



IS HONG KONG ASIA'S NEXT TRUST CENTRE?

DESPITE THE GLOBAL ECONOMIC DEPRESSION, CHINA'S ROBUST GROWTH PROSPECTS AND THE RISE OF THE NEW RICH IN GREATER CHINA ARE ATTRACTING OFFSHORE LAW FIRMS AND PRIVATE BANKS, WHICH SEE THEM AS THEIR NEW CLASS OF CLIENTS. BUSINESS DEVELOPMENT OPPORTUNITIES EXIST FOR FIRMS THAT CAN HELP PROVIDE VERSATILE AND USER-FRIENDLY OFFSHORE TRUSTS, WRITES

ARTEMISIA NG

GIVEN THE POTENTIALLY COMPLEX NATURE OF A HIGH NET WORTH CLIENT'S ASSETS – WHICH MAY INCLUDE MULTIPLE CLASSES OF ASSETS ACROSS VARIOUS JURISDICTIONS – **TRUSTS PRACTITIONERS HAVE SEEN A GROWING DEMAND FOR TAILOR-MADE TRUST STRUCTURES TO MEET THE SPECIFIC OBJECTIVES OF SUCH CLIENTS.**

Historically, setting up private trusts offshore has been a preferred vehicle for Asia's wealthy families and individuals to manage their assets as they crave the discreetness and protection that offshore trust laws offer in times of war or major life-changing events. In recent times, several offshore jurisdictions have updated their respective trust laws to allow greater flexibility, and enhance the user-friendliness of their trust structures.

Ian Mann, a partner at Harney Westwood & Riegels, says he has witnessed pronounced growth of both private trust advisory and contentious trust work in Hong Kong, which prompted his relocation from the British Virgin Islands (BVI) to the firm's Hong Kong branch.

"Our affiliated corporate services company, Harneys Services, provides trustee services in the BVI and thus enables us to act as a registered agent for BVI Private Trust Companies (PTCs), which has proved to be very popular in Hong Kong," says Mann.

Lee Syin Long, Walkers' head of trusts in Asia, points to the versatile nature of offshore trusts as the key appeal for Asian clients.

"Trusts can be set up for a variety of reasons and can be used as a means to manage difficult heirs, to protect against future creditors and to hedge against political and social risk," explains Long.

For many wealthy families, trusts are able to offer a long-term planned ownership

structure for holding complex assets including those that may not be compatible with direct personal ownership, she says.

Using a trust, families are also able to consolidate their worldwide assets into a long-term ownership structure that allows them to effectively deal with their assets holistically from a single point of reference.

"In Asia, the idea of transferring one's wealth to a third party (i.e. the trustee) is not considered attractive, especially because the trustee has duties to the beneficiaries rather than the settlor," says Mann of Harneys, who notices Asian clients are often keen to retain control over various aspects of the trust or the management of the underlying trust assets.

In this regard, BVI's VISTA trust and Cayman's STAR trust have emerged as popular options for Asia's richest.

The BVI VISTA trust allows operating assets, such as a family business, to be placed within the trust to the extent that directors of the underlying company are able to continue managing the assets without interference by the trustees, Long explains.

Besides, families with specific legacy considerations looking to have a trust set up over many generations to hold multiple types of assets can opt for the Cayman STAR trust.

With no limit on perpetuity, the settlor can stipulate the amount of information that each beneficiary receives in relation to their entitlements under the trust, and

appoint neutral (non-beneficiary) third parties to enforce the trust for the benefit of the beneficiaries.

"This is useful in avoiding intra-family disputes amongst beneficiaries, and beneficial if the patriarch desires the trust assets to be retained for the next generation," says Long of Walkers.

TRUST STRUCTURING NEEDS

Given the potentially complex nature of a high net worth client's assets – which may include multiple classes of assets across various jurisdictions – trusts practitioners have seen a growing demand for tailor-made trust structures to meet the specific objectives of such clients.

"A key challenge in structuring trusts for Asian families today is that a significant portion of Asia's wealth tends to be in active, or operating investments and business," says Long of Walkers.

In structuring trusts, Long believes advisors should consider the nature of the assets and assess whether there is a need to restructure assets located in the client's home jurisdiction. With the more complex assets and trusts, foreign legal recognition risks must also be taken into account and dealt with at the structuring stage.

She advises families to seek advice early, particularly before a life-changing event occurs in the family, and also when they

ESTABLISHING TRUSTS IN SELECT JURISDICTIONS – PROS AND CONS?

Features	Hong Kong	Singapore	Jersey
Longest fixed perpetuity period	80 years	100 years	No period – rule against perpetuities abolished
Rule against excessive accumulations	Yes – income can be accumulated for 21 years	Income may be accumulated for the life of a trust	Income may be accumulated for the life of a trust
Recognition of non-charitable purpose trusts	No	No	Yes
Provisions within trust law to disapply foreign forced heirship rules	No	Yes	Yes
Statutory private trust company regime	No	Yes	Yes

“THERE IS CURRENTLY LESS AWARENESS AMONG THE YOUNGER ENTREPRENEURS AND THE NEWLY RICH ON WHY, OR HOW, THEY SHOULD BE USING TRUSTS, BUT THIS IS LIKELY TO CHANGE OVER TIME.”

Lee Syin Long, Walkers

anticipate a realisation of their gains by setting up pre-IPO trusts.

For immovable assets such as real estate, Long says it is ideal to seek advice before the actual property purchase, as subsequent transfer costs – such as stamp duties and legal fees – may be prohibitive once the sale is completed.

BELATED REFORM

With the abolishment of estate duty in 2006, many practitioners believe Hong Kong has the potential to become an attractive trusts centre.

But the city’s outdated trust law is widely viewed as an impediment to such a prospect. The Hong Kong Trustee Ordinance, which was based on England’s Trustee Act, 1925, has not changed much since it was enacted in 1934.

“Other jurisdictions around the world have been updating and modernising their trusts statutes over the last few years including England in 2000 and Singapore in 2004,” says Richard Norridge, a senior associate in the dispute resolution department at Herbert Smith’s Hong Kong office. “In an increasingly competitive world, concern has been expressed that Hong Kong may be falling behind.”

Amidst industry concerns, Hong Kong’s trust law is poised to be reformed, with the bill waiting to be tabled at the next legislative session.

Two aspects of the reform proposal could make Hong Kong more competitive, Norridge points out. “The proposals in Hong Kong could restrict the scope of [trustee] exculpation clauses — the effect being that professional trustees would not be able to restrict their liability to the extent they now can,” he says, while noting that if Hong Kong can introduce clear principles regarding a beneficiary’s right to information, it will introduce much needed certainty to this area.

Meanwhile, Marcus Leese, Ogier’s Hong Kong-based partner, believes there is “absolute potential” for Hong Kong to become an important centre of trusts, since the city is already an important administrative hub providing trusteeship to offshore trusts.

“Hong Kong and Singapore both have historical ties to the British common law systems, and both are viewed as onshore centres which still have a certain degree of freedom and dynamism,” he says.

Leese suggests that Hong Kong can bring itself at par with many leading offshore jurisdictions by abolishing its 80-year cap on its trust perpetuity period, and allow the settlor to have more control over the trust assets.

BUSINESS DEVELOPMENT

As Asia becomes richer, many lawyers believe educating clients is fundamental to the growth of the trust businesses in the region.

“There is currently less awareness among the younger entrepreneurs and the newly rich on why, or how, they should be using trusts, but this is likely to change over time,” says Long of Walkers.

In a similar regard, Leese says Ogier has been working with private banks to offer seminars and workshops, and online training materials to educate financial professionals and potential clients on the creative use of offshore trusts.

Without local law capabilities, many offshore firms often rely on business referrals from onshore firms to grow their Greater China trust advisory work.

“High net worth individuals have their own Hong Kong lawyers as long-standing family wealth advisors, and they will recommend Harneys to them before coming to us,” says Mann. “We have a number of strategic partnerships in the region, and have been aggressive in marketing in the PRC. However, we have no exclusive tie-ins and generally cross refer when appropriate, depending on what’s best for the client,” he says.

As more offshore firms and trust corporations bolster their presence in Greater China — most notably with Ogier being the first offshore firm to set up shop in Shanghai last summer — competition has become keener.

To stand out from the pack, Mann from Harneys says calibre rather than fees is the key determining factor. “People are looking for established offshore firms with pedigree, depth of experience, and an understanding of private wealth and the legacy of successful families,” he says.

TALENT NEEDED

With China’s imminent ascent, many law firms are eager to expand their private wealth offerings. But they are inevitably competing with private banks to attract the already limited pool of talent in Asia.

Leese from Ogier admits that finding candidates “with the right skills has been very difficult.” He is looking for talented people with “high intelligence” combined with “practical skills” and an “awareness of practical reality.” “There’s a very important human aspect to private client work. You need to understand how people think and act,” he says, while adding that the new recruits will need to master broad legal knowledge, especially good corporate law knowledge, which proves to be very useful when advising trustees entering contractual agreements. **ALB**