Current themes in private wealth structuring

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At Ogier we continue to see Jersey trust companies winning substantive mandates for new private wealth structures. Plainly this bodes well for the future of the sector on the island. The purpose of this article is to consider the key drivers as to why ultra-high net worth families are choosing to structure now and ultimately to reflect on why these families and their advisers are choosing Jersey structures over and above other options.

Much of Jersey's substantive new business in private wealth is coming from the Middle East and the Far East. For these clients tax is rarely the driver. This contrasts with much of Jersey's business in the 1980s and early 1990s which was predominantly UK tax driven and built on mitigating capital gains tax and inheritance tax. Of course tax will always need to be considered for Middle East and Far East clients - many of these families are international in the sense of assets being held in multiple jurisdictions and family members being resident in multiple jurisdictions - but favourable tax treatment is rarely the primary motivating factor to structure.

So what are the key drivers prompting clients from the Middle East and the Far East to structure in Jersey? In the Middle East and the Far East the primary drivers for structuring are for the most part simple.

In recent times protection of assets against seizure by political means has been high on the agenda. Material concerns with political instability and nation state sovereignty have acted as a catalyst in prompting settlors to scrutinise where and how they want to structure their assets. In the Middle East this is particularly so following the Arab Spring and the continuing turmoil in Iraq, Libya and more recently Syria. Recent events in the Kingdom of Saudi Arabia have also prompted new structuring and restructuring mandates. Many settlors who are resident in politically sensitive countries find that a trust, by removing the assets from their ownership, can protect against the risk of assets being seized by political means. In the Far East this concern is replicated in the PRC where there remains a residual concern about the seizure of assets by political means. Clients and their advisers are increasingly concerned about *asset protection* and whether the sanctity of a Jersey trust will be upheld by the Royal Court of Jersey.

Broadly where the rationale for a trust or further accretions to a trust is legitimate and not designed to defeat known or anticipated creditors (e.g. the preservation of wealth and estate planning) then the Royal Court of Jersey has made it very clear that it will uphold the sanctity of a trust arrangement. Of course many of these countries are considered high risk from an anti-money laundering perspective which puts an even greater onus on Jersey trust companies to know their client and specifically to ensure source of wealth before take on.

In the Middle East and the Far East continuity of ownership is another primary driver to structure or re-structure existing structures. Increasingly settlors want to ensure that family assets will remain in the same ownership for the foreseeable future. Clients want long term dynastic structures built to last for generations to come. They want a structure which will be able to provide for an orderly transfer of wealth to the next generations. Many settlors do not want family assets, which might include a family business built up over many years, broken up and divided amongst the heirs. Settlors in both the Middle East and the Far East are now much more savvy in terms of planning for the future generations – in the Far East specifically high profile estate and trust litigation is having an impact in highlighting the risk of family wealth being materially eroded by settlors omitting to take simple steps to ensure an orderly transfer of wealth.

Another key driver in the Middle East is the avoidance of forced heirship requirements. Many systems of law (to include many countries in the Middle East founded on Sharia law) impose upon individuals a requirement that upon their death they must leave a proportion of their assets to certain heirs. A Jersey trust can avoid this. Broadly subject to certain limited exceptions where assets are held in a Jersey trust the Royal Court will not entertain a claim to set aside any trust which is based on forced heirship rights of a foreign jurisdiction.

For both Middle East and Far East clients a Jersey trust can also avoid estate duties and probate formalities. Assets transferred into a trust during the settlor's lifetime will not generally form part of his estate on death.

Likewise a Jersey trust can protect assets against profligacy by younger members of the family who might otherwise inherit large sums of money at an early age (e.g. under the Sharia laws of succession). A settlor may want assets to be distributed to his children once they have achieved a certain age or perhaps displayed a responsible and mature attitude and the flexibility of a Jersey trust can achieve this.

In terms of other trends we are seeing that clients from both the Middle East and the Far East wish to retain significant control over key aspects of the trust notably investment. For the most part there is no personal link with a Jersey trustee who is situate many thousands of miles away and administers the trust on entirely commercial terms and to this extent the sentiment to retain control over key aspects of the trust is understandable. However, reserving powers should be considered very carefully on a case by case basis particularly where there are concerns that reserved powers could be exercised by third parties (e.g. a liquidator or trustee in bankruptcy on insolvency or a matrimonial court on divorce). We are also seeing a steady flow of private trust companies mandates for very wealthy families where the desire for control and a bespoke structure tailored for the family is high on the agenda. Rather than transfer assets to a service provider's corporate trustee, certain high net families may prefer to establish their own PTC entity. The board of the PTC can comprise of family members, trusted family advisers and third party professional advisers.

In terms of legal work we have noted that whilst the volume of new trusts is less what is coming to Jersey is bigger and more bespoke. Often these structures require advice from outside of Ogier's private client and trusts team (notably corporate, funds and regulatory advice). It is increasingly common to be working with corporate colleagues on new structures and restructuring exercises where there is a need for both trust and corporate advice. For these larger structures it is fundamental to be able to provide joined up and cohesive legal advice from all relevant service lines.

A final word on demographics and global wealth trends. The UBS/PwC Billionaires Report 2017 highlights some startling statistics for 2016 which year witnessed a rapid increase in the number of Asian billionaires - up 23% compared to an increase of 5% in the USA and 1% in Europe and with the Asian number of billionaires up to 637 outstripping for the first time the US number of 563. Fundamentally Asian wealth is increasing at a materially faster pace than in the US (over double the rate of growth) and Europe (over six times the rate of growth) and much of this wealth in Asia is self-made as opposed to being multigenerational. Another key piece of data is that billionaires in Asia are getting older which should signal significant transfer of wealth over the next two decades – on the 2016 numbers 81% of billionaires in Asia are over the age of 70 which is significantly higher than the US number of 53% and the Europe number of 47%. Clearly these numbers suggest the Far East is likely to be a key market for Jersey in terms of new private wealth business going forward.

In conclusion the flexibility of Jersey trusts means that they can be put to all manner of uses. Of course when you add to the mix that Jersey is a major financial centre with an established track record, its political stability, its strong legal foundations (it is crucial for trustees to have access to court where circumstances arise) and the strong professional services on offer it is clear to see why Jersey's offering in private wealth management remains compelling.

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