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A sanctuary from the storm



With the current global geopolitical uncertainty, the world may already have much to worry about. However, George Friedman's book *The Next 100 Years* predicts a third world war in about 30 years' time and a military conflict between the US and rising superpower Mexico towards the end of the century. According to Friedman, Russia and China are destined to significantly weaken politically and economically, and Japan, Turkey and Poland to successfully grow economically and increase the territory under the rule of their respective governments. Perhaps, 'We ain't seen nothing yet'.

Rapid-fire economic, political and legal changes may be the new norm. Ultra-high-net-worth individuals increasingly seek to establish or re-domicile trusts and structures in politically, economically and socially stable tax-neutral jurisdictions that are reputable and well situated. The number of jurisdictions that meet these criteria may be diminishing. Bermuda continues to satisfy them.

Bermuda is the oldest self-governing Overseas Territory of the UK. Bermuda's Supreme Court had its first recorded sitting in 1616. Bermuda law remains the law of England (including the doctrines of equity) as extended to Bermuda on 11 July 1612, as amended from time to time thereafter. Bermuda's parliament is the third oldest continuously sitting parliament in the world, having first sat in 1620. Bermuda's final court of appeal is the Privy Council in London. These qualities and history provide a high degree of confidence to those who have their wealth managed from Bermuda.

Geographically, Bermuda is situated in the North Atlantic Ocean, not in the Caribbean, and has direct flights to London, Toronto and numerous north-east American cities, including New York and Miami.

Bermuda has carefully introduced laws to implement the *Foreign Account Tax Compliance Act*, the Common Reporting Standard and a central private beneficial ownership register, and it continues to refine its economic substance requirements to provide outcomes that balance addressing international concerns with respecting the privacy of legally compliant structures. At the same time, Bermuda's trust law continues to evolve sensibly, providing certainty and flexibility.

Alongside London, New York and Zurich, Bermuda is one of the key reinsurance hubs in the world, a leader in both the property and casualty reinsurance and the insurance captive markets.

We are fortunate to have highly respected practitioners from around the world contribute articles and commentary for our cover feature on geopolitical certainty and the private client world. We trust that private clients, family offices and their advisors from around the globe will find this edition interesting and helpful when deciding where to establish or re-domicile trusts, family offices and other private client structures. ■



Ashley Fife TEP is Chair of STEP Bermuda and Counsel at Carey Olsen Bermuda



There will be FUD

At a time when fear, uncertainty and doubt are dominating headlines and forecasts, investors are looking for super-stable financial centres that continue to weather the storm. Step forward Bermuda...

By Elliot Wilson

Is the world better or worse than it was a year ago, or last decade? Is it more or less stable? Should investors embrace risk by being more expansive and adventurous, or favour timidity and caution? Does it matter where you put your money to work these days, and where your assets and capital are located?

The answer to some or all of these questions will depend on your view of life. If you are by nature an optimist, you are more likely to believe in a better future, and to instinctively buy books (Steven Pinker's *The Better Angels of Our Nature*, Hans Rosling's *Factfulness*) that paint a rosy picture of us and the world we inhabit.

Pessimists, whether due to instinct or collective memories of a golden era when life felt richer and happier, may point to reasons to be fearful. After all, we are

assailed by messages in mainstream and social media, not to mention a host of analyst notes, warning us the world we know and love is coming to an end – a trend known as fear, uncertainty and doubt (FUD).

To be sure, there is plenty of fuel for the fretful. Consider the rise of Donald Trump and a global nexus of populists; Britain's torrid Brexit unravelling; Europe sleepwalking into a second decade of decline; a Middle East riven by competing factions; China and the US fighting a proxy trade war that's all about power and control.

Add in more immediate, personal concerns, from falling incomes and super-low interest rates to climate change and the threat from job-stealing robots and drone-wielding terrorists – and the threat-perception score jumps to 11.

Fears real and imagined

'The biggest problem we face today is fear and uncertainty,' says Joseph A Field TEP, Senior Counsel at Pillsbury Winthrop Shaw Pittman in New York and an expert on global trusts, asset management and estate planning. 'People are looking for stability, and this is true almost everywhere you go. I see no reason to believe we will return to a situation of global stability or normality.'

Patricia Woo TEP takes a rather more relaxed approach to the subject. A Partner at Squire Patton Boggs in Hong Kong and co-head of the firm's family office cross-practice team, she advises high-net-worth (HNW) clients on how to set up funds, trusts and family offices. Woo's clientele is overwhelmingly international and at the higher end of the HNW scale.

'Many ask me if they should move more assets out of Hong Kong,' she says. The Chinese special administrative region was hit by civil unrest over the summer of 2019, directed by younger citizens tired of being priced out of the property market and having no say in local affairs.

Woo says she always gives her clients and friends the same answer. 'I reply: "If your desire to move assets away from Hong Kong is triggered by fear, often

these are imagined fears.'" Her subtext is that Hong Kong, like other global financial hubs and major economies, remains a safe place to put your money to work, whether it is stored in stocks, real estate or debentures.

It's a nice idea, but as human beings we are genetically coded to fear the unknown, and to presume that threats are always lurking and ready to pounce. We react accordingly, which explains the rush of applications for Singapore residence permits among Hong Kong and mainland Chinese investors.

Field points to the net result of rising tensions in the Middle East, where Saudi Arabia and Iran are engaged in a grueling asymmetric struggle for regional hegemony, undermining stable zones like the UAE and Qatar. Many wealthy families are fleeing the region and taking their money with them.

Once, a good portion of that money would have been rerouted to the UK, settling into real estate – directly and via funds – and private equity. But, notes Field, 'with all the concerns around Brexit, notably a weakening pound, the future role of the City of London and what happens if [the leader of the main opposition party] Jeremy Corbyn takes

over, the money is going elsewhere – to Switzerland, Singapore and Bermuda'.

There is little doubt that those jurisdictions and a smattering of others, including Jersey, benefit from the widespread perception that instability and uncertainty are a mortal lock. The Global Economic Policy Uncertainty Index, a GDP-weighted average of national economic policy uncertainty indices for 20 of the world's largest economies, hit an all-time high of 348 in July 2019. To offer a sense of perspective, the index didn't breach the 200 mark until 2011, but has spent most of the last three years north of that line.

Jumping at shadows

Even if the fear of the unknown currently outmatches the actual threat posed to personal financial safety, it is clear that more long-term capital is being reallocated and redirected to locations seen as the best and most stable long-term bets.

There are several broad reasons for this shift. First is the fact that many big economies, long revered by investors for

their all-round solidity in areas ranging from taxes to economic growth to political stability, are showing signs of wear and tear, either self-inflicted or as a result of external sources.

In Europe, Britain is being damaged by the political class's failure to counteract uncertainty, and France by conflict between protestors and president. Germany is being roiled by a resurgent far-right and Italy by its merry-go-round government. In the emerging world, India is struggling for traction, while China's rich continue to move money offshore as soon as it is made.

The US economy continues to hold up well, funded in part by cutting taxes and growing the national debt. But many investors, not least from China and the Middle East, 'have a feeling not necessarily of unrest, but of discomfort in putting their money to work in America,' says Field. 'Even if they can get a visa, many feel they are no longer welcome there.'

Another factor behind the increased focus on stability is an ever more glaring ➡

'With all the concerns around Brexit, notably a weakening pound, the money is going elsewhere'



divide between jurisdictions viewed in binary terms by global investors, banks, rating agencies, supranationals and NGOs. Either you are good or you are bad – there is increasingly no in-between. The EU's list of non-cooperative tax jurisdictions, set up in December 2017, has now grown to include 12 jurisdictions.

A move in the wind

James Quarmby TEP, head of the private wealth team at London-based law firm Stephenson Harwood, says: 'There is a general move in the wind, which can be broadly defined as "anti-offshore", a process that is driven by the press and by public attitudes and regulatory changes, with the advent of the *Foreign Account Tax Compliance Act*, beneficial ownership registers and anti-money laundering directives. So we wind up with "good" and "bad" jurisdictions, and the good are competing with each other to be the best of the best. You see that with Jersey and Bermuda, for instance, and others are trying to catch up.'

Rule-abiding authorities attuned to shifting political and public attitudes know there is little choice but to cleave to the new rules. They know it will benefit them in the long term, as the more they invest in their reputation, the more new business will flow their way. Banks, under pressure to run stiff compliance checks on customers, have become, in the words of one private wealth manager, 'scared of their own shadow. If you want to set up an account in Bermuda, no problem. If you want to open an account in a so-called "non-cooperative jurisdiction" – good luck with that.'

That leads neatly to a discussion of the allure of a handful of super-stable jurisdictions, most notably Bermuda, Jersey, Singapore and Switzerland. None is exactly alike, but there are attributes that the quartet shares. The latter two are powerful sovereign states that boast major private banking centres, while the others are islands with strong London links: Bermuda as a British Overseas Territory, Jersey as a British Crown Dependency. All four have worked long and hard to forge a staunch reputation as a reliable financial partner with an unimpeachable record.

'Bermuda is a bastion of common sense, and its quality of service is very high and seamless... It has a uniform standard that everyone adheres to'

Quarmby describes the phenomenon of a 'flight to quality in the offshore world'. This points to the emergence of a cluster of super-developed financial centres attractive to institutions and the individually wealthy, plus an equivalent number of 'midshore' jurisdictions (such as Singapore and Switzerland), all of which place a strong emphasis on financial services, with robust legal frameworks and favourable tax treaties.

Bastion of common sense

Bermuda has positioned itself as a beacon of stability in an unstable world, in large part by consistently doing the simple things well. There are no flashy policy switches or statements, just a 'conscious and consistent effort to ensure its reputation is protected and that bad people don't end up there even by accident', says Field. 'Bermuda is a bastion of common sense, and its quality of service is very high and seamless. You are dealing with eight or ten high-quality trust companies, all of which know each other well. It has a uniform standard that everyone adheres to.'

Michael Grob, Head of Distribution at Sun Life Financial International, says: 'The nature of the work with which we deal is by definition long term. HNW clients who seek cover in the international life insurance market do so for a variety of reasons. Paramount for them all is peace of mind that the insurance cover will be secure and in place for decades to come.'

In this context, considerations around trends in political risk and shifting geopolitics are key, Grob continues. 'Here in Bermuda we are seeing an uplift in business based on these considerations. Many jurisdictions have a young history, and a future with changes ahead. Clients have generated and hold

the majority of their wealth in their home jurisdiction – for their families' future security they seek long-term protection and stability elsewhere. This sits alongside the boom we are seeing in citizenship and residency planning.'

Bermuda's steadiness, matched by long-standing innovations that clients implicitly trust, helps explain its ability to continue to win new business. Financial advisors point to the value of innovations like non-charitable purpose trusts. First introduced in 1989 and a firm favourite of clients ever since, they allow trusts to be established whereby trust property may be applied towards clear and lawful purposes, instead of (or in addition to) holding assets or property for one or more beneficiaries.

But stability remains the jurisdiction's chief calling card. 'For clients looking for a cost-efficient jurisdiction, Bermuda is highly competitive,' says Nicolas Malumian TEP, a Partner at Buenos Aires-based Malumian & Associates. He says his Latin American clients 'seek protection against confiscation, expropriation and all sorts of measures by governments. Therefore, long-term stability is key in a trust jurisdiction.'

Field says he is working 'with a group of individuals from the Middle East and Latin America who were attracted to the UK because of its policy on non-domiciled status, but are now having second thoughts. They don't want to be in the UK or the US, so Bermuda is perfect in their eyes. It's a great place to set up a family office, it's relatively easy to get residency and work permits, and it has a very welcoming atmosphere.' ■

Elliot Wilson is a Switzerland-based business and financial journalist who writes for *The Economist* and *The Spectator*, among other media

Pink sand beaches... and a rosy climate for trusts

Bermuda's legislative framework, supportive courts and strong trust industry make it an ideal location for wealth structuring

By Andrew Holden

Bermuda is a place where rose-tinted spectacles are not required. From Elbow Beach to Horseshoe Bay, Bermuda's pink sand beaches are known the world over. They are the product of microscopic creatures – *foraminifera* – whose red shells are crushed and blended with Bermuda's pristine white sand to create that extraordinary, uniquely Bermudian pink. These beaches are one of the many things that make Bermuda such an attractive destination.

For those in the private wealth and trusts industry, Bermuda's landscape is equally rosy. Over the past few years, the Bermuda government, its courts, the Bermuda Business Development Agency and practitioners have all cooperated to make Bermuda a uniquely hospitable location for trust structuring.

Legislative innovation

Over the past five years, legislative innovations designed to address practical problems facing the trust industry have been pioneered in Bermuda.

In respect of reserved powers, the *Trusts (Special Provisions) Amendment Act 2014* introduced a comprehensive regime enabling settlors of Bermuda trusts to reserve to themselves, or grant to third parties, a wide range of powers in respect of the administration of trusts without threatening the validity of the trusts or the position of the trustees. The legislation provides a sensible framework regulating the fiduciary duties owed by power holders, with the default position being that settlors who reserve powers to themselves are not treated as fiduciaries, but that third-party power holders generally occupy a fiduciary position.

In an era in which even the reservation of conventional powers to the settlor risks destroying the integrity of a trust – see the well-known, if not to say infamous, decision of the English High Court in *JSC Mezhprom Bank v Pugachev* (2017) – the Bermuda statutory regime provides welcome certainty and stability in this field.

Similarly, the innovation of the *Trustee Amendment Act 2014*, by which Bermuda legislated effectively to overturn the decision of the UK Supreme Court in *Pitt v Holt* (2013) and restore the 'rule in *Hastings-Bass*', shows Bermuda's commitment to facilitating the smooth administration of trusts. Where an innocent error in trust administration has occurred (and third-party purchasers would not be prejudiced), the Bermuda court now has a statutory jurisdiction

to intervene to undo the mistake, a power that has already been successfully invoked by trustees to undo potentially devastating damage to the trust.¹

The Bermuda legislature has also intervened to liberalise rules regarding perpetuities. At common law, trusts cannot exist indefinitely, but with the *Perpetuities and Accumulations Act 2009* and the *Perpetuities and Accumulations Amendment Act 2015*, Bermuda has abolished perpetuity restrictions for new settlements (save in respect of Bermuda real property) and has streamlined the procedure for disapplying the perpetuity period in respect of existing trusts.² The net effect is that Bermuda now welcomes the creation of dynastic and perpetual trusts and structures. When combined with its political stability, the abolition of perpetuity restrictions makes Bermuda an ideal location for settlors seeking to structure their wealth

to achieve very long-term ambitions.

Adaptable trusts, adaptable courts

Another of Bermuda's attractive features is the proactive and constructive approach of its courts to addressing practical issues in trust administration. Undoubtedly the best example of this is the manner in which the court has construed and deployed s.47 of the *Trustee Act 1975*.

Section 47 is a statutory jurisdiction to grant power to trustees to vary the terms of a trust. In successive decisions dating back to 2011,³ the court has made it clear that this is a jurisdiction that enables the administrative and dispositive powers and provisions of a settlement to be modified without needing to observe many of the formalities required for a *Variation of Trusts Act* application. The result is a more flexible procedure, enabling the

'Bermuda's courts remain renowned for both their trust expertise and their willingness to seek to facilitate the operation of Bermuda trusts'

trustees and beneficiaries of Bermuda trusts to adapt quickly and efficiently to changing circumstances. The jurisdiction has been successfully invoked on a number of occasions, and in this author's experience it has proved so popular that the governing law of foreign trusts has on occasion been changed to Bermuda law to enable this jurisdiction to be accessed. While s.47 is yet to be tested in appellate courts, this innovative use of an existing statutory jurisdiction is evidence of the court's willingness to assist in the efficient operation of Bermuda trusts.

A similar willingness to assist is evident in the Bermuda court's approach to the privacy of trust proceedings. In England, a recent trend towards transparency in trust matters has rendered it very difficult to invoke the court's jurisdiction without private, and often sensitive, information about the financial affairs of the trust and its beneficiaries being made public.⁴ But in Bermuda, the court has taken a different approach. In a series of recent cases,⁵ the Bermuda court has affirmed the continuing importance of privacy in respect of internal trust affairs. As Kawaley CJ said forcefully in the *G Trusts* case:

'The present proceedings concern the internal administration of a private trust into which the general public have no right to pry. Persons administering, interested in or settling Bermuda trusts should rest assured that this Court's firmly established practice of making confidentiality orders in appropriate cases, which is merely designed to enable law-abiding citizens to peacefully enjoy their actual and contingent property rights, has a venerable legal basis. The existing practice will continue to be applied in appropriate cases.'

Public policy in Bermuda is clear: Bermuda places great importance on preserving privacy in respect of the lawful and legitimate structuring of wealth. For settlors seeking to structure their family or personal wealth to achieve their goals, and for the practitioners who advise them, this clear commitment to privacy inspires great confidence in Bermuda as a jurisdiction.

Next steps

Its legislative framework, its supportive courts and its strong trust industry make Bermuda an ideal location for wealth structuring, but even more can be expected of this creative jurisdiction over the coming years.

The author is aware of a variety of further projects of legislative reform, which will seek to improve Bermuda's standing as a leading trust jurisdiction yet further. In particular, proposals to improve Bermuda's firewall legislation, designed to protect the integrity of Bermuda trusts, are likely to be brought forward.

As well as further legislative innovation, Bermuda's courts remain renowned for both their trust expertise and their willingness to seek to facilitate the operation of Bermuda trusts. Last year, Kawaley CJ retired and was replaced by a new Chief Justice, Narinder Hargun. Hargun CJ is already the author of important judgments, including a very recent decision approving the trustees' proposal to act in accordance with the settlor's wishes.⁶ It is apparent that, in Bermuda, the court's jurisdiction in respect of the administration of trusts remains in very safe hands.

If Bermuda is known worldwide for its pink sand beaches, it should be equally renowned among practitioners for its warm and welcoming climate for trusts. ■

¹ See *Re F Trust* [2015] SC (Bda) 77 Civ ² See *Re C Trust* [2016] SC (Bda) 53 Civ ³ See, in particular, *GH v KL* [2011] SC (Bda) 23 Civ ⁴ See most recently *MN v OP* [2019] EWCA Civ 679 ⁵ Including *Re BCD Trust* [2015] SC (Bda) 83 Civ; *Re G Trusts* [2017] SC (Bda) 98 Civ; and *Re E Trust* [2018] SC (Bda) 38 Civ ⁶ See *Re R Trust* [2019] SC (Bda) 36 Civ



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Why family offices choose Bermuda

Families are on the lookout for well-situated jurisdictions that combine strong professional infrastructure with a robust regulatory environment

By Thomas J Handler and Barbara R Hauser

Advisors around the world enjoy repeating the maxim: 'If you've seen one family office, you've seen one family office.' In other words, all families are different, and so family offices (FOs),¹ which are designed around the family they serve, are all different, too. However, there are some commonalities.

If we define 'family office' as the staff who attend to the needs of a particular family, it is clear that FOs have been around for as long as families could afford to hire staff. The FO label is relatively new, however, its origin often credited to US industrial barons such as the Rockefellers, Mellons, Morgans and Pitcairns.

In most cases, the FO is a very private entity; loyalty and confidentiality are key values. As such, it is impossible to count the number of FOs.

It is usually assumed that an essential feature of an FO is to manage the investable wealth of a family. That is not always true. We know some FOs whose main function is to manage a sizeable household staff and multiple residences, with relatively small amounts of traditional liquid wealth. In any event, those families who can afford to hire dedicated staff are fortunate members of the growing FO community.

Before looking at Bermuda, we should mention the increasing global growth of FOs. The market-leading *Family Offices: The STEP Handbook for Advisers*, first published in 2015, is now in its second edition. More than a dozen jurisdictions are represented, from the UK to the Gulf region, all showing remarkable growth in their FOs, as reported by advisors. According to estimates, there are more than 10,000 single-family offices (SFOs) worldwide, but the actual number may be substantially larger.² This growth results from a decrease in the number of trusted financial institutions and an increase in the number of very wealthy families.³

Evolution of a family office

Many families with an operating business are quite likely to have the functions of an FO provided to them by the executives in the family business. FOs of this kind are known as 'embedded' FOs.

At some point, often for tax, compliance or management reasons, personal services are moved outside the

family business into a stand-alone FO entity. When this move happened several generations earlier, the continuing FOs, including many well-known examples in Europe, can be thought of as 'heritage' FOs. These offices have managed to serve and survive across several generations, a topic of great interest today. In some cases, the younger family members of these heritage offices begin to question the economics of the continuing luxury of their own office. Without the original funding and subsidies from the senior generation, the younger generation often decides that the FO is a fairly expensive operation.

At this point, a number of SFOs are persuaded that their costs could be reduced if they could find other families to join and share the overhead expense. This became quite a trend in the US during the 1990s. Traditional FOs would announce that they were 'opening their doors' to other families. In many cases, however, the families found that it was harder than they thought to ➡

'According to estimates, there are more than 10,000 single-family offices worldwide, but the actual number may be substantially larger'



Appleby is one of the world's leading international law firms. We are a full service law firm providing comprehensive, expert advice and services across corporate, dispute resolution, property, regulatory and private client and trusts practice areas. Our trust specialists in our Private Client & Trusts and Dispute Resolution teams in Bermuda are recognized internationally for offering first-class legal advice.

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make an FO into a consistently profit-generating entity. The resulting 'multi-family offices' have been quite challenging in our experience, because they typically began as a service cost entity, not as a profit centre.

Choice of jurisdiction

For a family choosing the location/ jurisdiction for its FO, there are a number of factors to take into account:

- Where are the family members located? Are they all in one jurisdiction or, as is more common, do they live in a number of different jurisdictions?
- Where are key family assets located? What local management or oversight is required?
- Which jurisdictions have a strong professional infrastructure?
- Is there a reliable body of law that would apply, especially to family trusts?
- Would it be easy to hire and train local staff?
- Are the time zones close enough to simplify travel and communications?
- What are the tax and regulatory impacts?
- How strong is data protection and privacy?
- Are there any physical risks or dangers, such as kidnapping?
- Does the jurisdiction have a blue-ribbon reputation or is it one of the offshore centres that raise a red flag?¹

For some families, no one jurisdiction suits their purposes. We have worked with a number of families who decided to split their FO into two jurisdictions. Usually, one of the jurisdictions is that which is closest to the largest number of key family members. The second or 'subsidiary' FO is usually chosen for its investment environment or proximity to key family investments.

Another alternative is to avoid the bricks-and-mortar expense of a traditional FO and create a 'virtual' FO (VFO). VFOs can provide an excellent starting point for managing newly liquid wealth, a better platform for embedded FOs and a possible improvement for certain outdated FOs.⁵

Where Bermuda fits in

Bermuda scores very highly on the factors for choosing a jurisdiction. Its long history of excellent professional

'Bermuda offers a smart and culturally respectful venue for local operations that can fit within larger global businesses'

services and the general absence of income taxes and VAT, coupled with a strong regulatory environment, have won many admirers over the years.

We interviewed a number of professionals and asked why their FO clients choose Bermuda. Vanessa Schrum TEP, a Partner at Bermuda-based law firm Appleby, reports that FO clients are attracted by Bermuda's reputation as a blue-ribbon jurisdiction and its infrastructure. Other important factors include privacy (there is no register of trusts in Bermuda); the trust environment; and Bermuda's enviable courts, legislation and jurisprudence, with ultimate right of appeal to the Privy Council in London. Schrum adds that 'Bermuda is an ideal location for family members, many of whom are now scattered across the globe, to meet and converge.'

Ashley Fife TEP, Counsel at Carey Olsen Bermuda, says that: 'Bermuda is a top-tier offshore financial centre. It is strong and stable, legally and politically. Its courts have repeatedly demonstrated that they will respect families' privacy. In addition, Bermuda is well serviced by local advisors and has excellent travel links to New York, London and a number of other major centres. It also has good infrastructure, including schools, and is safe, making it a good place to bring up children.'

Randall Krebs TEP, Director of Harbour International Trust Company, one of many trust companies in Bermuda, says that his FO clients cite several elements of local trust law as important

in their decision to choose Bermuda: 'It is possible to have perpetual trusts in Bermuda, which is attractive for families wishing to create dynastic structures. Bermuda has also introduced a streamlined procedure for extending the perpetuity periods of existing trusts. Further, section 47 of the *Trustee Act 1975* is a unique provision of Bermuda law that facilitates court-approved amendment of trusts, including dispositive provisions. Trusts from other jurisdictions are frequently migrated to Bermuda to utilise this unique variation provision.'

Krebs adds that Bermuda also has state-of-the-art firewall legislation to protect Bermuda trusts and their beneficiaries from matrimonial property/ divorce claims and forced heirship, among other issues.

Finally, we spoke with a number of lawyers outside the island and asked why they and their FO clients have chosen Bermuda. Bill Bierce, a New York lawyer, has worked with Bermuda professionals for most of his career.

'I've always liked Bermuda's governmental discipline as a tax-neutral offshore jurisdiction,' he says. 'Bermuda has a well-deserved reputation built on local regulation that, by localising its business entities with duly authorised local management, retains its sovereignty. It offers a smart and culturally respectful venue for local operations that can fit within larger global businesses. It combines regulatory probity, compliance, good principles for corporate governance and a tax-friendly environment. It is not the cheapest, but it may be one of the best offshore jurisdictions.' ■

¹ We will be writing about 'single-family offices', not the more marketing-driven 'multi-family offices'.

² *Family Offices: The STEP Handbook for Advisers* (STEP Handbook), 2nd edn (Globe Law and Business, 2019), p.17 ³ In 2019, *Forbes* estimated that there are more than 2,000 billionaires worldwide (bit.ly/2kYpHkK).

⁴ For an excellent summary of these factors, see J. van Bueren and T. Ming, 'Selecting the Right FO Jurisdiction', STEP Handbook, pp.35-46 ⁵ See 'Global Virtual Family Offices', STEP Handbook, pp.47-62



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GLOBAL BERMUDA

In numbers: Bermuda's thriving business environment in 2019 and beyond



827

new international companies and partnerships were registered in 2018 – a 5.5% increase on 2017

500,000+

jobs are supported by Bermuda's economic model globally

100+

TREATY PARTNERSHIPS WITH NATIONS AROUND THE WORLD



\$1.67bn

contributed by Bermuda's international business to the overall economy – that's 26.7% of total GDP



NEW AIRPORT OPENING IN 2020

pre-clearance for US departures will remain



TRACK RECORD OF INNOVATION

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100

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\$100.3bn

in global gross written premium written by Bermuda (re)insurers in 2018



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INTERNATIONAL CLIENTS

Where the world does business

As well as offering a tried-and-tested, flexible business regime, Bermuda continues to innovate. International families are taking note

By Georgina James



Many international families use Bermuda-based trusts for dynastic business ownership, asset protection and succession structures, and structures dedicated to family charitable and philanthropic ventures. Many of these families are not resident, and nor do they otherwise have any physical presence, in Bermuda.

This article considers the reasons why Bermuda remains a popular jurisdiction for international structures.

International outlook and accessibility

Bermuda is well connected, with direct flights to the US and London (giving easy access to Europe), and is in a time zone that facilitates easy communication.

Although Bermuda is itself a tax-neutral jurisdiction, families whom fiduciaries regularly work with are often based in a range of jurisdictions where tax rules are complex; assets are scattered and change is constant.

Bermuda's track record as a long-term provider of trust and fiduciary services for a range of global clients means its practitioners are well used to understanding and managing the tax and regulatory issues that can arise.

Being self-governed and outside Europe and the US, Bermuda has a degree of autonomy that presents an attractive option for families who are keen to hedge against political risk in their home jurisdictions – Bermuda trusts can be an effective means of holding assets 'externally'.

Given that the settlor of a trust need not be resident in nor have any connection with Bermuda, and given that the trust property need not be situated in Bermuda, Bermuda trusts often work well in combination with custodian and asset-holding arrangements in international financial centres, such as Switzerland, Luxembourg and central European jurisdictions, where there is no local trust law.

Regulation

As well as taking a proactive approach to international global transparency, Bermuda is robust on regulation and supervision of its fiduciary business. It balances this with a reasonable level of confidentiality, and it may be a comfort for clients to know that there is currently no public registration requirement, or other public disclosure requirements, in relation to the establishment of trusts in Bermuda.

Trust structures and flexibility

Trusts have significant benefits for families who are globally spread, such as those who are looking for greater asset protection and those based in jurisdictions that are subject to forced-heirship rules and who cannot otherwise enable the free disposition of their property on death.

Bermuda law is based on common-law principles and its trust legislation substantively based on English trust-law concepts, which are well known and carry a long history of jurisprudence, giving them a reliability and predictability, which is reassuring for those looking for something that is tried and tested.

Typically, a discretionary trust would be used for asset-holding/governance structures, but different types of trust are available, such as purpose trusts, which can be created for philanthropists whose objectives may go beyond those that are strictly charitable as a matter of local law.

Since 2009, Bermuda-law trusts have not been subject to perpetuity periods and this allows families to create perpetual dynastic structures for intergenerational estate-planning purposes.

No one knows what the future will hold, and planning a structure that is as flexible as possible is important. Even so, as structures evolve through generations, terms that were once appropriate may become impractical, irrelevant or too restrictive.

In these circumstances, a notable feature of Bermuda trust law is the

legislative flexibility that allows trustees to restructure or vary trusts where the terms are no longer fit for purpose using the 'section 47' court application process.¹ This can be done without needing the consent of all of the beneficiaries, avoiding the need to overcomplicate matters and hopefully keeping costs down in uncontested cases. The process is subject to proper checks and balances – amendments will only be approved where it is expedient to do so, the court must be comfortable that any adverse impact of the proposed changes for beneficiaries has been properly considered and regard must be had to the best interests of all parties as a whole.

Bermuda also has a statutory *Hastings-Bass* rule, helpfully giving the court statutory jurisdiction to remedy the negative effects or consequences of acts or omissions made by settlors, trustees or other fiduciaries, subject, of course, to satisfying the basic threshold conditions from the *Re Hastings-Bass* case. Under s.47A of the *Trustee Act 1975*, provided the threshold conditions for the court's jurisdiction are met, the court has discretion to set aside the exercise of the fiduciary power in whole or in part, either unconditionally or on such terms and conditions as it thinks fit.

Final thoughts

Bermuda takes a deserving place among the world's leading jurisdictions for international structuring. For families looking for a tried-and-tested, flexible regime that is adept at dealing with international matters, Bermuda continues to be relevant and innovative and is well worth serious consideration. ■

¹ Under s.47 of the *Trustee Act 1975*.



Georgina James is a Partner at Bryan Cave Leighton Paisner

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MILLENNIAL PHILANTHROPY

The hands-on generation

Millennials have a different vision when it comes to philanthropy, and their advisors need to make allowances

By John Gibbons

Speaking cynically, it could be said that the millennial approach to philanthropy does not yet exist.

As a cohort, at least among the professional classes, millennials are (arguably) mostly through the worst of the negative effects of the 2008 financial crisis – but they are still generally not wealthy enough to consider large or intense giving. Further, what money they do have is likely to go towards marrying, buying property, having children, etc.

However, as a generation, they are very conscious of the ills of the world. Millennials are also perhaps the best-informed generation in history. More of them have been exposed to higher education, and they have grown up with the internet. With allowance for fake news and social media echo chambers, they are an aware group.

Millennials remember a time post-2008 when a degree did not take you where it was supposed to. Those without tertiary education are worse off than those with a similar educational level a generation ago. In addition, millennials inherited a world facing fundamental problems, most notably global warming. So, while many individuals in this large group may not yet feel ready to donate, as their age and wealth increase, they will be more likely to donate than their forebears and will do so in different ways.

Millennials differ significantly in their approach to philanthropy in two ways: the causes they support and a desire for increased engagement.

Big-picture issues

Previous generations have been more concerned with improving certain aspects of people's lives at an individual level. Popular targets for donation included children's hospitals, sports centres in impoverished areas and historical sites in need of preservation.

Millennials also hold such causes dear, but, being a globalised generation, they tend more towards tackling big-picture issues. Giving to a charity in Africa that supplies clean water is fine enough, but would it not do future generations of Africans a greater service to support green electrification as these countries develop? There are NGOs that focus on that. Instead of giving a scholarship to a university, a millennial might want to take on the issue that going to university is too expensive in the first place.

Desire for engagement

It is frequently observed that millennials value giving time more than giving money. This is not to say that millennials shun monetary giving, but rather that they consider the gift of time and energy more effective. A survey by the Blackbaud Institute¹ found that 52 per cent of those born before 1965 consider donations to be the most effective way to make an impact, compared with 30 per cent of millennials, who instead prefer hands-on work such as volunteering and advocacy. However, the study notes previous research that implies this is a natural function of age: older people prefer to give money rather than time, perhaps because they have more money and less energy than the young. It may be that millennial habits will also shift in this direction once they reach the same age, but for now at least, millennials prefer to be involved.

This desire for engagement means that advisors to wealthy, socially conscious millennials should consider that a seat on the board of a family foundation will not be enough. Millennials may be more satisfied with a smaller private charity that is more focused and agile, with which they can get directly involved. This would be analogous to a provision in the planning of a large business family for members of the next generation to

benefit from capital to start a business, except, in this case, the entity is a non-profit. Such a new entity may also be necessary if the objects of an existing charitable vehicle do not include causes dear to the new generation. Global warming, for example, may not have been something the founders of such a vehicle foresaw.

Hands off!

Trustees should take a hands-off approach with such a structure, and funds should be appointed onto the new structure absolutely, but with the following provisos to ensure that they are not misspent. The vehicle should take the form of a charitable trust in order to set clear objects for the charity and remove the 'ownership' from the beneficiary leading the project, although they should still have extensive powers to run the charity as chair or CEO. Further, under offshore charitable trust legislation, the charity would be accountable to an enforcer or similar role. In addition to a chair or CEO, the vehicle should have another executive position that must be filled by a reputable, career charity executive with defined minimum experience in the field.

Finally, there is the (unsurprising) fact that, according to the same Blackbaud Institute study, only 10 per cent of millennials and members of Generation Z (the cohort succeeding them) have a will or estate plan in place. It is worth reminding millennials that they can make plans to help their preferred cause in their absence. ■

¹ The Next Generation of American Giving (2018), bit.ly/2lZIRfF



John Gibbons TEP is a family office specialist at Harbour International Trust Company

Grand designs

What a mythological case study can tell us about the management of family wealth

By David Veness

In Bermuda, we continue to see our local trust industry winning mandates for private wealth structures. We also see structures move to Bermuda to access a legal process that is supportive of restructuring. Why is this happening? What advantages does Bermuda have that attracts those wishing to restructure? Why are families and their advisors choosing Bermuda structures, or choosing to relocate to Bermuda to restructure? Have automatic exchange of information (AEOI) reporting regimes and changes brought about by, for instance, beneficial ownership and economic substance regimes had any impact on the selection of Bermuda as a jurisdiction of choice for first-class structuring and restructuring?

There is a trend for families and their advisors to rationalise structures and reduce the number of jurisdictions to which they are exposed. If a jurisdiction such as Bermuda is chosen because of its political stability, quality of service providers and laws that facilitate restructuring, it is increasingly likely that all entities in the structure will be Bermudian, to reduce the risk of being exposed to different reporting or transparency regimes in multiple jurisdictions. This is not a matter of 'jurisdiction shopping', but rather settling on a jurisdiction that has adopted a sensible approach in implementing and complying with such regimes and sticking with it, without having to research and comply with increasingly

complex and varied reporting regimes in multiple jurisdictions.

In a mature trust jurisdiction such as Bermuda, it is not uncommon that professional trustees will administer trusts that were established decades previously. Families are dynamic and the original circumstances in which the trust was drawn up may have been superseded. The original settlors may be deceased and their original intentions no longer relevant, or other external factors may have intervened. Often there is a need to refresh the planning to reflect those changes, and sometimes this requires changes to the trust instrument.

Families at war

As an example, let us consider the ancient Greek house of Atreus. Atreus had two sons, Menelaus and Agamemnon, for whom he set up a trust. In our example, Atreus asked his grandfather Tantalus to be protector and Zeus Trustees (Bermuda) Ltd was appointed as trustee. When Atreus set up the trust he did not know the tribulations that his family would face.

This was not a happy family. Unfortunately, Atreus did not know that Menelaus and Agamemnon, who were happily married to Helen and Clytemnestra, respectively, when the trust was drawn up, would suffer the turmoil in their lives caused by Helen running off with Paris to Troy. Nor did he know that, in the ensuing ten-year war that followed, Clytemnestra would take up with Aegisthus and, on Agamemnon's return to Mycenae, Aegisthus and Clytemnestra would murder him.

This might be considered an unusual case, but it illustrates the fact that families are dynamic and circumstances change. Marriage breakdowns are not uncommon, remarriages produce new families and external factors, such as a Trojan War-type event, may cause a change in the settlor's business or the original investment objectives and strategies.

As illustrated by the house of Atreus, disputes arise in families, sometimes due to grievances that have nothing to do with the trust. Changes in residence or domicile may lead to the need to rethink trust arrangements, to exclude beneficiaries, to split or resettle assets in new trusts or to make other arrangements. Often a trustee is faced with a situation where the purposes for which a trust was established are no longer relevant.

Asset protection

Tax-planning changes as a result of revisions to the laws applying to the settlor or one or more beneficiaries are sometimes a factor where trust parties reside in higher-tax jurisdictions, or where tax circumstances change on the death of the settlor or grantor. Beneficiaries may move to other jurisdictions either permanently or for extended periods. Bermuda is ideally placed to support family members moving to the US or other higher-tax jurisdictions where a change of residence or domicile gives rise to different tax treatments, requiring planning and restructuring before the move.

The need to protect assets against political unrest or seizure, certainly a potential factor in our ancient Greek example, is often a factor in new structuring and restructuring mandates. Asset protection is a legitimate objective where the rationale for a trust is not designed to defeat known or anticipated creditors. International clients may have their business affairs spread across multiple jurisdictions and seek a politically stable safe haven where sensitive data can be securely held. This is increasingly important in a world where financial AEOI

regimes such as the US *Foreign Account Tax Compliance Act* and the OECD's Common Reporting Standard have become the norm, and where the privacy and security of personal and financial data are perceived to be under threat.

Succession planning over the generations, and continuity of ownership of family businesses, is another driver for structuring or restructuring. Settlors may wish to ensure that family assets, including family businesses, will remain securely held through the generations, but often do not foresee difficulties that may ensue after they are gone, as families become more fragmented and scattered, with different needs and interests.

There are many reasons that family needs diverge over the generations, and grievances and jealousies may arise as trustees try to deal with a diverse group of beneficiaries in an old structure. Retaining control over key powers of the trust, such as investment, is also becoming more common, particularly for clients resident in jurisdictions where retaining such powers does not have adverse tax consequences. Bermudian legislation designed to facilitate the reserving of powers by trust parties is mature and many bespoke structures utilising this aspect have been set up over the years. In other cases, structures that may not have been set up with a private trust company originally have been restructured to adopt such a structure to allow more family control.

Section 47 – a jewel in the crown
Bermuda's *Trustee Act 1975* (the Act) includes provisions that enable trusts

'Section 47 of Bermuda's trust law has become internationally renowned'

to be varied without the involvement of the court. The power to amend trust instruments may be lacking, or more modern investment powers may have been omitted from older trust instruments. For instance, powers to delegate or sub-delegate, or to deal with capital or alter beneficial interests in the trust, may be lacking. Often there is a need to add or exclude beneficiaries or create sub-funds or separate trusts for different groups of beneficiaries to resolve disputes or segregate investments. Protections afforded to trustees in modern trust instruments may be lacking.

Where it is not possible for the trustee to utilise existing trust law to effect an amendment or transaction, or to restructure as required by the particular circumstances, then s.47 and s.48 of the Act provide the court with the necessary powers to authorise transactions and vary trust instruments as required to alter beneficial interests. Under almost any varied set of circumstances that may apply in particular cases, Bermuda's trust legislation has been designed to allow the flexibility to facilitate particular transactions, to revisit adverse transactions and to support the restructuring of trusts. In particular, s.47 of Bermuda's trust law has become internationally renowned, providing the Bermuda court with a number of powers to permit transactions not authorised by the trust instrument, to vary provisions in the trust and to ratify decisions made by trustees or de facto trustees.

In conclusion, the flexibility of Bermuda trusts, and the ease with which they may be restructured, is increasingly a factor that makes Bermuda the jurisdiction of choice. Bermuda is a mature jurisdiction with political stability and good legal infrastructure. It has a strong professional services industry that is used to restructuring and administering bespoke structures. It is easy to see why it is the first choice of so many professionals. ■

David Veness TEP
is Vice President at
Butterfield Trust



INTERVIEW

Sea change

How a Bermuda-based marine conservation charity is delivering greater research and education capability to scientists and schools... **Interview by Mike Hine**



Ocean Tech is a Bermuda-based charity whose mission is to provide schools, government departments and research scientists with free access to one of the world's most advanced marine research tools – the REMUS 100. It aims to supercharge oceanographic research and STEAM education – science, technology, engineering, arts and maths – in an attempt to battle the declining health of the world's oceans.

The USD1.4 million REMUS 100 is an industry-leading autonomous underwater vehicle (AUV) rated to 100 metres. It comprises multiple sensors and imaging systems, with capabilities pertinent to marine research. It is ideal for coastal hydrographic survey and target localisation missions while requiring minimal infrastructure to support and operate.

Ocean Tech's Mission Manager Andrew Smith explains that the idea for the charity grew out of his experience as Series Producer for TV series *Ocean Vet*. 'As filming drew to an end, the late Dr Neil Burnie and I were discussing inventive ways of filming wildlife under the ocean, which later led me to discover the REMUS 100. I reached out to Henrik Schroder, a good friend and keen steward of the ocean environment. After several meetings, we began our five-year battle to launch Ocean Tech and bring a highly specified REMUS 100 to Bermuda.'

Registering the charity in Bermuda was an easy decision, Smith explains. 'Bermuda is where my family live.

It's been a part of my life for as long as I can remember. Over the last 36 years, I have been lucky enough to see more of its astonishing wildlife than most. However, I have also watched it change, and not for the better.'

Bermuda is in a unique geographical position, Smith adds, and it provides unparalleled access to a variety of marine habitats. 'These habitats, although under threat, are still some of the most pristine in the world. Scientists learn a massive amount by studying the marine environment in Bermuda. Our REMUS 100 vehicle is delivered directly into the hands of these scientists.'

Smith credits the 'passion and drive' of the Bermuda community as a powerful contributor to local marine conservation efforts. 'Delivering the best technology to those already doing great work, and to those passionate about environmentalism, is an excellent place to direct effort,' Smith says. 'Ocean Tech isn't striving for glory. We simply want to provide the best technology to those that need it to help them achieve more for less – arming the best with the best.'

Philanthropy has been vital to getting Ocean Tech off the ground. Bermuda is also home to large corporations that are keen to support charitable projects, including PwC Bermuda and Lindo's, two of Ocean Tech's founding sponsors.

'Philanthropists appreciate how vital technology is to solving the world's biggest problems,' Smith says. 'It is only with the support of local philanthropy that Ocean Tech can deliver the REMUS 100

into the hands of local scientists, teachers and students.'

'Once they understand the AUV, philanthropic individuals and corporations start to see investment in Ocean Tech as investment in the broader oceanographic, marine research and STEAM education arena in Bermuda.'

In its work with schools, Ocean Tech provides a link between classroom studies and real-world application. Its education programme allows students and teachers to design and run their own REMUS missions. This starts with a 'mission planning day' in the classroom, during which students have the opportunity to work with the AUV pilots to understand how it operates.

'The REMUS 100 embodies mathematics as a means of navigation, technology as a means of operation, science through its discoveries, engineering in its construction and computing through the data it gathers,' Smith explains. 'The most important takeaway for students is how STEAM education can lead to solving big and exciting real-world problems.'

Ocean Tech, it seems, has already succeeded in capturing the imagination of Bermuda's education sector. A significant portion of its 2020 budget is set aside for an extensive public-school programme, with many original and compelling missions planned for the start of next year.

Smith says the charity is 'inundated' with applications from both research organisations and schools.

'We are currently only able to support a handful. Our aim, with greater philanthropic support, is to deliver far more.' ■

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