WHAT THEIR MAIN PRIORITIES AND CONCERNS ARE.

There are many factors to take into account when debating which jurisdiction might be the best option for particular wealth structuring activities. Many people make their decision based on familiarity and reputation: they've either heard that it's good, or know of friends or families that have structures there.

It would be extremely impractical, if not absurd, to sit down with a client and do in-depth studies of 30 different jurisdictions, weighing up the pros and cons of each.

The first step an adviser should take is to determine the client's objectives. For example, if the client is concerned about protecting assets from creditors, he or she might want to consider the Cook Islands or the Bahamas – because they have better asset protection laws, says Michael Olesnick, partner at Baker & McKenzie.

Many offshore, mid-shore, and now onshore jurisdictions are now offering products and solutions that seem, on the surface, to be fairly similar.

Not only has Labuan developed the Labuan special trust, which offers similar perks to the BVI's VISTA; but



Samoa has also introduced a rival to VISTA, which is called SISTA.

"Countries will continue to be creative and to try to find a niche that will attract investment in their financial services industries," says Tan Choon Leng, partner at RHTLaw Taylor Wessing.

But there are subtle – and important – differences between jurisdictions. The leading and long-established offshore centres, for example, strictly regulate their financial services industries. Some of the newer offshore, mid-shore

and onshore centres, have a more lightweight approach to regulation.

To be a trustee in the UK, for example, all that is required is a website and a business card. In the BVI, in contrast, there are numerous requirements.

TRUST LAW

One way in which jurisdictions are promoting themselves is by tweaking and updating their trust law. Cayman trust law, for example, was originally

based on English law but departed significantly from the English model in response to client demand. In 1997 the jurisdiction introduced its own unique form of non-charitable purpose trust legislation: the Special Trusts (Alternative Regime) Law.

And in May 2013 the BVI made a number of changes to the Trustee Act and Virgin Islands Special Trusts Act (VISTA), including extending the perpetuity period from 100 years to 360 years. A longer perpetuity period enables families to establish a trust that may continue over several generations.

Hong Kong recently announced that it will be updating its trust law in December 2013. James Bertram, consultant at Deacons, says that these changes may make Hong Kong look more attractive cosmetically.

"But I don't think we will see floods of people coming to Hong Kong for structuring. At least not to an extent comparable to other favoured trust jurisdictions, such as the Channel Islands, the Cayman Islands, the BVI or Bermuda," he says.

In contrast, Nisha Singh, senior associate at Berwin Leighton Paisner, argues



Omonike Robinson-Pickering
Walkers

"By using a VISTA trust in the BVI or a STAR trust in the Cayman Islands, clients can benefit from a level of confidentiality that they wouldn't otherwise have access to."

that the changes address many of the key reservations advisers would have had in using Hong Kong trusts.

A key change is that if the settlor retains control over the assets, the trust will not be invalid. This is particularly attractive to Asian clients, as there is a general preference for being actively involved in the management or investment of their own assets.

However, Hong Kong is a special administrative region until 2047, and it is not presently known what system will

be in place thereafter. This uncertainty may tip the balance in favour of other jurisdictions in the region, says Valerie Wu, partner at Lee & Lee in Singapore.


But Singh says the fact that the "one country, two systems" policy will no longer apply in 2047 has not been widely discussed as a concern.

She suggests this may be because it is not uncommon to change the governing law of trusts; a trust can, in effect, be moved to another jurisdiction if necessary, in light of prevailing political circumstances.

"Some clients have concerns [about Hong Kong being part of China] and do not want their wealth managed out of Hong Kong – but others who wish to take part in China's growth story would prefer Hong Kong," says Woon Hum Tan, partner & head, trust, asset & wealth management practice at Shook Lin & Bok LLP.

Over the last 10 years there's been a huge rise in interest in Singapore as a centre for private wealth structuring.

The Singaporean government has made significant efforts to promote the country as an international centre for



Ian Mann
Harney Westwood & Riegels

"Clients need to understand that banks and other fiduciaries are providing value for what they're charging."

FEATURE ARTICLE

banking and finance, with the jurisdiction updating its trust law in 2005.

LEGAL INFRASTRUCTURE

The quality and the reliability of a jurisdiction's legal infrastructure is an important consideration. Clients want to feel confident that the contracts they draw up will be respected, and that efficient legal recourse is available if necessary. Some of the developing financial centres still have work to do in order to meet international standards of anti-corruption and fairness.

It is common for disputes to arise, as a result of clients either being dissatisfied with trustee decisions about distributions, or dissatisfied with the way the assets are being managed, says Ian Mann, partner, Harney Westwood & Riegels.

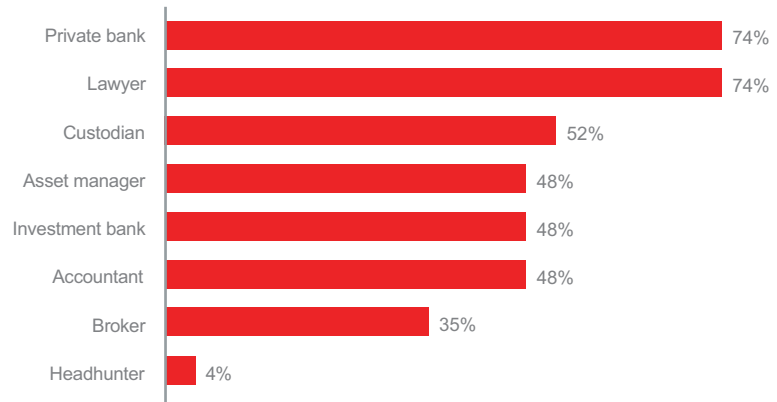
In the Cayman Islands and the BVI, the judiciary are very sophisticated and have a long history of dealing with complicated trust disputes.

"The BVI and Cayman offer a much more established body of professionals than the newer jurisdictions not just in terms of lawyers, but a range of advisers who have been practising in this area for years. There's a real wealth of talent in these two jurisdictions," says Mann. Whether or not a jurisdiction has a broad range of professional services firms and capable advisers on the ground is another key consideration for clients. They want to have access to people who can provide assistance and support if and when the need arises.

INTERNATIONAL TRANSPARENCY

As the world moves towards automatic exchange of information and new standards in terms of transparency, the ju-

WHAT TYPES OF ORGANISATION ARE YOUR MAIN EXTERNAL SERVICE PROVIDERS?



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

risdictions that possibly attractive business in the past by offering secrecy are having to rethink their strategies, fast.

"While David Cameron has announced that the overseas territories should not be regarded as tax havens, prior to that, a lot of fingers were being pointed at various offshore jurisdictions," says Paul Christopher, managing partner, Hong Kong at Mourant Ozannes.

But according to OIL's recent survey of more than 200 offshore industry participants, offshore zero-tax jurisdictions are no longer being used in isolation for structuring. More clients are now opting to combine offshore and mid-shore jurisdictions in order to access the benefits of a broad range of DTTs.

"In the past, tax was a key driver for wealth planning and structuring, hence the predominance of jurisdictions with low reporting and disclosure requirements, and tax havens," says Sim Bok Eng, head of specialist & private client disputes practice and partner in the private wealth practice at WongPartnership. "Whilst tax remains a relevant consideration, there is also an increas-

ing emphasis on the stability of the country and soundness of its financial systems."

Saiful Bahari Baharom, chief executive officer of Labuan IBFC, explains that people come to the jurisdiction for its robust, strong regulatory framework. While Labuan IBFC works closely with the regulator, the regulator and promoter of a jurisdiction must be separate, to avoid a conflict of interests. "The regulator must make sure that only the right players are coming into the jurisdiction to do business."

Confidentiality remains a priority for wealthy clients. They have various reasons for wanting to keep their financial affairs confidential, one being security of their data. Some fear the risk of kidnapping and blackmail, while others are worried about copyright issues (protecting themselves and their businesses from competitors).

"By using a VISTA trust in the BVI or a STAR trust in the Cayman Islands, clients can benefit from a level of confidentiality that they wouldn't otherwise have access to," says Omonike Robinson-Pickering, associate at Walkers. ■

WEALTH PLANNING PRIORITIES FOR SOUTH-EAST ASIAN FAMILIES

WOON HUM TAN, PARTNER & HEAD, TRUST, ASSET & WEALTH MANAGEMENT PRACTICE AT SHOOK LIN & BOK LLP IN SINGAPORE, OUTLINES WHAT'S IMPORTANT TO SOUTH-EAST ASIAN FAMILIES WANTING TO PRESERVE THE FAMILY ASSETS FOR FUTURE GENERATIONS - AND THE ISSUES THESE CLIENTS OFTEN OVERLOOK.

Only now is the enormous amount of wealth that was generated in Singapore in the mid 1900s being transitioned to the second generation.

But according to Woon Hum Tan, partner & head, trust, asset & wealth management practice at Shook Lin & Bok LLP in Singapore, families are typically not familiar with structures like trusts, foundations, and charitable investing vehicles; many just have a will at the most.

And a will may not be sufficient for protecting the family wealth. A good way to get clients to come to terms with this, says Tan, is to say to them: "You love your kids. And you love your grand-kids. But you may not love their friends - and you may not love their future spouses."

"This often gets clients talking about how they don't like their daughter-in-law or their in-laws, leading to discussions about how much wealth - and which assets - the client wants certain family members to receive," says Tan.

In some cases, the patriarch or matriarch decides that their children should

be bypassed and that the wealth should go straight to the grandchildren. And some families like to carve out a proportion of the estate to go to a particular charity.

Philanthropy is becoming more important to Asian clients. High net worth family offices are becoming increasingly interested in "green", "responsible" or "ethical" investing, says Tan.

Business succession is a top priority for many clients. To avoid a standstill or a dispute after the death of the patriarch - which could affect the value of the shares of the family controlled company - many families want to make provisions detailing who will obtain control of the shares when they are no longer in a position to run the business.

An increasing number of families in Singapore are now considering engaging professional advisers to run a family office that will manage the investment portfolio, insurance protection, tax planning, and other concerns.

But the family office concept is still in its infancy, and some families are leaning more towards a holding company-



Woon Hum Tan

Shook Lin & Bok

type setup. These don't have proper governance and structure and they also don't address issues relating to the transition of wealth, says Tan. "It's more about managing the family portfolios of properties, businesses, and other assets." ■

IS MALTA AN EMERGING CENTRE FOR WEALTH STRUCTURING?

MALTA, A SMALL ISLAND STATE AT THE HEART OF THE MEDITERRANEAN, HAS QUIETLY EMERGED AS ONE OF EUROPE'S MOST STABLE AND INNOVATIVE FINANCIAL CENTRES. THE COUNTRY'S WEALTH MANAGEMENT SECTOR IS PARTICULARLY ATTRACTIVE TO WEALTHY INDIVIDUALS FROM ALL CORNERS OF THE WORLD, SAYS BRUNO L'ECUYER, HEAD OF BUSINESS DEVELOPMENT AT FINANCEMALTA.

Malta's financial services sector has continued to experience growth in recent years, with the government, regulator, and industry professionals working to develop and promote niche areas.

This has made the country very attractive as an international centre for wealth structuring – something which is set to continue in the years ahead.

"Malta offers a holistic package to investors seeking a safe and sound jurisdiction," says Bruno L'ecuyer, head of business development at FinanceMalta.

"The country's regulatory authority has built a strong reputation for attracting quality business and has adopted stringent regulations to safeguard the industry and the country at large."

All financial services fall under one regulator, the Malta Financial Services Authority (MFSA). This means companies benefit from streamlined procedures, reduced bureaucracy and lower regulatory fees.

Equally supportive is the Maltese legal structure, a hybrid system of Civil and Anglo law, which is based on the

civil law pattern of continental Europe, though most administrative and fiscal legislation is constructed on the UK's model.

Thus the country has developed a sophisticated framework that is structured to deal with the international nature of Malta's business.

COMPANY FORMATION

The formation of holding and trading companies is an important pillar in Malta's corporate services offering. In Malta, companies are taxed at a rate of 35%. However, they are entitled to claim tax credits – which can potentially result in an effective tax rate between zero and 10%.

This has helped Malta to become a Tier 1 jurisdiction for corporate structuring, and the finance centre is today home to more than 52,000 companies.

Also, as the international financial marketplace becomes ever more competitive, Malta's large network of double taxation treaties is considered a real plus point for corporate and personal tax planning, points out L'ecuyer.



Bruno L'ecuyer

FinanceMalta

FLEXIBLE TRUST OFFERING

Malta is one of the few jurisdictions that caters for both trusts and foundations, by incorporating the Anglo Saxon Trust concept with its Roman law system.

The setting up of trusts in Malta is regulated by the Trusts and Trustees Act, which came into force in January 2005 and introduced domestic trusts. The Act created a streamlined and simplified trust regime and made Malta much more attractive to international clients, by offering greater flexibility and high standards of certainty.

“And where the beneficiaries under a trust are non-residents and the income of the trust does not arise in Malta, there is no taxation,” says L’ecuyer.

Malta does not offer ‘off-the-shelf’ trusts. Instead, each trust is structured carefully to reflect the requirements of the settlor – to ensure a set-up which

“Professional fees in Malta, including management and administration fees, legal and audit fees, are also significantly lower than in other jurisdictions,” L’ecuyer adds.

ATTRACTIVE FOR FUNDS

Malta’s fund industry is increasingly making international headlines.

According to the Malta Financial Services Authority (MFSA), the number of funds in Malta has grown from 130 in 2004 to more than 600 at the end of 2012, with €10 billion (US\$13.6 billion) under management. The jurisdiction offers a number of fund options,

can invest in a variety of movable and immovable assets – from financial securities and instruments to immovable property.

PIFs or UCITS can be formed in a number of possible vehicles, including open-ended and closed-ended corporate entities, trusts, limited partnerships and contractual funds.

With low costs, efficient regulation, a beneficial tax treatment and a flexible and accessible regulator, Malta is an attractive domicile for funds and fund managers alike.

SHARIAH COMPLIANT STRUCTURING

Malta is well positioned to cater to Islamic investors’ various wealth management, estate planning and corporate finance needs.

At the heart of the country’s offering to the Islamic finance community is the Special Purpose Vehicle (SPV), which has become a key element in Islamic finance transactions.

Malta’s attractive tax regimes for companies and trusts make the country the

“Each trust is structured carefully to reflect the requirements of the settlor, to ensure a set-up which is both flexible and responsive to any changes.”

is both flexible and responsive to any changes.

This includes the option to have the trust governed by the laws of a country other than Malta.

Malta’s legislation recognises all forms of trusts found in other jurisdictions: discretionary trusts, accumulation and maintenance trusts, fixed interests trusts, spendthrift and charitable trusts – as well as the use of trusts for commercial purposes.

Another key attraction to setting up a trust or foundation in Malta is the significantly lower set up and administrative costs. On average, setting up a trust in Switzerland will cost a minimum of €5,000 (US\$6,800); in Malta the cost of setting up a fully-fledged trust is around €1,500.

including alternative funds, known as Professional Investor Funds (PIFs), and UCITS. Free from investment restrictions and targeted at financially-literate high net worth investors, PIFs



JURISDICTION PROFILE

ideal location to establish SPVs. While companies pay tax at 35%, shareholders can claim a tax credit for the tax paid by the company, which reduces the effective net tax rate significantly.

Ijarah Funds, Commodity Funds and Murabaha Funds, which generally invest in non-conventional asset classes, may be licensed in Malta as PIFs, whilst Shariah compliant equity funds can be set up as Maltese UCITS schemes or as PIFs.

The owners of almost 300 super yachts have already chosen Malta as a base for their yachts, in order to take advantage of its location and the cost-effective services provided by marinas and ancillary companies, as well as the regime for boat ownership which offers specific incentives to yacht owners.

Malta also aims to develop itself into an aviation hub. The updated Aircraft Registration Act, introduced in October 2010, incorporates new concepts such

“The owners of almost 300 super yachts have already chosen Malta as a base for their yachts, in order to take advantage of its location and the cost-effective services provided by marinas and ancillary companies as well as the regime for boat ownership.”

CATERING FOR ALTERNATIVE ASSETS

Malta is an attractive base for the registration of yachts and super yachts (vessels over 24 metres in length). The country's ship register today ranks first in Europe and seventh in the world.

as the possibility of registering an aircraft while it is still under construction, the recognition of fractional ownership, and an easy registration procedure for private aircraft.

Aiming to take its place among the global aviation centres, Malta's legislation also provides for modern trends



Professional services

Malta's professional service providers are internationally renowned for the excellence of their service and are well positioned to offer meaningful support and strategic guidance in wealth and asset management.

A large number of law firms operate on the island. These are regularly listed in Chambers, Legal 500, and other directories. And all of the leading international firms have a presence in Malta through associate links with local law firms.

Malta is home to a large range of accounting and auditing practitioners, ranging from small boutique practices to the global big four accountancy firms. There are many consultants on the island providing business advisory, back office support and other services.

In addition, there are approximately 120 investment services firms licensed in Malta, and many local service providers are also increasingly offering family office type services to high-net-worth individuals and families.

in aircraft ownership of business and private jets. A plane can be registered under the terms of a trust, allowing a high degree of confidentiality on the ownership of the aircraft. ■

THE RISE OF 'INTELLIGENT ONSHORE' CENTRES

HAVING A ROBUST LEGAL SYSTEM AND FAIR APPLICATION OF THE LAW IS CRUCIAL IF A JURISDICTION IS TO SERVE AS A CENTRE FOR WEALTH STRUCTURING, SAYS CHRISTIAAN DE BRUYN, DIRECTOR OF TRUST SERVICES AT TRIDENT TRUST IN HONG KONG. ON TOP OF THIS, HAVING A NETWORK OF DOUBLE TAX AGREEMENTS CAN BE VERY ATTRACTIVE FOR CLIENTS LOOKING TO MINIMISE THEIR TAX BURDEN.

According to Christiaan de Bruyn, director of trust services at Trident Trust, what makes a country successful in financial services is its rule of law.

"Clients want to feel confident that the contracts they draw up will be respected, and that efficient legal recourse is available," says de Bruyn. Some of the developing onshore financial centres still have work to do in order to meet international standards of anti-corruption and fairness.

Singapore modernised its trust law in 2007, and Hong Kong recently announced changes to its trust law, which came into force on 1st December 2013. One of the changes includes enabling settlors to reserve the power of investment decisions of trust funds. This is particularly appealing to clients in this region, where there is a desire to retain control over the investment decisions of the funds held within a trust.

TAX CONSIDERATIONS

In the age of transparency, tax compliance is a must. And Hong Kong and Singapore are becoming particularly attractive as centres for structuring because of their wide networks of double

tax agreements (DTAs). Hong Kong, for instance, has signed 29 DTAs in recent years, and is in discussions with a further 11 countries.

"DTAs bring more clarity and certainty about tax obligations," says de Bruyn. Offshore centres are often required to sign TIEA's, which reduces the traditional confidentiality attraction that they had. For these reasons, some clients are moving from the offshore centres to what de Bruyn calls "intelligent onshore". At the moment, this includes places like Hong Kong, Singapore, Mauritius and New Zealand.

Many of Hong Kong's DTAs specify that occupational pensions only are taxable in countries where they were earned, and not in the country of residence. This means that a Canadian person who retires in Hong Kong will be taxable in Canada (on their Canadian pension), and similarly, a Hong Kong person retiring in Canada will only be taxable in Hong Kong.

Many Hong Kong Chinese clients like to retire in Canada. These clients must be aware that if their family assets are settled in a trust, the assets will only be exempt from taxation in Canada for five years. If the trusts are placed in



Christiaan de Bruyn
Trident Trust

a pension scheme, subject to taking appropriate professional tax advice, the client can avoid the tax burden – thanks to the DTA between Hong Kong and Canada.

"However, tax must never be viewed in isolation," warns de Bruyn. "The family's objectives should come first." ■

ONSHORE, OFFSHORE AND MID-SHORE STRUCTURING

HONG KONG AND SINGAPORE HAVE MUCH TO OFFER AS CENTRES FOR STRUCTURING. BUT CHOOSING A JURISDICTION REALLY COMES DOWN TO MEETING THE NEEDS OF THE CLIENT AND HIS OR HER FAMILY, SAID PANEL MEMBERS AT HUBBIS' WEALTH PLANNING FORUM 2013 IN SINGAPORE IN EARLY NOVEMBER.

In the past, structures could be – and were – set up in offshore jurisdictions in order to conceal assets and to maintain secrecy. But tax evasion and banking secrecy are no longer acceptable.

"Today, there is more to selecting a jurisdiction," said Seow Chee Goh executive director of the wealth advisory group, JPMorgan Private Bank.

Advisers should approach the question of where to set up a structure by exploring which jurisdictions are in a position to provide the client with the services he or she actually needs.

"More and more jurisdictions are marketing themselves as centres for wealth structuring," observed Marcus Leese, partner, Ogier. "But in reality, a client's choice of jurisdiction is actually quite limited. The adviser or the institution the client is working with will have a substantial say in the decision. Firms and practitioners typically have a range of preferred jurisdictions that they know and trust."

Panel members suggested that the more important decision is actually choosing an adviser or wealth planning team that the client can connect with.



"Trusts, foundations and companies are not products," warned Leese. "Wealth planning is about the advice."

HONG KONG Vs SINGAPORE

According to a report published earlier this year by PwC, Singapore is set to become one of the major global jurisdictions for wealth management.

"Substance is becoming increasingly important in this space," said David

Chong, founder and chairman, Portcullis Group. "And Singapore offers some structures that are particularly amenable to family offices."

For instance, under the Designated Unit Trust scheme, specified income derived from designated investments – such as gains from the disposal of securities, interest, and foreign dividends received in Singapore – are exempted from Singapore income tax at the trust level. Similarly, under the Enhanced-Tier Fund Incentive scheme, specified

income derived by a fund vehicle from designated investments may be exempted from Singapore income tax at the fund level.

In contrast to Singapore's government-driven initiatives and proactive approach to reviewing its trust legislation, the recent changes to Hong Kong's trust law have been driven by professionals.

"Hong Kong's approach is entirely laissez-faire; the government has opted to rely on the fact that the industry knows best," said Leese.

While the changes themselves are not ground-breaking in any way, the move is clearly a step forward – and signals the fact that Hong Kong is very interested in being a centre for private wealth management and structuring.

Some clients are very averse to setting up structures in Hong Kong, due to the uncertainty of what will happen in 2047 when the "one country, two systems" policy no longer applies.

But others are unfazed, and remain keen to make use of the benefits a Hong Kong trust can offer.



SAVVY CLIENTS

A few years back, clients relied on their bankers to make suggestions and implement a wealth plan for them; they just went with whatever was recommended to them.

"The clients we meet with today – the younger clients, who have been educated overseas – ask lots more questions about the structures and how they will work in practice," revealed

Goh. "They read up about the different structuring vehicles available before coming to the meeting."

The challenge, though, lies in informing and educating clients about the new regulatory environment.

"This is going to require longer discussions," said Goh.

Leese agreed: "Many of the recent developments around extinguishing secrecy on tax evasion are difficult to explain to clients."

Clients will inevitably ask how much it will cost them to set up various structures, Chong warned.

"In the past, clients would opt for cheap and cheerful solutions," he said. "Today, considerations like tax compliance cannot be overlooked. Clients need to recognise that they must pay for independent advice."

Leese summed this up by declaring that structures cannot be quick, cheap, and good.

"Clients can have any two of these, but not all three," he said. ■



STRIVING TO LEAD THE WAY IN OFFSHORE STRUCTURING

WITH AROUND 13,000 PEOPLE EMPLOYED IN FINANCIAL SERVICES, AND A LONG, PROSPEROUS HISTORY OF TRUSTS AND OTHER STRUCTURING SOLUTIONS, JERSEY CLEARLY REMAINS ATTRACTIVE FOR OFFSHORE WEALTH STRUCTURING - AS OUTLINED BY GEOFF COOK, CHIEF EXECUTIVE OFFICER, JERSEY FINANCE.

In today's global economic climate, investors are looking for reliability, political and economic stability, and a sophisticated and comprehensive infrastructure of laws, substance, expertise and experience.

More than anything else, private clients and their advisers are looking for quality service. And according to Geoff Cook, CEO, Jersey Finance, this is something that Jersey has been focused on offering for over 50 years.

Jersey's finance industry employs just under a quarter of the local workforce, which reflects the largest financial services workforce (around 13,000 people) of any European offshore centre.

And Jersey continues to be the top offshore centre in the Global Financial Centres Index.

"The jurisdiction's reputation as a specialist finance centre is founded on its focus on high quality levels of service and its impressive network of specialist firms to support investors," says Cook.

This network includes global banking organisations, the major accountancy firms, as well as major offshore law

firms, trust companies, fund administrators, custodians, fund managers and advisers.

And with 1,184 members of the Society of Trust and Estate Practitioners, for instance, Jersey boasts the largest branch of STEP globally.

Jersey has earned a good reputation for its wealth management and trust services among Asian private clients. Many of the banks and independent trust companies in Asia offer Jersey trust and wealth structuring services.

And financial services institutions in Jersey have built up a considerable knowledge of the needs and requirements of private clients in Asia.

INVESTMENT GATEWAY

Jersey's close and unique relationship with the City of London is particularly appealing to international private clients.

A recent study by Jersey Finance showed that Jersey is a conduit for nearly GBP500 billion of foreign investment into the UK. The jurisdiction



Geoff Cook

Jersey Finance

has developed a role as an investment gateway, or facilitator of capital coming from overseas markets into the UK and continental Europe, explains Cook.

A programme of overseas ministerial visits underlines the government's commitment to building strong rela-

tionships with key markets, including in Asia.

Jersey Finance has representative offices in Hong Kong and Abu Dhabi, and a further office is planned to be opened in Shanghai in early 2014.

Jersey is well positioned to structure appropriate investment vehicles to meet the needs of the growing high net worth sector in China. Jersey company entities are proving suitable for enabling Chinese businesses to expand internationally and access capital by listing on foreign exchanges, including the London Stock Exchange.

This has enabled Jersey to deliver a full range of private client services, explains Cook; from simple trusts and underlying company structures for UK families, to high value and more complex structures involving trusts, companies, limited partnerships and foundations for international families.

Jersey also offers ultra-high net worth families the option of establishing 'virtual' family offices.

And structures are available for corporates looking to implement suitable arrangements for the rewarding of staff and providing for their retirement.

tion of these are being used for philanthropic purposes," says Cook, "helping to position Jersey as a specialist centre for supporting the philanthropic objectives of private clients."

Jersey's funds industry continues to flourish, with Jersey fund administrators currently administering and managing 1,337 funds.

As at 30th June 2013 Jersey had GBP201.3 billion (US\$325 billion) asset value of funds under administration and GBP22.5 billion funds under investment management.

And about one third of Chinese companies currently listed on the AIM market are incorporated in Jersey. Plus, there are numerous examples of existing listed Jersey Holding Companies for Chinese businesses.

"With no Capital Transfer Tax, Capital Gains Tax, Value Added Tax, Withholding Taxes or Wealth Taxes, Jersey's tax neutral environment offers a compelling overall proposition for private clients looking to use Jersey as a centre for structuring their wealth."

TAX AND REGULATORY ENVIRONMENT

And similarly, Jersey investment structures are also being used increasingly to facilitate the efficient flow of international capital into Asia for various infrastructure projects.

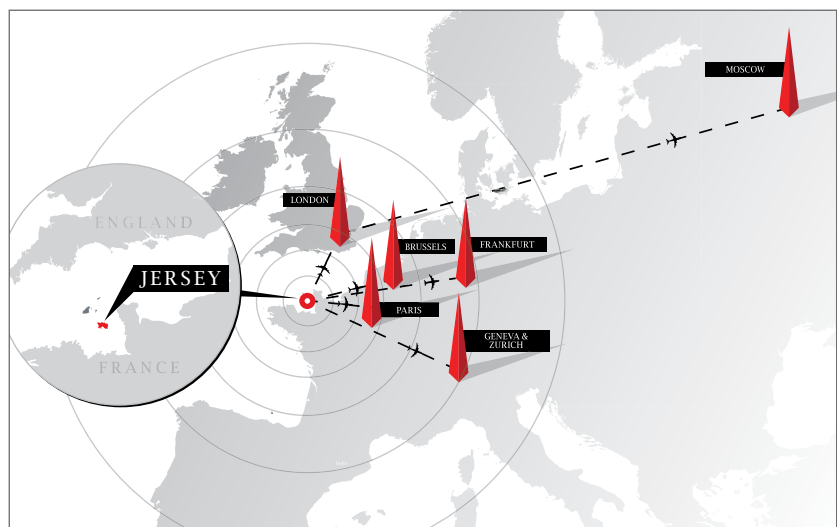
Since their launch in 2009, Jersey Foundations have become increasingly popular structures, with over 200 formed to date. "A significant propor-

"With no Capital Transfer Tax, Capital Gains Tax, Value Added Tax, Withholding Taxes or Wealth Taxes, Jersey's tax neutral environment offers a compelling overall proposition for private cli-

FIDUCIARY AND FUND SERVICES

Jersey's trust law has helped the jurisdiction to establish itself as a specialist centre for trusts, foundations and estate planning. It has become a template upon which other jurisdictions have modelled their trust law – including the Hague International Convention on trusts.

In addition, the legal framework is continually developed and enhanced, to ensure flexibility and attractiveness to domestic and international markets.



JURISDICTION PROFILE

ents looking to use Jersey as a centre for wealth structuring,” says Cook.

The government is committed to meeting international standards around tax transparency.

This signing tax agreements such as Double Taxation Agreements (DTAs) and Tax Information Exchange Agreements (TIEAs). 40 TIEAs and DTAs have been signed to date.

fair to refer to the Crown Dependencies, which includes Jersey, as ‘tax havens’,” says Cook.

Jersey supports the global drive towards transparency, as long as this involves the adoption of sensible workable global standards that are designed to be effective in fighting financial crime, including tax evasion – and as long as a level playing field is maintained.

“It was no coincidence that, earlier this year, UK Prime Minister David Cameron told Parliament that it was no longer fair to refer to the Crown Dependencies, which includes Jersey, as ‘tax havens’.”

Offshore finance centres have been the subject of much attention this year, in light of the tax initiatives discussed at the G8 and G20 summits.

Jersey has already carried out many of the proposed changes that emerged from those summits concerning transparency of tax information.

“It was no coincidence that, earlier this year, UK Prime Minister David Cameron told Parliament that it was no longer

“Balancing the cost of compliance and the legitimate rights of citizens to an appropriate level of privacy is also an important part of the debate, which affects all countries,” Cook adds.

Jersey was actually one of the first international finance centres to be placed on the Organisation for Economic Cooperation and Development’s (OECD’s) white-list as having implemented internationally agreed tax standards in 2009.

Jersey’s ties with China

- 2006, Jersey Financial Services Commission (JFSC) signs MoU with China Banking Regulatory Commission (CBRC)
- 2009, Jersey welcomes the former Chinese Ambassador to the UK Madame Fu Ying to the island; and also opens its first international office in Hong Kong
- 2010, Jersey signs TIEA with China; and a Tianjin government and regulator delegation visit Jersey
- 2011, China Insurance Regulatory Commission (CIRC) delegation visits Jersey
- 2012, JFSC initiates MoU negotiation with China Security Regulatory Commission (CSRC); and Jersey signs DTA with Hong Kong – ratified in July 2013
- 2013, Jersey’s Chief Minister visits China and Hong Kong
- 2014, Jersey Finance plans to open a representative office in Shanghai



The jurisdiction is fully aligned with the highest standards of the anti-money laundering EU Directive; was the first offshore finance centre to become a full signatory to the IOSCO Multilateral Treaty; and has signed bilateral and multilateral Memorandum of Understandings (MOUs) with regulators in over 70 countries, including China, India, the UAE and Qatar. ■

WHY HONG KONG'S NEW TRUST LAW WILL LURE NEW BUSINESS

WILLIAM AHERN, PRINCIPAL, FAMILY CAPITAL CONSERVATION EXPLAINS HOW THE RECENTLY ANNOUNCED CHANGES TO HONG KONG'S TRUST LAW WILL BRING MORE TRUST BUSINESS TO THE JURISDICTION IN THE MONTHS AHEAD.

Hong Kong has recently announced changes to its trust law. These will be effective from 1st December 2013, and according to William Ahern, principal of Family Capital Conservation, the announcement has already resulted in a lot more interest in structuring wealth out of Hong Kong.

One international law firm, for example, is currently acting for seven groups that are looking to set up registered trust companies in Hong Kong.

One of the key changes is that the rules against perpetuities and excessive accumulation of income have been abolished for all trusts created on or after 1st December 2013.

This move is particularly attractive to high net worth individuals wanting to use trusts for multi-generational dynastic planning.

The changes also enable settlors to reserve the power of investment of trust funds.

"This means that trustees can safely act in accordance with the settlor's directions around investment decisions,"

explains Ahern. "This is key because the amendment relieves a trustee of liability in these circumstances."

Overseas forced heirship rules will not be upheld by Hong Kong courts – as long as the settlor has capacity under the law of his domicile or nationality, or the law of the transfer jurisdiction. The other requirement is that the transferee trust is governed by Hong Kong law and resident in Hong Kong.

Other amendments involve simplification of the process of appointing new trustees in place of existing trustees. Where beneficiaries are of full age and capacity, trusts need not be terminated in order to appoint new trustees, and courts need not get involved.

"The new statutory duty of care means that professional trustees will need to take more care, particularly with investment decisions and delegating tasks to others," says Ahern. This offers more protection to beneficiaries and is therefore a welcome introduction in Hong Kong.

Also, after 1st December 2013, trustees will no longer be exempt from li-



William Ahern

Family Capital Conservation

ability for wilful misconduct and gross negligence.

All of these changes are excellent news for Hong Kong, making it a more feasible and attractive choice for clients looking to set up trusts. ■

THINGS TO CONSIDER WHEN CHOOSING A TRUSTEE

ACCORDING TO PRACTITIONERS, SOME INDEPENDENT TRUST COMPANIES ARE BETTER POSITIONED THAN BANKS TO DELIVER THE RIGHT LEVELS OF SERVICE AND ADVICE ON SUCCESSION PLANNING. HOWEVER, PRICE, BRAND, REPUTATION, AND SIZE CONTINUE TO BE IMPORTANT CONSIDERATIONS FOR CLIENTS IN ASIA.

For many years there has been a trend in Asia towards household-name financial institutions. Brand name, reputation, longevity, and global reach are all attributes that give comfort to clients that are considering placing large amounts of their wealth into somebody else's hands.

Many clients see banks as more secure, solid institutions. For this reason, bank trustees have been the preferred choice in Asia for some time.

"It's surprising that wealthy families are not more interested in independents. This comes down to the fact the bank brand is very important to clients in Asia and because clients often want a trustee with deep pockets if things go wrong," says Bill Ahern, principal, Family Capital Conservation.

"[They] perceive that with independents, the professional indemnity (insurance cover) is less comprehensive than that which a bank trustee can offer," explains Valerie Wu, partner at Lee & Lee.

But this isn't necessarily the case. The large, international independent trustees also have deep pockets.

Cynthia Lee

JPMorgan Private Bank

"Lots of trustees are offloading risk and consolidating trust jurisdictions. A number of banks have closed offshore trust businesses."



"[And] the financial crisis of 2007 showed that banks can disappear with little warning," says Katherine Chiu, deputy managing director, Intertrust.

But size should be an important consideration, regardless of whether the client is looking at bank trustees or independents.

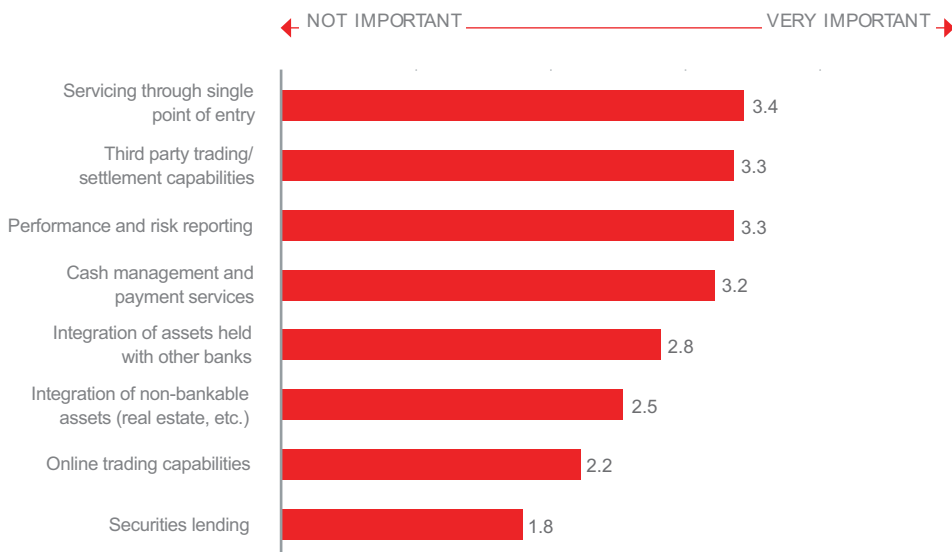
"Clients are reluctant to work with independents that don't have some history, or a substantial size. A small, new outfit may not have a sustainable mod-

el, and may not be there for the long-term, says Woon Hum Tan, partner & head, trust, asset & wealth management practice at Shook Lin & Bok LLP.

There is the threat, for example, of smaller independent trust companies being the target of acquisitions by private equity funds.

Banks could also exit jurisdictions or close their trust businesses. OV Group recently bought BSI Bank's trust company in Singapore, for example.

WHAT ARE THE PREFERRED SERVICES FROM THE CUSTODIAN BANK?



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

"Lots of trustees are offloading risk and consolidating trust jurisdictions. A number of banks have closed offshore trust businesses," explains Cynthia Lee, executive director, wealth advisory group, Asia, JPMorgan Private Bank.

"Everybody's tightening up on cross-border activities, and redefining what can and can't be done in offshore markets."

If consolidation occurs, the management style could change. And some clients aren't comfortable with that concept, says Wu.

Another reason that size is of consequences is that the larger players have more resources to spend on things like compliance, technology, and security than smaller ones.

"[This will] give some comfort to clients when deciding if they are happy handing over their wealth," states Chiu.

The only caveat to this is that with large global organisations, there is the

worry of higher levels of staff turnover. The client could end up dealing with a number of different individuals within one organisation.

CAPABILITIES

The concept of having a one-stop-shop is attractive to some clients. Rather than having to talk to different advisers from different organisations for different needs, they might opt for one of the large private banks with a wealth planning function complete.

But banks may have certain limitations – such as breadth of tools and vehicles available and also access to jurisdictions.

"Some banks can't cater for all of their clients' structuring needs because they don't have the jurisdictional capabilities," says Crawford.

And many independent trustees will argue that their approach involves sourcing services from the best provid-

ers in each area. This is not a bank's core business.

"Every client will have very specific and unique needs. Wealth planning arrangements cannot be standardised; you can't ram a square peg into a round hole," says Keith Corbin, executive chairman, Nerine Trust.

In addition, some clients are asset rich but liquidity poor – such as property investors, points out Melanie Rihoy, director, Nerine Trust. "Banks are unable to take on some of these assets, but independents can. This is their core business."

Independents are generally more willing to deal with non-financial assets such as yachts, properties and companies. Although banks aren't solely focused on investment assets, the majority prefer to pass on non-financial business.

This is not only due to risk, but also because banks tend to lack the time and specific knowledge or in-house ex-

FEATURE ARTICLE

pertise to deal with these sorts of assets themselves.

Clients are far less likely to want to work with a trustee who cherry-picks which assets they want to look after.

It's therefore far more logical for bank-owned trustees to be frank with clients and recommend a capable independent firm instead.

And given that the wealth planner's role is to present the optimum solution to the client, this should include referring third parties where appropriate.

PRICE

Some bank-owned trustees are in a position to offer particularly competitive pricing – and even offer wealth planning advice for no fee whatsoever. This is because the bank can earn other streams of income from ancillary work with the client.

"Banks are in a position to cross-subsidise wealth planning activities," explains Martin Crawford, chief executive officer of Offshore Incorporations Limited (OIL). However, the overall cost involved may not actually work out to be cheaper.



"Every client will have very specific and unique needs. Wealth planning arrangements cannot be standardised; you can't ram a square peg into a round hole."

Particularly for banks that use a transactional fee model, this ironically works out to be more expensive for Asian clients than an advisory model, because active investors trade so frequently.

As the market in Asia matures, there will be a shift towards focusing on

quality rather than price. People will recognise the importance of making sure a structure is right and that it works for them.

IMPARTIALITY

After the Lehman crisis, clients lost a lot of their faith in banks. Consequently, there has been a trend towards working with independent trustees.

One issue is that some bankers still tend to push the bank's products, simply because they're incentivised to do so by their remuneration schemes.

The trustee's role is to explore ways to fix a client's problems, not sell them solutions, states Karen O'Hanlon, director client services at Asiatic Trust Singapore.

Plus, if a trust is sold as a commodity, it's highly likely that the client will not



receive a proper explanation of how the structure works.

The market is now realising that this is not practical; it will simply result in unhappy clients and less business.

For these reasons, many bank-owned trust companies are distancing themselves from the parent bank, and do not rely solely on their relationship with the private bank for business opportunities.

While some bank wealth planners are obliged to use their own bank's investment banking services only, other bank-owned trust companies have a more flexible model.

And not all firms require clients to keep their assets within the bank in order to have a trust, explains Alan Taylor, managing director of EFG Trust.

"EFG Trust works with clients to implement wealth plans, but allows them to book their assets with other banks if they wish."

PERSONAL PREFERENCE

Choosing a trustee is really a question of what the client wants and needs at that moment in time, says Chee Fang Theng, partner, Pan Asia Wikborg Rein.

Some clients want simple, template or standardised structures. Others want bespoke advice and tailored structures that suit their individual needs.

Many clients often overlook the importance of personal relationships when thinking about working with a trustee. It is advisable to look at a range of service providers, and try to establish whether they would feel comfortable working with and trusting a firm.

"[It's really] about the sophistication of the trustee. The client should go

Karen O'Hanlon

Asiaciti Trust



"The trustee's role is to explore ways to fix a client's problems, not sell them solutions."

"The client should go and meet the trustee to get a feel for how capable they are, how much experience they have, and how much integrity and commitment they have."

and meet the trustee to get a feel for how capable they are, how much experience they have, and how much integrity and commitment they have," advises Paul Christopher, managing partner, Hong Kong at Mourant Ozannes.

"It might even be a good idea to take a checklist of objectives to that first meeting."

Crawford agrees: "It's important that clients perform their own due diligence on individuals and firms before engaging anybody for advice."

Practitioners offering wealth planning and structuring advice ought to be legally trained, he says, and ideally, should have qualifications like TEP.

In addition, recommendations and referrals also mean a lot in this industry.

There's clearly a role for both bank owned and independent trustees.

"Different people value the different strengths offered," concludes Jay Krause, partner and head of wealth planning, Asia, at Withers. ■

What to consider when choosing a trustee

- How independent is the trustee?
- How professional is the trustee?
- Does the trustee have the required knowledge and skills?
- Does the firm have a good reputation?
- How long will the trustee be around?
- Is the client able to connect with the team on a personal level?

WHAT IT TAKES TO BE A LEADER IN THE INDEPENDENT TRUSTEE SPACE

AS MORE AND MORE PRIVATE BANKS EXIT THE FIDUCIARY SERVICES SPACE, OR REDUCE THE SCOPE OF THEIR WEALTH PLANNING-RELATED SERVICES, INDEPENDENT PROVIDERS LIKE TRIDENT TRUST ARE RECEIVING MORE BUSINESS. BUT WHERE THEY WILL STAND OUT IS IN PROVIDING SERVICE TO CLIENTS THAT MEETS ALL OF THEIR REQUIREMENTS, AND BRINGS REAL VALUE.

In the world of wealth planning and fiduciary services private banks are at an advantage. In theory. They should be well positioned to leverage on their long-standing relationships with clients who have banked with them for many years. However, banks are not always able to take advantage of this – because of limitations in their service offerings.

While some banks have specialised teams offering family governance services, many are opting to focus purely

on their core businesses. Banks are therefore becoming increasingly willing to pass business over to independent specialists, says Markus Grossmann, managing director of Trident Trust in Hong Kong and Singapore.

For this reason, clients are increasingly turning to independent providers of corporate and fiduciary services. Independents such as Trident Trust are able to accept a diverse range of underlying assets of trusts and foundations, including bank and brokerage accounts, real estate, aircraft and luxury yachts.

With 34 offices in 24 jurisdictions, Trident Trust is also able to meet the



Markus Grossmann

Trident Trust

“Clients are increasingly turning to independent providers of corporate and fiduciary services.”

on their core businesses. Banks are therefore becoming increasingly willing to pass business over to independent specialists, says Markus Grossmann, managing director of Trident Trust in Hong Kong and Singapore.

In addition, banks are becoming increasingly selective in terms of the types of clients and assets they’re willing to take on, with a number of them now only taking on bankable assets.

cross-border needs of today’s increasingly international clients. The firm provides third party, independent and professional corporate and trust services to various institutions, multinational corporations and professional firms across the globe.

For independents, track record has become more important than ever, says Grossmann. Banks and professional advisers typically prefer to work with

a large, established trustee with a solid reputation.

Another plus is being able to offer the range of corporate vehicles that Trident Trust specialises in – such as limited liability partnerships, limited duration and guarantee companies, and private trust companies.



Christiaan de Bruyn
Trident Trust

Also, bank-owned trustees and independents do not directly compete for the same clients. For example, Trident Trust does not provide services directly to the end-customers of its institutional and professional clients. Instead, it serves lawyers and accountants, financial institutions and other qualified intermediaries.

Smaller, less established players will come under increasing pressure, and so further consolidation in the sector is inevitable.

In order to provide solutions that really meet a client's needs, it's imperative that the adviser asks the right questions, in order to uncover the client's goals, needs, and desires.

For example, when choosing which vehicle or jurisdiction to use for wealth or succession structuring, the first step is to determine what exactly the client wants to achieve, says Grossmann.

Based on this, the adviser can then rule out certain options.

The next step is to determine what type of assets the client wants to hold – and that will narrow down the options further.

CALLING ON EXPERTS

When a client is choosing a professional adviser or service provider, length of service and experience are important considerations. At Trident, the senior management have more than 30 years' service with the group, enabling the firm to provide the continuity and knowledge that clients value. Few organisations in this industry have been in existence for as long as Trident has without any significant change in senior management.

However, it's also important for practitioners in this industry to be aware of their own limitations. For example, Trident offers workshops on family governance and succession planning, giving clients an overview of the issues that they ought to be thinking about today. But if families have more complex needs relating to governance and business succession, the firm will refer them to speak to a specialist in this area – with the relevant skills and experience to meet their needs.

CATERING TO CHINA'S NEEDS

Recently, Trident has been seeing increased interest from mainland Chinese clients in both Hong Kong and Singapore. According to Grossmann, the major reason for this is that China's wealth is no longer just in China.

China's wealth is, to a large extent, still first generation, and it still lies in the hands of the wealth creators. These

entrepreneurs are now expanding their businesses overseas – setting up companies in Hong Kong and Singapore.

Mainland Chinese clients are also becoming increasingly international in their investments; many now have assets spread across the globe, says Grossmann.

There's now a growing realisation amongst these wealthy individuals that they will need to put certain succession planning structures in place in order to preserve this wealth for the next generation. However, this client segment is not very familiar with the trust concept, and trust companies therefore very often have to assume an educational role.

In addition, mainland Chinese clients usually aren't just looking to deposit financial securities in a basic banking-type trust. Their assets tend to be more complex. They typically require offshore structures that can hold overseas properties or shares in companies.

Why are so many players exiting the corporate and fiduciary services business?

- Avoidance of conflicts of interest
- Desire to focus on core competence
- Cost savings
- Franchise risk
- Regulatory burdens
- Client preference for working with pure specialists

FIRM PROFILE

If mainland clients are interested in international structuring, they tend to reach out to banks and other providers in Hong Kong and Singapore, explains Grossmann. This is because the expertise of advisers in China is still developing.

PROMINENCE OF HONG KONG

As of January 2012, over 940,000 private limited companies – and almost 11,000 public companies – were registered with the Hong Kong Companies Registry.

According to Christiaan de Bruyn, director of trust services at Trident Trust in Hong Kong, what makes a country successful in financial services is its rule of law.

While some of the developing onshore financial centres still have work to do in order to meet international standards of anti-corruption and fairness, Hong Kong's constitution, or Basic Law, protects the fundamental rights of individuals. Hong Kong currently enjoys

a high degree of autonomy from the People's Republic of China (PRC) under the "One Country, Two Systems" policy.

The jurisdiction is also attractive as a centre for structuring because of its wide network of double tax agreements (DTAs). Hong Kong has signed 29 DTAs in recent years, and is in discussions with a further 11 countries.

In addition, Hong Kong recently announced a series of amendments to its trust law that will come into force in December 2013.

One of the changes includes enabling settlors to reserve the power of investment of trust funds. This is particularly appealing to clients in this region, where there is a desire to retain control over the investment of the funds held within a trust.

The amendments also protect Hong Kong trusts from forced heirship rules; enable Hong Kong trusts to be settled for an unlimited amount of time; enable beneficiaries to appoint and remove trustees; and place a greater duty of

What to consider when choosing a trustee:

- Independence and impartiality
- Client loyalty
- Continuity – a long history
- Intermediary focus
- Global coverage
- An industry leader in numerous jurisdictions
- Range of services
- Industry knowledge and expertise
- Reliability
- Personal service

care on trustees (more protection for beneficiaries). Trident Trust believes these amendments will enhance the position of the jurisdiction as a trust domicile and as a fiduciary administration and management centre. ■

Trident Trust's global presence

EUROPE

- Guernsey
- Isle of Man
- Jersey
- Luxembourg
- Malta
- Switzerland
- United Kingdom

THE AMERICAS / CARIBBEAN

- Bahamas
- Barbados
- British Virgin Islands
- Canada
- Cayman Islands
- Nevis
- Panama
- United States
- US Virgin Islands

ASIA PACIFIC

- Hong Kong
- New Zealand
- Singapore

MIDDLE EAST / AFRICA

- Cyprus
- Dubai
- Mauritius
- Seychelles

HOW INDONESIAN CLIENTS CAN PRESERVE FAMILY WEALTH

MARCUS DEARLE, PARTNER AND OFFICE MANAGING DIRECTOR ASIA AT WITHERS, BASED IN HONG KONG, EXPLAINS HOW INDONESIAN FAMILIES ARE LOOKING FOR WAYS TO PROTECT AND PRESERVE THE WEALTH THEY HAVE WORKED HARD TO ACCUMULATE.

There's no denying the significant wealth management opportunity that Indonesia presents. According to the WealthX/ UBS billionaire census 2013, Indonesia now boasts 23 billionaires, with a total net worth of US\$47 billion.

The number of ultra-wealthy families in Indonesia has grown significantly over the past decade, affirms Marcus Dearle, partner and office managing director Asia at Withers.

A major concern for these clients is succession planning and wealth preservation, including divorce and also non-matrimonial family disputes amongst family members affecting their businesses, trust assets and personal wealth.

"Most of these ultra-high net worth families have assets and family members in different parts of the world – and so they need international advice. These clients are becoming more aware of the need to think internationally, with the realisation that the law in their domestic jurisdiction may not apply in foreign jurisdictions," says Dearle.

It's very important, says Dearle, to have consultations with families at the earliest possible stage to protect their

assets as far as possible from divorce – which can be very destructive to the family wealth.

In divorce settlements in some parts of the world, for example in Hong Kong, 50:50 splits are common – meaning a client could be at risk of losing half of their wealth to their ex-spouse.

A prenuptial agreement (pre-nup) is a contract entered into prior to marriage, including provisions for division of property and spousal support in the event of the marriage breaking up. A postnuptial agreement (post-nup) differs from a pre-nup only in that it is entered into after marriage.

"If there is a significant difference in the wealth between the two parties, it is sensible to consider entering into one of these types of agreements," advises Dearle "to protect the wealth of the financially stronger party."

KEEPING MATTERS CONFIDENTIAL

For wealthy families in Indonesia, confidentiality is a vital component of such planning. "Clients want to know how they can prevent the family's level of the wealth, as well as any family dis-



Marcus Dearle

Withers

putes, from being disclosed," explains Dearle. "They don't want their own children knowing how much wealth they have – let alone non-family members or future spouses."

In some jurisdictions, no financial disclosure is required in order for a pre-nup to be enforceable, but in most disclosure is required. ■

GUERNSEY: ARE ASIAN CLIENTS MISSING OUT?

WHILE THE BVI AND CAYMAN SEEM TO BE THE COCA COLAS AND PEPSIS OF THE OFFSHORE WORLD FOR ASIAN CLIENTS, FIONA LE POIDEVIN, CHIEF EXECUTIVE OF GUERNSEY FINANCE REVEALS THE WAYS IN WHICH GUERNSEY MIGHT BE PARTICULARLY ATTRACTIVE TO WEALTHY ASIANS - BOTH IN AND OUTSIDE OF ASIA.

When seeking solutions for structuring their wealth, Asian investors are fairly open to placing their assets in offshore locations. But there is a tendency for Asian clients – and advisers – to stick to what they know, and for this reason, the BVI and the Cayman Islands remain the preferred choices for offshore wealth structuring.

Historically, Guernsey's primary introducer markets for new business flows have been the UK, continental Europe and the US. However, the maturity of these markets and the impact of the global financial crisis have impacted new business opportunities in these markets, explains Fiona Le Poidevin, chief executive of Guernsey Finance.

As such, over the last few years, there has been a refocusing of the Island's drive for new business to include emerging markets, such as Asia.

"Asia offers Guernsey diversification from reliance on our traditional core introducer markets," says Le Poidevin.

Similarly, placing funds in Guernsey can offer Asian clients diversification for asset protection purposes. Having some assets held offshore can protect

them from potential domestic issues in the client's home country. Some geographical diversification is also logical – for example, a client might choose to hold some assets in the Caribbean, some in Asia, and some in European jurisdictions.

As well as onshore Asian high net worth individuals and families, the large diaspora of globally mobile Asians also represents a significant opportunity to Guernsey. This group includes second generation high net worth family members who have been educated in the UK or Europe and have opted to remain overseas either for work or because they prefer the lifestyle.

The Island's proximity to both London and continental Europe means that it is a convenient offshore option for these clients: easily accessible, and in the same time zone.

STRENGTHENING RELATIONSHIPS

Guernsey Finance is a joint industry and government initiative to defend and promote the long term reputation, stability and development of Guernsey



Fiona Le Poidevin

Guernsey Finance

as a leading international centre for financial services.

Numerous visits and exchanges with government officials, regulators, sector network associations and intermediaries have helped to raise Guernsey's profile in Asia.

The agency has also had a representative office in Shanghai since 2007, and has relationships with Shanghai Municipal Financial Services Office, the China Insurance Regulatory Commission (CIRC), the China Securities Regulatory Commission (CSRC) and the China Banking Regulatory Commission (CBRC).

In November 2013 Guernsey Finance attended the STEP Asia conference in Singapore and a series of other meetings, including the Monetary Authority of Singapore (MAS).

And in the same month, the Guernsey Financial Services Commission (GFSC), signed a Memorandum of Understanding (MoU) with CSRC to facilitate the exchange of information between the authorities, to ensure compliance with their respective regulatory requirements. This aims to promote investor protection and the integrity of the investment products.

BALANCING TRANSPARENCY AND CONFIDENTIALITY

"The Island has a reputation for being well regulated," says Le Poidevin. "Its high standards are delivered within an environment which is not secret but which is still able to offer clients the assurance of appropriate security and confidentiality."

Guernsey was one of the first jurisdictions to regulate trust and corporate service providers. And independent assessments by the IMF and the OECD continue to place the Island in the top tier of international finance centres in terms of its standards of both regulation and transparency and exchange of information for tax purposes.

"As early as 2011, for instance, the Island moved over to automatic exchange of information in relation to equivalent



measures under the EU Savings Tax Directive," reveals Le Poidevin. "Other jurisdictions are only now adjusting to this concept."

More recently, Guernsey signed a FATCA style agreement with the UK government – and will shortly sign a Model 1 intergovernmental agreement with the US under FATCA, which requires foreign financial institutions to report US accounts to the Internal Revenue Service via local tax authorities.

It could be argued that Guernsey's thorough regulatory regime and high standards of transparency could be off-putting for some clients.

Many clients in Asia don't feel comfortable with institutions having their personal data, for security reasons. In some Asian countries, kidnapping and blackmail are a real threat for wealthy families.

However, Guernsey employs high data protection standards to ensure client security and privacy, Le Poidevin assures. Client data held in Guernsey is only available to the relevant Corpo-

rate Service Provider (CSP) and the appropriate regulatory authorities.

And in addition, Guernsey's innovative and up-to-date private client laws are particularly attractive to clients around the world.

INNOVATIVE STRUCTURING TOOLS

The jurisdiction has a 50 year history of establishing and administering private wealth structures. Today this offering includes a variety of structures that have been developed to meet the specific needs of wealthy individuals and families.

A Guernsey private trust company (PTC) can be used for succession purposes, but also offers clients the flexibility to maintain management and control of the underlying assets during their lifetime. Many clients take advantage of Guernsey's purpose trust to hold shares in a PTC.

A Guernsey purpose trust has no registration or disclosure requirements un-

JURISDICTION PROFILE

der Guernsey law, meaning the ownership of the PTC can be confidential.

Guernsey was the first jurisdiction to introduce a protected cell company (PCC), back in 1997. The PCC allows clients to create one or more cells within the company, the assets and liabilities of which are segregated from the non-cellular assets, and from the assets and liabilities of other cells. This ring-fencing of assets means that

Guernsey Foundations were introduced at the start of 2013. Whilst Guernsey is a common law jurisdiction, the law has been drafted in such a way as to reflect legal drafting in civil law jurisdictions – which do not usually recognise trusts, but are familiar with foundations. Guernsey foundations are expected to be of particular interest to wealthy individuals, family businesses and entrepreneurs in emerging market countries, many of

Guernsey boasts more than 150 licensed fiduciary services providers, ranging from multinational organisations to independent, boutique firms. It also has more than 50 licensed fund managers, administrators and custodians, currently managing assets of GBP286 billion (US\$463 billion). And there are more than 30 licensed banks with deposits of £90 billion (US\$146 billion).

These businesses are supported by a network of professional support services, including multi-jurisdictional law firms and global accountancy practices.

“Our long and strong heritage in servicing private clients over the last 50 years also means that we have a tried and tested infrastructure, including a robust [and independent] legal system.”

“Our long and strong heritage in servicing private clients over the last 50 years also means that we have a tried and tested infrastructure, including a robust legal system which is renowned for its independence – especially in relation to judgements made by foreign courts,” says Le Poidevin.

when a cell incurs liabilities, such liabilities are attributable to that cell only.

which are civil law jurisdictions. An example would be mainland China.

And in 2006 Guernsey brought in the incorporated cell company (ICC). An ICC may create one or more incorporated cells, the assets and liabilities of which are segregated from the assets and liabilities of the ICC and of the other incorporated cells.

SERVICE PROVIDERS

It’s crucial that a jurisdiction can offer clients the services and support necessary to set up and maintain these sorts of structures.

“We will never profess to be the cheapest jurisdiction, and would never want to be. But we provide a bespoke service for our clients in order to ensure that their assets are administered in the best possible way, and protected for the benefit of future generations.” ■



DEALING WITH TRUST-RELATED DISPUTES

WHEN SETTLORS OF TRUSTS PASS AWAY, TRUSTEES CAREFULLY CONSIDER SETTLORS' WISHES. IAN MANN, PARTNER, HARNEY WESTWOOD & RIEGELS, EXPLAINS WHY IT IS COMMON FOR DISPUTES TO ARISE BETWEEN BENEFICIARIES AND TRUSTEES – AND HOW SUCH DISPUTES CAN BE AVOIDED.

In Hong Kong, the settlors of trusts that were set up 20 to 25 years ago are now approaching the end of their lives. It is important, says Ian Mann, partner, Harney Westwood & Riegels, for beneficiaries to know what their rights are, and how they can assert those rights.

Equally, trustees should be aware of their obligations too.

Disputes typically arise as a result of beneficiaries being dissatisfied with trustee decisions about distributions, or the way the assets are being managed.

Unlike commercial claims, trust litigation proceedings are not black and white. Rather than one party attacking another, these proceedings usually involve different people sharing their views.

"Trustees may feel obliged to listen to certain beneficiaries' pleas, because of the long-standing nature of the relationship. But beneficiaries' views cannot be treated as instructions. The trustee must act in the best interests of the beneficial class as a whole."

Alternatively, the court may decide that a trustee is not properly manag-

ing the assets in the trust, thereby not exercising its fiduciary duties.

"These duties may include things like making enquiries into the underlying investments," explains Mann, "and reviewing the nature of the investments."

Mediation is an option – and is a great way to settle disputes. But it is only practical if the protagonists want to co-operate and come to a compromise. And not everybody wants to do so.

AVOIDING DISPUTES

A well-drafted trust deed can help to minimise ambiguity around the responsibilities of the trustee. For example, the deed may outline that discretion is to be exercised independently by the trustee.

Alternatively, a protector could be chosen who may have a certain influence over certain decisions (such as income distributions to beneficiaries) or be able to veto decisions.

Many disputes arise between family members from a second marriage and family members from the first marriage. It's therefore crucial to be clear



Ian Mann

Harney Westwood & Riegels

about who is included in the beneficial class. And it's very useful, says Mann, for the trustee to have discussions with the beneficiaries – so that they know in advance what their role is, and what to expect.

"In some cases, the beneficiaries don't even know they're beneficiaries." ■

KNOWING THE COST OF EVERYTHING BUT THE VALUE OF NOTHING

A MAJOR CHALLENGE FOR WEALTH PLANNING PRACTITIONERS IS GETTING CLIENTS TO PAY FOR THEIR SERVICES. FOR THIS REASON, MOST PRIVATE BANKS DON'T CHARGE FOR WEALTH PLANNING ADVICE. BUT THERE IS ONLY SO MUCH THEY CAN THROW IN FOR FREE, AND OFTEN, SENDING THE CLIENT TO SEE AN EXTERNAL SPECIALIST WOULD BE IN EVERYONE'S BEST INTERESTS.

"There are people that recognise the need for proper planning, and are willing to pay for it; and there are others who feel it's too expensive, and believe they can do a DIY job," says Keith Corbin, executive chairman, Nerine Trust.

Asian clients are renowned for being extremely price sensitive. And while an increasing number do now see the value working with independent wealth managers who charge a fee for service, the story is often different when it comes to wealth planning.

One reason for this is that some clients still haven't fully acknowledged the need to implement plans to protect and preserve their wealth. Many refuse to accept that the importance of professional advice until something actually happens to them – such as a death or divorce of a family member or friend.

"At the moment, unfortunately it seems as if only people who have had their fingers burnt who are willing to pay for good advice," says Paul Christopher, managing partner, Hong Kong at Mourant Ozannes.

As wealth planning is a fairly new concept in Asia, there's a need to educate



clients – particularly about the consequences of not planning.

"Clients need to understand that banks and other fiduciaries are providing value for what they're charging," states Ian Mann, partner, Harney Westwood & Riegels.

FREE ADVICE

Private banks don't charge clients for the time they spend giving them advice. They provide it as an added bo-

nus, with a view to strengthening the relationship with the client. The idea is for the adviser to be the first port of call when the client wants to make a trade.

"Most banks heavily subsidise the cost of providing [wealth planning] services, in the hope that they will gain AUM or to create stickiness of clients and their assets," explains Bill Ahern, principal, Family Capital Conservation.

Mark Smallwood, head of strategic initiatives, Asia Pacific, Deutsche As-

set & Wealth Management, describes how the ultimate motivation for bank owned trustees is to engage the client and their family, including the next generation.

"We want to offer a holistic experience so that clients will view the bank as a trusted adviser, and will engage in more activities – including delivering more assets for the bank to manage," he explains.

"Trusts in some instances have been used by private bankers as an acquisition strategy," adds Michelle Lau, senior director, head of wealth planning, private wealth solutions at HSBC Trustee.

At UBS Wealth Management, the wealth planning function is also about client retention.

"Fees are generally charged only if a structure is established with the bank. But we're not driven by profit from the fees for the structure alone," says Jonathan Hubbard, head of wealth planning, Asia, UBS Wealth Management.

"We look at the relationship as a whole. Generally, clients are entitled to [use our wealth planning] services if they've got high AUM with the bank."

External service providers such as consultants and law firms are therefore at a disadvantage, with clients turning them down at the first mention of a fee.

Katie Graves, partner at Withers explains how law firms have to charge their clients for advice, and are losing business when potential clients say, "No thank you – I can get this thrown in for free by my private bank."

In addition, some banks are reluctant to pass any business over to independent specialists, says Ahern.

Michelle Lau

HSBC Trustee

"Trusts in some instances have been used by private bankers as an acquisition strategy."



"[Banks] should realise that independent wealth structuring advisers can't do what banks do – and vice versa. There is plenty of room for collaboration."

This may be for fear that clients will shun the bank because it cannot meet all of their needs.

"Banks should realise that independent wealth structuring advisers can't do what banks do – and vice versa. There is plenty of room for collaboration."

COMPLEXITY CHALLENGES

For banks wanting to offer a full suite of services to keep their clients sweet, there is an expectation for them to not only provide advice relating to the investment portfolio, but also to deal

Angelo Venardos

Heritage Trust Group

"We're in the luxury wealth management business. So clients will pay."



FEATURE ARTICLE

with broader issues relating to the client's business and family wealth.

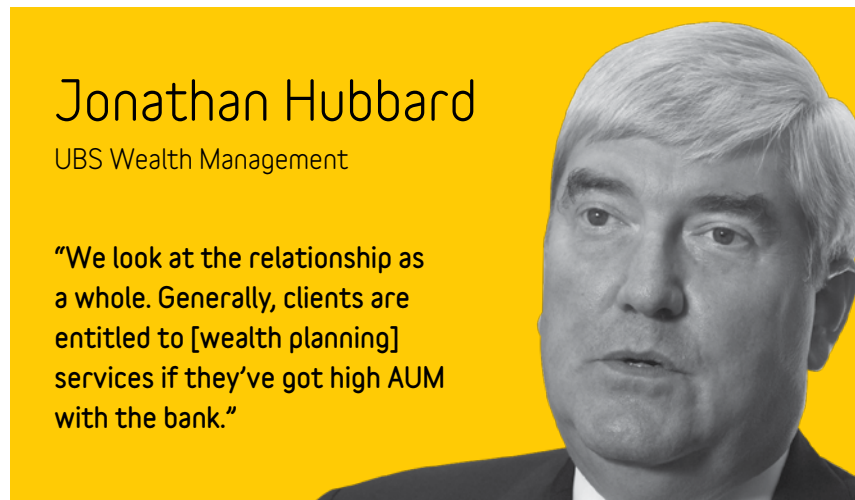
Providing such holistic advice and dealing with such complex issues can be both time-consuming and expensive.

Working on conflict resolution between siblings and cousins, for instance, and assisting with decision-making relating to the family business, is a long-term commitment, and requires specialist expertise. Some banks are therefore re-thinking whether they can actually monetise these services.

Many banks are now outsourcing more and more of this sort of work to external specialists; it's simply not in their interests to pursue these projects.

And according to practitioners, a lot of the independent service providers are better positioned than banks to deliver the right levels of service and advice on succession planning, governance, philanthropy, and other issues.

"It's important for advisers to be aware of which services the bank is



capable of providing – and in which circumstances it would be better for the client to use an external service provider," says Smallwood.

As a result, many firms have settled on a model whereby they have "generalist" wealth planners in-house, and whenever there's a client requirement for a specific service or advice, they'll call on a third party expert – a law firm, tax expert, or other specialist.

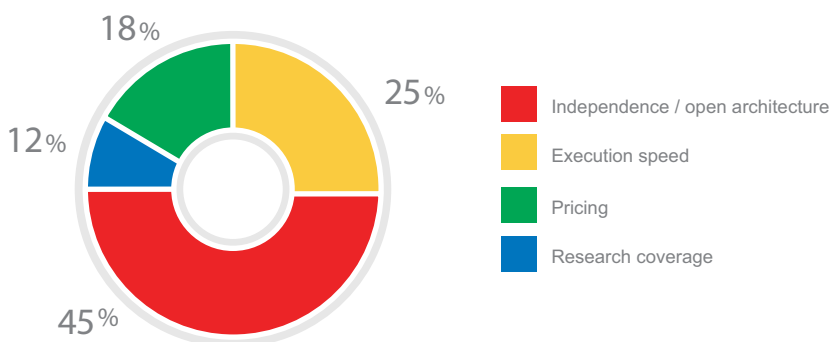
INDEPENDENT ADVICE

After the Lehman crisis, many clients in Asia and elsewhere lost a lot of trust in banks. In some institutions, there is still a tendency for bankers to push the bank's products. And clients don't want to be sold to. This conflict of interest may be a result of compensation schemes whereby relationship managers are incentivised to hit targets.

"Some clients are cautious of the perceived lack of objectivity of private bankers – and so there is a general preference for third party advisers, such as lawyers, to address wealth planning requirements," says Sim Bok Eng, head of specialist & private client disputes practice and partner in the private wealth practice at WongPartnership. "Clients tend to turn to their private bankers only for investment advice."

Angelo Venardos, chief executive officer of Heritage Trust Group agrees. "We're in the luxury wealth management business. So clients will pay – but we've got to demonstrate where the intangibles are." ■

KEY DRIVERS FOR SELECTING A CUSTODIAN



Source: Hubbis

SINGAPORE'S CHANGING INSURANCE LANDSCAPE

NEAL ARMSTRONG OF STANDARD LIFE EXPLAINS HOW THE FAIR REVIEW HAS IMPROVED TRANSPARENCY OVER PRODUCTS AND PRICING IN SINGAPORE, AND SUGGESTS THAT SINGAPORE'S INSURANCE INDUSTRY CAN LEARN FROM THE UK'S RETAIL DISTRIBUTION REVIEW (RDR).

The Financial Advisory Industry Review (FAIR) set out to achieve a number of objectives in raising standards among financial advisers in Singapore.

These include: improving transparency in terms of product features and pricing; driving down distribution costs (thereby improving product pricing); improving knowledge among advisers and raising the standard of advice; and ensuring that practitioners are dedicated to delivering a good service to clients.

The introduction of this whole host of changes will present challenges to many firms in Singapore, says Neal Armstrong, chief executive officer for Singapore at Standard Life.

"But these changes are welcome and refreshing," he declares.

The MAS is sensitive to the fact that firms will need some time to implement internal changes to adjust to the new regulation – and so it will be phased in. In addition, providers may liaise with the regulators over the best way to approach the new requirements.

Distributors are keen to know when the changes will be implemented, and how they can prepare themselves in advance of the deadline – so that they can educate their staff and customers.

In the banking space, increased regulation and transparency can only be a positive, says Armstrong.

CHALLENGES FOR THE INDUSTRY

A key challenge the industry faces is around retaining talent.

In the past, professionals were entitled to work part-time as a financial adviser, and pursue other work on the side.

This will no longer be possible – so some practitioners will exit in order to focus their energies on other work, says Armstrong.

Also, some financial advisory firms operating in Singapore are fairly small. These firms will face tough challenges around capital management and cash flow management.



Neal Armstrong

Standard Life

"Most firms are very dedicated to Singapore – and want to make the changes," advises Armstrong. "And there's absolutely no time like the present to deal with these issues." ■

CONSEQUENCES OF THE RAPID PACE OF REGULATORY CHANGE

AS THE INTERNATIONAL REGULATORY PLAYING FIELD LEVELS OUT, FIRMS WILL HAVE NO CHOICE BUT TO COMPLY, AND THE INDUSTRY WILL BECOME A FAIRER PLACE. BUT THE CHANGES ARE RAISING A NUMBER OF CONCERNS AMONG CLIENTS RELATING TO THE PRIVACY AND SECURITY OF THEIR PERSONAL DATA.

Licensed trust companies must abide by the same guidelines as the banks, which is why there are huge differences in pricing in this industry.

"In the Channel Islands, everyone – from trust companies to corporate service providers – is regulated and licenced," says Angelo Venardos, chief executive officer of Heritage Trust. "Hong Kong, though, has not chosen to regulate and licence trustees, corporate service providers, and fiduciaries."

The market in Singapore consists of an unbalanced mix of licenced trust companies (53) and unlicenced ones (probably a couple of hundred).

At the moment, unlicenced independents with lower fees, as well as less rigorous KYC checks and on-boarding processes, are able to attract more business than those with more comprehensive compliance procedures. But this is changing.

"While the recently announced changes to Hong Kong's trust law are definitely a positive step forward, the fact that the Hong Kong government has decided not to regulate the trust industry may give clients cause for concern,"



suggests Sean Coughlan, managing director of Asiatic Trust in Singapore. "If something goes wrong or a trustee steps out of line, there are no regulatory implications for the firm or for any of the individuals involved. People are therefore likely to be reluctant to hand their assets to unregulated firms."

In addition, western governments are actively taking measures to identify any overseas citizens who are not paying the tax that is due. An example would be the US' introduction of FAT-

CA, which will come into force on 1st July 2014.

"With FATCA, foreign financial institutions must report US accounts to the Internal Revenue Service (IRS) either directly or via local tax authorities," explains Eric Boes, international tax, Amicorp Group.

Singapore has announced that it will introduce model 1, and a number of other Asian jurisdictions are in the process of negotiations.

IMPLICATIONS

FATCA effectively requires affected non-US banks, custodians and funds and other financial institutions – including non-US trust companies – to choose between implementing FATCA or exiting the US investment market for themselves and their clients.

“FATCA is here to stay,” declares Venardos. “Firms have no choice but to invest in IT and compliance in order to gear up for it.”

Plus, the disclosures being introduced by the US in terms of FATCA are likely to be mirrored by other jurisdictions.

High net worth families in Asia are coming to terms with the inevitability of reporting and disclosure obligations and the importance of the legitimacy of their funds, says Sim Bock Eng, head of specialist & private client disputes practice, and partner, private wealth practice at WongPartnership.

“The move towards automatic exchange of information means that soon, every jurisdiction will be ‘open book’. All structuring should be able to



Chee Fang Theng
Pan Asia Wikborg Rein

“The Inland Revenue Authority of Singapore (IRAS) receives a fair number of requests from foreign tax authorities to establish cases in overseas jurisdictions.”

withstand scrutiny,” adds James Bertram, consultant, Deacons.

“Singapore is a growing wealth centre with a lot of expatriates and foreign investors,” explains Chee Fang Theng, partner, Pan Asia Wikborg Rein.

“The Inland Revenue Authority of Singapore (IRAS) is therefore receiving a fair number of requests from foreign tax authorities to establish cases in overseas jurisdictions.” Under the present laws, IRAS has to obtain a

court order before any disclosure is made. However, Singapore’s Ministry of Finance recently proposed that the authority should be able to obtain information without having to apply for a court order.

“This has raised some concerns relating to individuals’ rights to confidentiality,” says Chee.

CONFIDENTIALITY Vs SECURITY

While secrecy is well and truly dead, privacy is still important to a large number of clients.

In light of events in 2013 such as the ICIJ leak, as well as discoveries that governments across the world have access to a lot more information than was previously believed, many clients have become more concerned about the security of their data.

The wish for confidentiality of financial affairs is understandable, given the real threat of kidnapping and blackmail in some countries.

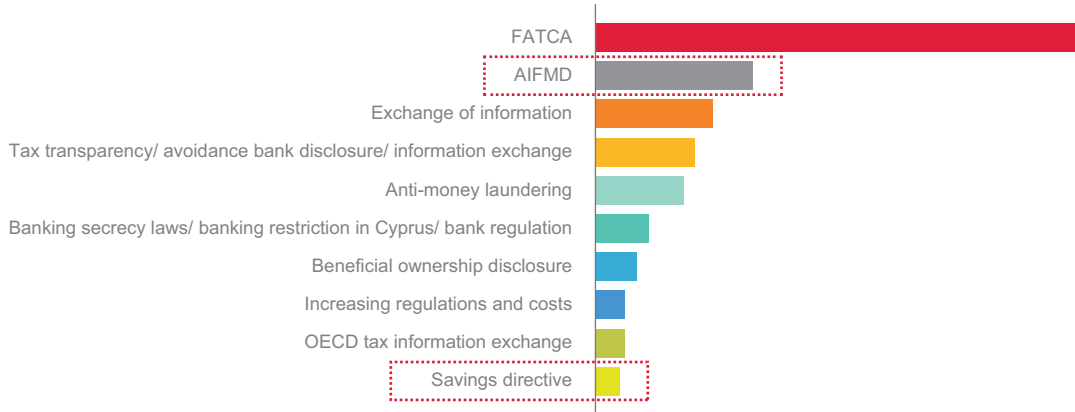
“Clients should do due diligence on the organisations they plan to work



Sean Coughlan
Asiaciti Trust

“The fact that the Hong Kong government has decided not to regulate the trust industry may give clients cause for concern.”

REGULATIONS, NEW OR EXISTING, WHICH ARE LIKELY TO BE AN IMPACT ON THE OFFSHORE MARKET IN THE NEXT 5 YEARS



Indicates EU regulations that are influencing the industry

Source: OIL, Offshore 2020 Report (2013 edition)

with – in terms of their data protection policies, and how strictly these are enforced,” says Jay Krause, partner and head of wealth planning for Asia at Withers.

The debate today is about the level of transparency that the world is heading for: whether it will just be governments that have access to individuals’ information, or whether the information be made public. With respect to the first model, there is a concern that not all governments are benevolent and fair organisations. In many countries, governments can take a vindictive approach towards groups or individuals.

UK Prime Minister David Cameron has announced that the country plans to publish a register of beneficial owners of companies. And Mauritius is an example of a jurisdiction that now requires offshore companies to submit information to the government about directors, shareholders, and the beneficial owners. This has driven a lot of business away from the jurisdiction,

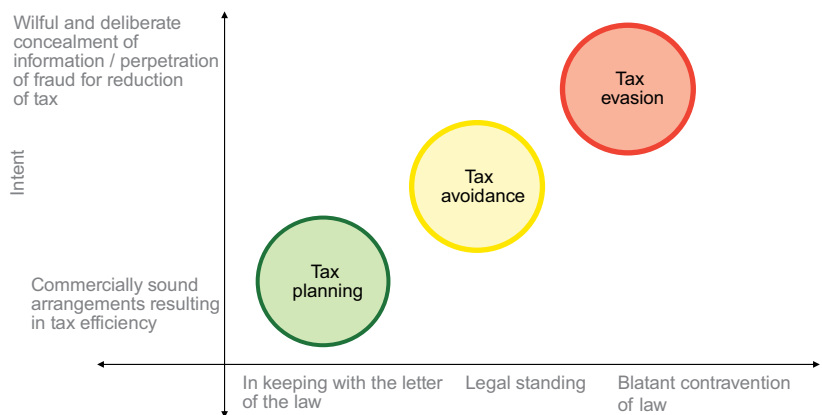
says Katherine Chiu, deputy managing director, Intertrust.

“Making such data publicly available has much more serious implications than if the government were to keep it for its own purposes. People don’t want their residential address and passport details available to the pub-

lic,” says Chiu. “This represents a real security risk and raises concerns about the potential for more identity fraud.”

Some countries’ laws include statutes against the publication of information concerning individuals’ private lives. For some reason, financial information is becoming an exception to the rule. ■

RECOGNISING SERIOUS TAX CRIMES



Source: Ernst Young Presentation Tax Crimes Act

WEIGHTY CONSEQUENCES FOR CLIENTS WITH US CONNECTIONS

THERE ARE MANY WEALTHY INDIVIDUALS IN ASIA WITH US CITIZENSHIP OR GREEN CARD HOLDER STATUS. WHEN THINKING ABOUT WEALTH PLANNING AND STRUCTURING, US TAX AND INFORMATION REPORTING CONSIDERATIONS NEED TO BE TAKEN INTO ACCOUNT - BUT SHOULDN'T BECOME THE TAIL THAT WAGS THE DOG, SAYS JAY KRAUSE, PARTNER AND HEAD OF WEALTH PLANNING, ASIA, AT WITHERS.

When it comes to planning and structuring, advisers often say things like, "Since you're a US citizen you'll need a foreign grantor trust – for tax purposes." This is not the right approach, says Jay Krause, partner and head of wealth planning, Asia, at Withers.

The first step should be to establish the client's long term intentions for family decision making, Krause explains. Tax planning should be an overlay, rather than the primary consideration. Tax can, however, have a substantial impact on a client's wealth and structuring – particularly for people outside of the US with US citizenship or green cards. US tax rules apply to a range of family structures, including family businesses, holding vehicles, as well as international trusts and foundations.

Historically, the US has been the most popular destination for Asian immigration; and many successful Asian families – from Taiwan, the Philippines, Indonesia, Malaysia, and India – have long standing US connections. These may have been established after studying in the US, or otherwise for long-term stability. A number of subsequent-generation wealthy Asians gained their US status 'accidentally'. This includes persons that were born in

the US, and persons born outside the US who have a US parent and spent the requisite time in the US.

In contrast, the mainland Chinese with American citizenship tend to be either first generation entrepreneurs who studied in the US and have returned to Asia; or persons with no prior connection to the US but who have obtained US green card status through the EB-5 investor visa program. All of the abovementioned groups tend to be surprised to learn that their US status carries with it US tax and reporting obligations, says Krause.

The push by the US government and other international authorities to enforce existing tax rules has encouraged many clients to approach firms like Withers for assistance in meeting their tax and reporting obligations – including making best use of the Internal Revenue Service's offshore voluntary disclosure program.

Further, the upcoming implementation of FATCA is causing individuals to explore whether or not they wish to maintain their US status. A growing number of people are considering renouncing their US citizenship or giving up their green cards to avoid the tax



Jay Krause
Withers

and reporting burden, with a view to broadening their options for intergenerational structuring. However, many are pleasantly surprised to learn that careful planning allows their goals to be met without renouncing their US status. "The key to planning is establishing where you want to go before starting the journey," says Krause. ■

RETHINKING HOW TO PROTECT CONFIDENTIALITY AND PRIVACY

THE INTERNATIONAL PUSH FOR TRANSPARENCY MEANS THAT THE CONCEPTS OF CONFIDENTIALITY AND PRIVACY ARE FAST DISAPPEARING. BUT THIS RAISES QUESTIONS ABOUT WHETHER INDIVIDUALS' DATA IS GOING TO BE SECURE, ACCORDING TO SEAN COUGHLAN, MANAGING DIRECTOR, AND KAREN O'HANLON, DIRECTOR OF CLIENT SERVICES AT ASIACITI TRUST SINGAPORE.

Confidentiality and privacy are very key concerns for wealthy clients around the world.

In some countries, if information about a wealthy person's financial situation was made public, the individual and his or her family could be at risk.

And yet confidentiality and privacy are concepts that are disappearing fast.

EVOLVING STANDARDS

With changing global standards around transparency, trustees can no longer guarantee confidentiality of client data.

"Some of the developed countries are on a mission to collect their citizen's tax information," states Sean Coughlan, managing director at Asiatici Trust Singapore.

A number of governments in the western world are keen to find ways to address budget deficits – and are actively trying to independently determine and verify their overseas citizens' taxable income, to ensure the correct amount of tax gets paid.

UK prime minister David Cameron has announced that the country plans to publish a register of beneficial owners of companies, for instance.

And more and more countries are signing up to agreements around exchange of information (EOI).

Some of these require financial institutions to disclose client information directly to governments and authorities.

CONSIDERATIONS FOR CLIENTS IN THE MIDDLE EAST

Karen O'Hanlon, director of client services at Asiatici Trust Singapore, is working with a number of clients in the Middle East through the firm's representative office in Dubai.

"Clients there are very concerned about confidentiality, privacy and security of their data. These are the issues keeping them awake at night," she explains.

Despite the favourable tax environment in Middle Eastern countries like Dubai, there are many clients who have capital invested overseas, with



Sean Coughlan

Asiatici Trust

assets in high-tax jurisdictions like the UK, for example.

Clients therefore set up structures and holding vehicles for a range of purposes, from estate and succession planning to tax optimisation.

The main concern for such clients relating to these structures is whether their personal data – including details of their finances – is in safe hands.

The unfortunate data leak that took place in the first half of 2013 really shook the industry and made trust companies very aware of their own processes around data security.

Many institutions conducted internal reviews to assess the robustness of their systems and practices.

OLD-SCHOOL DATA SECURITY

Firms are now turning back to old methods of storing information: on paper records, kept under lock and key.

Asiaciti Trust in Singapore initially had plans to digitalise its file archive, but

While the recently announced changes to Hong Kong's trust law are definitely a positive step forward, the fact that the Hong Kong government has decided not to regulate the trust industry may give clients cause for concern, suggests Coughlan.

"If something goes wrong or a trustee steps out of line, there are no regulatory implications for the firm or for any of the individuals involved."

People are therefore likely to be reluctant to hand their assets to unregulated firms, Coughlan explains.

In Singapore, although corporate service providers aren't regulated, trust companies are. Trustees require a licence in order to act as a trustee.

Independent trust companies frequently work alongside banks, as

"Clients in the Middle East are very concerned about confidentiality, privacy and security of their data. These are the issues that are keeping them awake at night."

upon reflection these plans did not go ahead.

"We have sufficient electronic data to enable us to run a business, but we feel that it's safer to keep some data on paper," explains Coughlan.

"Stealing five million paper records would be quite a tough job!"

WORKING WITH TRUSTED PROVIDERS

For clients, deciding who to entrust with both their family wealth and their personal information is a tough choice.

they may be more willing to take on-board any private client business that does not meet the bank's profile, explains O'Hanlon.

But when banks refer clients to specific independent trust companies, there is a risk that the client will hold the banker or relationship manager responsible if anything goes wrong.

Banks are therefore becoming more cautious about which independents they work with.

Some have panels or whitelists of approved firms that they will recommend to clients. ■



Karen O'Hanlon

Asiaciti Trust

Asiaciti Trust

The firm offers a range of international fiduciary and financial planning services to both private clients and corporations to enhance and preserve private wealth through the creation of effective international structures.

One of the leading Asia Pacific-based international trust groups, the firm has a presence in:

- Dubai
- Singapore
- Hong Kong
- Cook Islands
- Samoa
- New Zealand
- Nevis
- Panama
- Uruguay

HOW FAMILIES WITH US LINKS CAN MANAGE THE TAX BURDEN

MANY FAMILIES IN ASIA HAVE CONNECTIONS WITH THE US, AND THEREFORE FACE VARIOUS TAX OBLIGATIONS, ACCORDING TO KURT RADEMACHER, DIRECTOR, INTERNATIONAL TAX PRACTICE, AND BRAD WESTERFIELD, PARTNER, TAX GROUP, AT BUTLER SNOW. THESE FAMILIES CAN ORGANISE THEIR FINANCES TO MINIMISE THE TAX BURDEN – BUT THIS MUST BE DONE CAREFULLY, AND IN LINE WITH THE RULES.

There are huge numbers of families living in Asia who have connections with the US.

Within most ultra-high net worth families, for example, at least one of the children has usually been sent to the US to study.

“These children often get their degree, work on Wall Street for a couple of years, and then pick up a green card, a passport, and / or a spouse,” explains Kurt Rademacher, director of the international tax practice at Butler Snow.

This means there are likely to be various tax obligations affecting the family, whether members are aware of them or not.

If those second generation family members have children with American spouses, the third generation (the grandchildren) will automatically have US citizenship.

And so if the patriarch or matriarch wants to set up discretionary trusts to benefit their children and grandchildren, there are a number of disclosure obligations and tax implications they ought to be aware of.

Most industrialised nations only tax individuals on their worldwide income if they live in the jurisdiction.

For example, if a UK passport holder decides to move to Hong Kong, he or she is no longer a tax resident.

America is different; US citizens must pay tax whether or not they are resident – or have ever been resident – in the country.

THE DOWNSIDE OF OWNING US ASSETS

Even if Asian families don't have US family members, they may have US investments such as property in America, or equity – such as shares in US companies, for instance. Those clients will have to pay US estate tax on those investments when they die.

The Foreign Investment in Real Property Tax Act (FIRPTA) means that any gains made on US real estate are subject to tax, even if they are generated by a non-US person.

Any rental income is subject to tax, and if the owner sells the property, he



Kurt Rademacher

Butler Snow

must pay tax. Plus, if he passes away and has direct ownership of a US property, it will be subject to an estate duty of 40% of its value.

“The simplest way to avoid estate tax is to own US property through a non-US company, such as a BVI company,”

says Brad Westerfield, partner in the tax group at Butler Snow.

But it's a catch-22 – because as a company owner, the individual will be expected to pay corporate tax (including US branch profits tax).

"There's no perfect solution; it's about doing some calculations and figuring out the most efficient option."

IMPLICATIONS FOR OVERSEAS AMERICANS

"The Internal Revenue Service (IRS) is honing in on American citizens living overseas," says Westerfield.

"This starts with auditing people's tax returns, to check that they're correct. Depending on the size of the case, the agents may actually fly out to meet the individual face-to-face and go through the information line-by-line with the family members."

People who have structured their affairs with criminal intent will be criminally prosecuted.

A large proportion of the work Butler Snow is taking on at the moment involves helping non-compliant clients to sort out their tax issues.

"There's no perfect solution; it's about doing some calculations and figuring out the most efficient option."

"If you aren't compliant, there's never been a better time to become compliant – before FATCA comes into force," advises Westerfield.

"FATCA requires firms to comb their records to identify any Americans on

their books," explains Rademacher. "In essence, it obliges non-US financial institutions to act as IRS auditors."

This means that if individuals don't voluntarily come forward to the tax authorities, their bank will be doing it for them.

Firms can invest in IT systems that will help them in the process of submitting the necessary reports to the IRS, explains Westerfield.

For instance, input systems can ask the user (the relationship manager or adviser) relevant questions when accounts are being set up.

INSTITUTIONS: DIFFERENT ATTITUDES

Some financial institutions are shunning Americans, viewing these clients as an unwanted burden in terms of the additional compliance procedures the firm is required to perform. Other firms are welcoming them.

"Some financial institutions – including non-US banks – see this as a market opportunity," says Westerfield.

"If other non-US banks are rejecting clients from this segment, it's po-

tentially a way they can differentiate themselves and get extra business."

Plus, regimes similar to FATCA are likely to be rolled out by other countries in the not-too-distant future. Firms are well advised to get ready in advance. ■



Brad Westerfield

Butler Snow

Tax compliance: key questions bankers and trustees should ask:

- Where was the client born?
- Where do they live or spend their time?
- With structures, where were the beneficiaries born?
- Where do the beneficiaries live or spend their time?
- Does anyone in the family have a green card?
- Does anyone in the family have a second passport?

More and more jurisdictions are introducing rules like FATCA; and soon, citizens of numerous countries will face similar obligations.

WHAT GLOBAL TAX TRANSPARENCY MEANS FOR WEALTH MANAGERS

AS MORE AND MORE COUNTRIES SIGN UP TO FATCA AND INTER-GOVERNMENTAL AGREEMENTS, CLIENTS NEED TO REALISE THAT THEIR DATA WILL NOT BE KEPT SECRET, SAID PANEL MEMBERS AT HUBBIS' WEALTH PLANNING FORUM 2013 IN SINGAPORE IN EARLY NOVEMBER. WHILE MOST WEALTH MANAGEMENT FIRMS ARE NOT QUALIFIED TO GIVE TAX ADVICE, THEY SHOULD ENCOURAGE CLIENTS TO SPEAK TO SPECIALISTS.

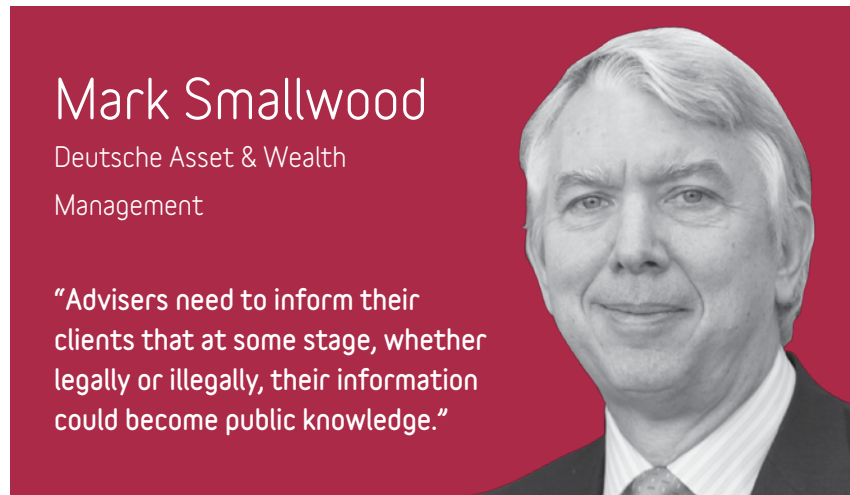
Events such as the ICIJ data leak that took place earlier this year, as well as Edward Snowden's disclosure to the press of government mass surveillance programs, and even more recently, the discovery that German Chancellor Angela Merkel's private phone conversations were being tapped, have led to international concern about personal data confidentiality.

"Advisers need to inform their clients that at some stage, whether legally or illegally, their information could become public knowledge," stated Mark Smallwood, head of strategic initiatives, Asia Pacific, Deutsche Asset & Wealth Management.

However, Philipp Piaz, partner, Finaport, maintained that client confidentiality is not over. "While individuals' data will not be kept secret, it can be kept confidential," he said.

The world is moving from a system of exchanging of information on request to automatic exchange of information.

This is partly driven by governments in the western world looking for ways to address budget deficits; and partly driven by the misconception that the



offshore jurisdictions hold a lot of money that's owed to onshore jurisdictions in taxes.

"This global move to transparency will prove that the concept of the tax haven no longer exists," stated Marcus Hinkley, group partner, private client, Singapore office, Collas Crill.

For example, David Cameron in the UK has declared that he no longer considers the overseas British territories and crown dependencies to be tax havens.

A LEVEL PLAYING FIELD

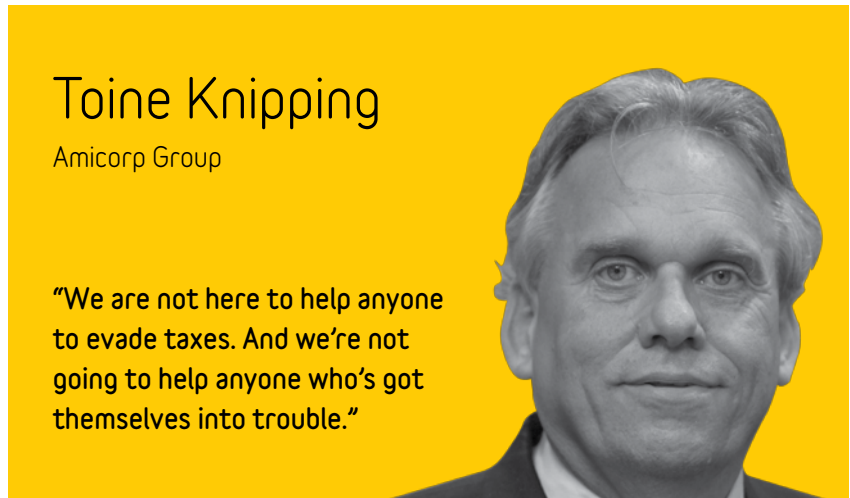
According to Toine Knipping, chief executive officer & co-founder, Amicorp Group, the changes that are taking place will create a level playing field between jurisdictions.

"From a compliance point of view, it will no longer make a difference whether you're in Jersey, Cayman, Hong Kong, Dubai, New Zealand or the US," he said.

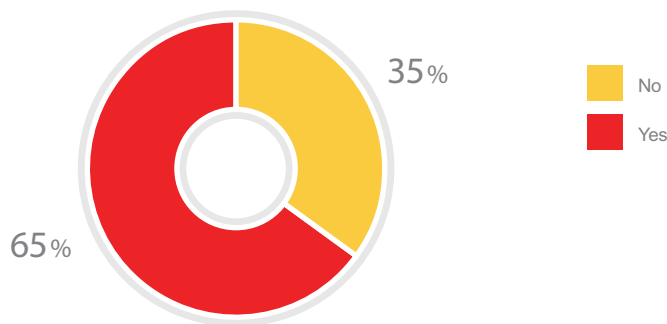
"Finding the right jurisdiction will therefore be about finding the place that offers the right opportunities for doing business, investment and wealth structuring."

Another change is the extension of regulation relating to structures. In the past, when people talked about structures being compliant, they were referring to structures being compliant with the laws of the jurisdiction where the entity was set up, explained Knipping.

For instance, a BVI company had to be compliant with BVI law. Today, that's



ARE YOU CONCERNED ABOUT UNCERTAINTY OR ADVERSE DEVELOPMENTS IN TERMS OF TAXATION OR REGULATION?



Source: The UBS/Campden Wealth Asia-Pacific Family Office Survey 2013

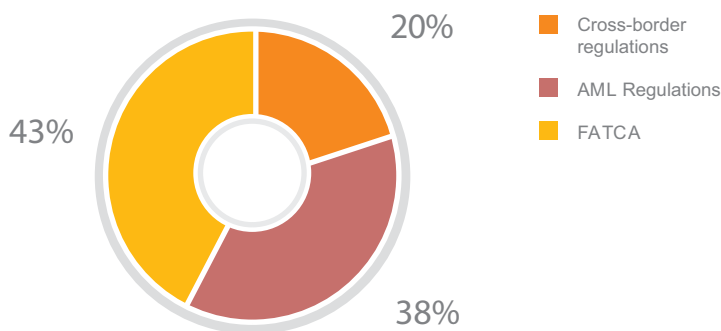
not enough. Structures must now be compliant with the laws of the jurisdiction where the client is a tax resident.

WHAT THIS MEANS FOR FIRMS

In July, the MAS made tax evasion an offence of money laundering. If a client is found to be evading tax, the institution and the adviser involved could pay the price – potentially jail time.

"We are not here to help anyone to evade taxes," stated Knipping. "And we're not going to help anyone who's got themselves into trouble."

THREE IMPORTANT REGULATIONS TO IMPACT FINANCIAL SERVICES FIRMS IN ASIA



Source: Thomson Reuters GRC Survey: The impact of regulation on financial services in Asia

"We need to be cognisant that in the process of advising our clients, we could be exposing ourselves to significant liabilities," said Smallwood. "If a firm or an individual is not qualified to give tax advice, they should communicate that to clients. And if a client wants a structure for tax planning purposes, the adviser should recommend them to a legal or tax specialist."

Smallwood revealed how his firm comes across many clients in Asia who have US exposure but who completely ignore the fact they hold a green card, for example.

FEATURE ARTICLE

It's important that firms communicate to clients the message that they can't rely on the banker or trustee to give them tax advice; they need to talk to a specialised US tax lawyer.

"Smaller companies, unlike banks, are not equipped with large teams of compliance and legal experts," pointed out Piaz.

"We're actually quite limited in terms of what we're legally allowed to advise clients on."

The MAS has a strict regime outlining what different firms may advise on – depending on how they are licenced.

Firms therefore need to be well-connected to a network of specialists, so that they can refer their clients to the right experts.

Governments across the world are tightening up on tax compliance, and it's likely that within a few years' time, the wealth management industry will be completely transparent.

And with more and more countries committing to meeting global standards around regulation, firms will have to bite the bullet and update their compliance policies.

Marcus Hinkley

Collas Crill

"The more mature Asian jurisdictions need to strike a balance between appeasing G20 and not estranging themselves from the emerging markets in the region."



WHAT THE FUTURE HOLDS FOR HONG KONG AND SINGAPORE

According to Smallwood, the English common law jurisdictions in Asia offer a very solid platform for holding wealth and facilitating wealth succession and the transfer of assets to the next generation. China and Indonesia are not common law jurisdictions, and so plac-

es like Singapore and Hong Kong are at an advantage.

Hong Kong and Singapore also offer attractive tax regimes, good legal systems, robust infrastructure, and knowledgeable practitioners on-the-ground.

Access to sophisticated investment products is also limited in the less mature Asian jurisdictions – and so

"It would be naïve to assume that all of the wealth in [Indonesia and China] has come from non-political sources."



clients will be drawn to places like Singapore and Hong Kong. But these more mature Asian jurisdictions face a bigger challenge. "They need to strike a balance between appeasing G20 and not estranging themselves from the emerging markets in the region," said Hinkley.

"Firms in Hong Kong and Singapore still want to take advantage of the opportunities presented by markets like Indonesia and China. But it would be naïve to assume that all of the wealth in those countries has come from non-political sources." ■

TAX EVADERS: NOWHERE TO GO

ACCORDING TO MICHAEL OLESNICKY, PARTNER AT BAKER & MCKENZIE, AS GOVERNMENTS AROUND THE WORLD CONTINUE TO STAMP OUT TAX CHEATS, EVADERS WILL FIND THEY HAVE NOWHERE LEFT TO GO - BECAUSE FOR INSTITUTIONS, HAVING CLIENTS WITH QUESTIONABLE TAX PRACTICES IS SIMPLY TOO RISKY.

As 2014 approaches, there are still clients lurking in dark corners who want to stay one step ahead of the tax man.

"But the world is becoming increasingly intolerant of tax evaders, and these clients are now finding that there are fewer and fewer places where they can hide their assets," says Michael Olesnick, partner at Baker & McKenzie.

If a client is found to be evading tax, it's the institution they're banking with that will bear the brunt – and in most jurisdictions, the penalty for tax crimes includes a jail sentence for the individuals involved.

In order to avoid this risk, some banks are refusing to on-board American clients – due to the increased compliance procedures required, and therefore increased costs. But this approach is impractical, says Olesnick.

"Governments across the world are tightening up on tax compliance, and within five years' time, this industry will be completely transparent."

There's also a growing focus on tax compliance in Asian jurisdictions such as Indonesia.

As more and more Asian jurisdictions enforce stricter rules, wealth management firms will have to re-assess the clients from those jurisdictions that are on their books.

The Hong Kong and Singaporean governments have made it clear that they have no interest in taking on non-compliant business.

Neither jurisdiction wants a reputation for secrecy, or worse, to end up being sanctioned by the OECD.

IMPLICATIONS FOR FIRMS

"The hardest thing for wealth managers during this transitional stage is dealing with the reality that some institutions are implementing more stringent regulatory policies than others," points out Olesnick.

With some firms taking a lighter touch to regulation, the playing field isn't level – meaning clients can go down the road and get the same products or services faster, or for a lower price.

The good news, though, is that this cannot continue.



Michael Olesnick

Baker & McKenzie

With more and more countries committing to meeting global standards around regulation and transparency, firms will have to face up to the facts and update their compliance policies to meet the requirements. Firms are likely to face increased costs around infrastructure and educating staff. ■

A SHAKE-UP AND WAKE-UP IN THE OFFSHORE WORLD

MARTIN CRAWFORD, CHIEF EXECUTIVE OFFICER OF OFFSHORE INCORPORATIONS LIMITED GROUP, REVEALS HOW 2013 HAS SEEN SIGNIFICANT CHANGES IN TERMS OF THE PREFERRED JURISDICTIONS FOR SETTING UP OFFSHORE STRUCTURES, AND ALSO IN CLIENTS' MOTIVATIONS FOR DOING SO.

Clearly, no individual wants to pay more tax than is due. However, tax planning is becoming less and less important in terms of motivations for setting up offshore structures, says Martin Crawford, chief executive officer of Offshore Incorporations Limited (OIL).

OIL's recent survey of more than 200 offshore industry participants found that tax planning was well down the list of drivers of client demand, and declining. When asked what accounted for the bulk of their business in 2013, only 10.3% of respondents cited individual tax planning – down from 15.9% in 2012.

Instead, asset management and wealth protection are the primary drivers for offshore structuring – followed closely by funds management. Firms have seen a significant increase in interest in these areas since last year.

Single country risk is a problem for many wealthy Chinese families, explains Crawford. China has restrictions around currency and outbound investment flows – making geographical diversification difficult. Setting up a structure such as a trust can help clients to achieve the desired diversification in a legitimate way.

JURISDICTIONAL WINNERS AND LOSERS

When advising clients on the different structuring options available, it's important to be agnostic about jurisdictions, says Crawford. The first step is to establish what the client wants to achieve. Beyond that, it often comes down to personal preference.

According to OIL's research, jurisdictions that were previously market leaders – the BVI, the Cayman Islands, Hong Kong, and Singapore – were perceived to fall in importance in 2013. This is likely linked to client sentiment in light of events such as the ICIJ leak, intensifying regulatory pressure from G8 countries and the OECD, and heightened political scrutiny in developed markets regarding the use of offshore structures.

Although Hong Kong and Singapore are both expected to rebound, interest in the BVI and the Cayman Islands could continue to deteriorate. These jurisdictions will need to reaffirm the message that they do offer robust legal systems, a broad range of structuring vehicles, and compliance with global transparency standards.



Martin Crawford
Offshore Incorporations Limited Group

Delaware and Bermuda experienced some growth in popularity in 2013, but European players did not gain from the crisis of confidence in the BVI and the Cayman Islands. Going forward, the mid-shore locations (particularly Hong Kong and Singapore), plus Malta, the Seychelles, and Samoa are expected to experience the greatest inflows. ■

WHY SECRECY AND LAX REGULATION ARE LONG GONE

AS THE WORLD MOVES TOWARDS AUTOMATIC EXCHANGE OF INFORMATION AND NEW STANDARDS IN TERMS OF TRANSPARENCY, JURISDICTIONS THAT PREVIOUSLY SOLD THEMSELVES ON SECRECY OR LAX REGULATORY STANDARDS WILL CEASE TO EXIST, SAYS ANDREW MILLER, PARTNER AND HEAD OF THE GLOBAL TRUSTS GROUP AT WALKERS.

Regulators around the world are realising that in order to maintain their jurisdictions' reputations, regulatory standards must rise.

"This is a good development – as it will reduce the chance of firms being subject to the sorts of scandals that have taken place in the past around tax evasion and money laundering," says Andrew Miller, partner and head of the global trusts group at Walkers.

However, as the world moves towards automatic exchange of information and new standards around transparency, the debate over the fine line between privacy and secrecy is heating up.

According to Miller, people have a right to privacy – particularly with respect to their financial affairs. "The only instance in which it would be acceptable to look into another person's bank account is if you are a regulator or other enforcer of the law," he says.

However, people who try to keep their financial affairs secret are the ones that give cause for concern.

"Those individuals want to hide their finances for nefarious purposes;

for fraud or tax evasion reasons," explains Miller.

Walkers therefore tends to be very careful about the type of business it takes on-board.

"We have no interest in helping people to hide money," says Miller.

IMPLICATIONS FOR JURISDICTIONS

Some of the smaller jurisdictions may struggle to meet the fast-changing international regulatory standards.

"If a jurisdiction has – until now – sold itself on the fact it offers secrecy or lax regulatory standards, there's a good chance its life is over," Miller declares.

By using a VISTA trust in the BVI or a STAR trust in the Cayman Islands, clients can enjoy a comfortable level of confidentiality while resting assured that the structures meet the required regulatory standards.

Both of these jurisdictions are committed to complying with global transparency standards.



Andrew Miller

Walkers

As regulations become more far-reaching, the cost of doing business in the offshore locations, and managing wealth out of them, will rise.

And costs relating to regulation will inevitably be passed down to clients, says Miller. ■

THE RISE OF HIGH-END INSURANCE IN ASIA

THE HIGH-END INSURANCE MARKET HAS GROWN AND MATURED SIGNIFICANTLY OVER THE LAST 10 YEARS. WEALTHY CLIENTS TODAY ARE VERY AWARE OF THE IMPACT THAT SWINGS IN THE FINANCIAL MARKETS CAN HAVE ON THEM AS INDIVIDUAL INVESTORS - AND ARE THEREFORE TURNING TO SOLUTIONS SUCH AS HIGH-END INSURANCE AS A RISK MITIGATING INSTRUMENT, SAYS MARTIN WONG, GENERAL MANAGER, SOUTH-EAST ASIA AT JARDINE LLOYD THOMPSON.

Back in the early 2000s, says Martin Wong, general manager, South-East Asia at Jardine Lloyd Thompson (JLT), high-end insurance was in an “embryonic stage.” A limited number of providers, and a lack of awareness among private banks and trustees meant that high-end insurance was not generally incorporated into strategies for clients.

In the aftermath of the crisis, however, clients have come to realise that portfolio compression or asset devaluation can have a significant impact on them, Wong explains. And they want to manage these risk exposures. This represents a significant opportunity for wealth advisers and insurance brokers – in communicating the value of high-end insurance.

TRENDS IN DEMAND

Four or five years ago, Singapore residents represented just 5% of the total number of universal life policy clients on JLT’s books. Today, that figure is nearer to 30%.

The demand from Greater China is even bigger. Mainland Chinese clients haven’t inherited their wealth; they are the wealth creators – and they’re still in their mid-40s.

JLT is well positioned in capitalising on the opportunities in China; in partnership with global private banks servicing the HNW segment in Greater China. So far, says Wong, the value proposition has been very well received.

DYNAMICS IN ASIA

Insurers are now broadening their policy ranges to offer more high-end insurance, such as Singapore dollar and RMB universal life plans. Also, bespoke solutions such as high-end global hospitalisation plans, fine arts and jewellery coverage, and kidnap and ransom plans have seen increased adoption by HNW clients looking to address risk exposures to their health, private collections, and personal safety.

Brokers function in an inverted pyramid. At the bottom, there is a huge number of private banks – and at the top, a limited number of providers. Those banks will work with four or five brokers. The product offering is fairly undifferentiated – so the key is in fostering and maintaining holistic relationships with the private banks.

One of the challenges to success, says Wong, is in finding client-facing brokers that can value add in the inter-



Martin Wong

Jardine Lloyd Thompson

action between bankers and clients. For advisers, the golden opportunity is when a client starts to ask how a policy works and how they can get the most out of that policy based on their profile. This should not be a one-off conversation, warns Wong. If advisers want to build long-lasting relationships, this should take place annually, at the policy anniversary. ■

Relevant publications to you in 2014

The Guide to Family Wealth in Asia (April 2014)

This aims to help UHNW individuals address the dynamics of managing their personal or family wealth as well as their business wealth – two areas which are often inter-connected. Through case studies and expert insights, it will offer best-practice advice on approaches to estate, succession and tax planning, creating a robust investment platform and family office, plus making the most out of relationships with service providers.

The Guide to Wealth Planning (November 2014)

The needs of Asia's wealthy are increasing in complexity. There is a fundamental requirement for individuals and families to implement proper planning in order to preserve, protect and transition the wealth they have accumulated to the next generation. This Guide will explore market trends, developments, opportunities and challenges in relation to the wealth planning and fiduciary services industry, including the considerations for clients and firms regarding the changing regulatory environment.

Events in 2014

Compliance in Asian Wealth Management Forum 2014

Thursday 23rd January
Pan Pacific Singapore

Asian Wealth Management Forum 2014 - Hong Kong

Tuesday 27th February
Conrad, Hong Kong

Independent Wealth Management Forum 2014

Thursday 13th March
The Marina Bay Sands, Singapore

Taiwan Wealth Management Forum 2014

Thursday 27th March
Grand Hyatt, Taipei

Indian Wealth Management Forum 2014

Thursday 3rd April
Mumbai

Investing in Asia Forum 2014

Thursday 8th May
Park Hyatt Zurich

Thailand Wealth Management Forum 2014

Thursday 15th May
Four Seasons Hotel, Bangkok

Technology & Systems Solutions Forum 2014 - Singapore

Thursday 19th June
Pan Pacific, Singapore

Malaysian Wealth Management Forum 2014

Thursday 26th June
Le Meridien, Kuala Lumpur

Indian Private Banking Forum 2014

Thursday 21st August
Mumbai

Wealth THINK 2014

Tuesday 23rd September
Pan Pacific, Singapore

Asian Wealth Management Forum 2014 - Singapore

Wednesday 24th September
Pan Pacific, Singapore

Indonesian Wealth Management Forum 2014

Thursday 23rd October
Four Seasons Hotel, Jakarta

Wealth Planning Forum 2014

Thursday 6th November
Marina Mandarin, Singapore

Technology & Systems Solutions Forum 2014 - Hong Kong

Thursday 13th November
Four Seasons Hotel, Hong Kong

China Wealth Management Forum 2014

Thursday 27th November
Grand Hyatt, Shanghai



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