

Private Client & Trust Bulletin

April 2020

With the world in the grip of the COVID-19 pandemic, we would like to reassure our clients that we remain ready to provide advice and support during this difficult time, as your needs may change. Please visit our [website](#) for our latest articles and insights on the present situation.

Meanwhile, with much of the world in lockdown, we hope you find this review of developments in the international private wealth sector informative and enjoyable reading. Most importantly, in the weeks and months ahead we hope you and your families and colleagues keep safe and well.



**Farewell
Alec!**

As many of you will know, Alec Anderson retired from Conyers at the end of March after 35 years with the firm. During his 25-year tenure as head of the firm's Private Client & Trust practice, he established its reputation as one of the leading teams in the offshore world. Alec is widely recognised as a leader in the private client field and for his extraordinary dedication to his clients. We owe him an enormous debt of gratitude and wish him every success in future endeavours.

Jurisdiction Developments

Like all international financial centres (IFCs), Bermuda, Cayman and BVI continue to be challenged by increasing regulation and the introduction of the EU's economic substance requirements. Nevertheless, clients and their advisors, particularly in the context of trusts and international private wealth management, still seem robust in their use of IFCs to achieve their planning needs. In addition, we are seeing IFC governments demonstrate greater awareness of the value of private clients and family offices in enhancing their jurisdiction's reputation, inward investment, job creation and intellectual capital. Finally, we continue to see IFC courts feature strongly in trust-related planning. In this regard, both Bermuda and Cayman are leaders in developing offshore trust jurisprudence.

Regulation - what's next?

US FATCA and the OECD's CRS are now well implemented by all financial institutions in reputable IFCs. As predicted, quality clients have their personal and business tax affairs in order, so this additional burden only presented challenges from administration and cost perspectives. Constantly evolving anti money laundering requirements continue to put significant burdens on everyone, not just licensed trustees – ask any banker. Complexity can arise on these questions (for example if a settlor has specific wishes limiting notifications of beneficiaries); however, this layer of diligence is mostly administrative and all quality clients are familiar with these issues nowadays.

There are three developing areas we are watching closely: namely, public registers of beneficial ownership, DAC6 and the OECD's proposed global minimum rate of corporate tax.

Bermuda has committed to introduce a published register of beneficial ownership when it becomes the "international standard", but with the Channel Islands and, most recently, the Cayman Islands committing to publication, it seems this position will be harder to maintain. For the moment, the initiative is limited to companies only and there is no proposal for a trusts register. The debate over privacy rights and the social contract has only intensified in the last few weeks and we expect this will be an active area of discussion in the weeks and months ahead.

Second, we are monitoring the impact of the EU's latest Directive on Administrative Cooperation (commonly known as DAC6) and its requirements for Mandatory Disclosure Rules relating to tax arrangements, "CRS avoidance arrangements" and "opaque offshore structures". At this stage, these rules are still being discussed in Bermuda, Cayman and BVI; no doubt consultation and draft legislation and regulation will follow. Jersey issued draft regulations at the end of December and we will monitor the implementation and issues arising from those.

Finally, the OECD has proposed a global minimum rate of corporate taxation, which has been well covered in the press in recent months. It remains to be seen how this develops and how it will impact IFCs. In particular, we will watch the reaction of the US to these proposals.

Economic Substance

All IFCs have now adopted local laws to implement economic substance requirements. These laws are intended to combat harmful tax practices and require certain entities formed or registered in IFCs, that are carrying on specified activities, to report on and maintain substance in the jurisdiction (for example by way of adequate personnel, physical premises or operating expenditure). Although Trusts are generally exempt from economic substance requirements, there are some points worthy of note in the private client and trust context, classification of private trust companies and financing and leasing activities, for example.

Private trust companies are viewed as out of scope of the legislation since they are not holding their own assets with a view to a profit, or carrying on any business other than holding assets upon trust. However, we have seen two “relevant activities” that may impact trust and private client structures: acting as a holding company and financing & leasing business. As to the former, the IFC jurisdictions have adopted narrow definitions of carrying on holding company business. For example, in Cayman and BVI, a holding company means “pure equity holding” and in Bermuda this means pure equity holding or holding solely majority equity ownership in underlying entities (which follows the Channel Islands definitions). Accordingly, the view is presently taken – in the absence of any guidance to the contrary – that an underlying company owned by a trust which holds an investment portfolio of equities that also includes non-equities such as corporate bonds, as well as non-financial assets such as real estate, will be out of scope. With respect to financing & leasing activity, inter-group loans in trust and private client structures, especially those earning interest, may well be caught in the legislation.

One impact of the economic substance requirements is that clients, especially larger ones, have been prompted to review their connections and presence in offshore centres. We have seen increased interest in family office arrangements, as well as some relocations of clients to our jurisdictions.

Legislative Reforms

Cayman Islands Trusts Law

Legislative amendments to the Cayman Islands’ Trusts Law took effect on 14 June 2019, building on previous important modernisation in the last two years. While the reforms do not represent a drastic

overhaul of the Trusts Law, they introduce welcome improvements to ensure the Cayman Islands remains a leading offshore jurisdiction for the establishment, administration, and maintenance of trusts.

The 2019 reforms effect the following key changes:

- **codifying the “Hastings-Bass”** principle: providing a clear statutory framework to apply for relief where the trustee (or some other fiduciary) has made a mistake in the exercise of their powers
- **extra-judicial variation of trusts:** making it easier for the Grant Court to approve a variation to a trust on behalf of minor and unborn beneficiaries
- **compromise trust litigation:** making it easier for the Grant Court to approve a compromise to a trust dispute on behalf of minor and unborn beneficiaries
- **foreign element provisions:** extending the “firewall” or foreign element provisions which protect against a foreign law applying to a Cayman trust or foundation company
- **trust corporations:** widening the definition of a “trust corporation” to include licensed trust companies’ controlled subsidiaries and thereby widening the scope for such trustees to retire

Cayman Wills

The Cayman Islands has recently taken a more flexible approach to recognising the validity of Wills for persons domiciled or habitually resident outside the jurisdiction. The Formal Validity of Wills (Persons Dying Abroad) Law, 2018 (“the Law”) came into force in early 2019. It replaced the common law rule which required that a Will disposing of movable property, such as shares, must be executed according to the law of the country in which the testator was domiciled at death. In contrast, the Law now provides that a Will is valid where it conforms with any of the following:

- Cayman Islands law
- the law in the territory where it was executed
- the law in the territory where, at the time of its execution or at the time of the testator’s death, the testator was domiciled or had his/her habitual residence
- the law in the territory where the deceased was a national at the time of execution or at the time of death

The Law makes it easier for foreign persons to make a Will with regard to their Cayman assets, and is a welcome reform in the Cayman Islands for foreign investors seeking to establish Cayman structures. Clients wishing to make a Will specifically in respect of their Cayman assets can now do so in accordance with Cayman laws, which broadly require that a Will be executed at the end of the document in the presence of two witnesses.

You may also be interested in [Death in Paradise: What to do when a deceased person has assets in the Cayman Islands.](#)

Bermuda: anticipated legislation

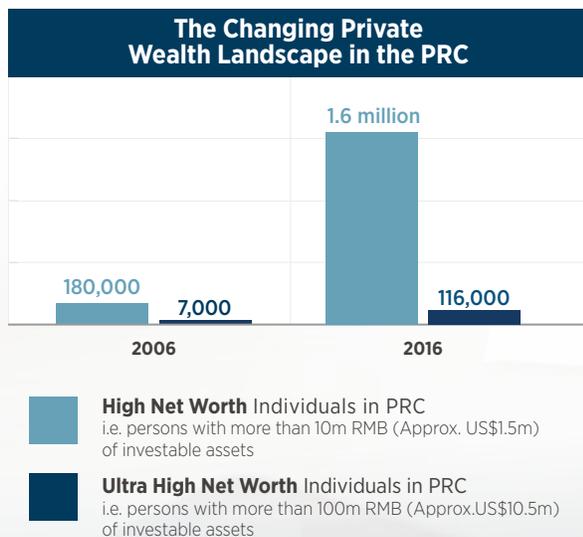
We anticipate updated Bermuda legislation in two areas of interest to private clients. First, it has been some years since Bermuda's "firewall" provisions have been considered and we expect refinements to enhance the protections for wealth held in Bermuda trusts against orders of foreign courts. Second, following references in Bermuda's 2020 Budget, we soon expect to see specific laws offering immigration, tax and other incentives aimed specifically at family offices. Look out for further commentary on those in forthcoming bulletins.

Asia Private Wealth

The geographical focus of both Cayman's and the BVI's client base has showed increased work-flow from Hong Kong and the People's Republic of China (PRC), in particular with the establishment of employee benefit trusts, using the BVI's VISTA and Cayman's STAR regimes for PRC-based HNW entrepreneurs, and dynastic discretionary trusts for PRC-based families.

You can learn how Cayman Islands SPACs are used to raise funds through IPOs here: [STARs, SPACs and IPOs – A Guide to Cayman Islands Star Trusts and Special Purpose Acquisition Companies](#).

From Hong Kong, Peter Ch'ng provides an interesting look at [developments in private wealth and estate planning for PRC citizens and residents](#).



Statistics taken from China Merchants Banks' 2017 China Private Wealth Report.

Recent Cases of Interest

A number of important trust cases have come before the courts over the past year:

JAN
2019

Cayman Islands

In the Matter of A Trust

Tasked with a request to approve a trustee's "momentous decision in this case, the Hon Justice Kawaley took the opportunity to re-state the principles applicable to Category 2 Public Trustee v Cooper applications. The judgment provides useful guidance for both trustees and beneficiaries who are seeking to negotiate proposals for the distribution of assets held in discretionary trusts, which are likely to be the subject of Court blessing applications.

[Read the case summary.](#)

JUN
2019

Bermuda

In the Matter of the GA Settlement

This case concerned an application under section 47 of the Trustee act 1975, which continues to be an essential tool for Court sanctioned restructurings of trusts where trustees otherwise lack power to do so. The jurisdiction of the Court to disapply the rule against perpetuities was considered and the factors taken into account to determine the exercise of the Court's discretion.

[Read the case summary.](#)

OCT
2019

Bermuda

Ashley Dawson-Damer and Lyndhurst Limited

The decision of Chief Justice Hargun in this case appears to be the first time the Bermuda Court has granted an interim preservation order over disputed trust assets pending the outcome of foreign proceedings.

[Read the case summary.](#)

NOV
2019

Hong Kong

Zhang Hong Li and others v. DBS Bank and others

This important judgment in the Hong Kong Court of Final Appeal held that trustees do not have a high level supervisory duty for an underlying investment company where the trust instrument contains anti-Bartlett clauses exempting such duty. As a result, trustees will not be liable for any losses resulting from transactions by the underlying investment company trustees.

[Read the case summary.](#)

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