

Q&A – Trends with ultra-high net worth clients and the growing call for bespoke structuring

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James Campbell is a partner in Ogier's Jersey private client and trusts team advising professional trustees, family offices, intermediaries and high-net worth families on all aspects of international private client. In this Q&A, he explores industry trends towards increasingly bespoke private wealth structures.

Why is bespoke structuring on the rise?

According to a 2016 report on ultra-high net worth individuals there are 212,615 individuals in the world who hold a total of over \$30 trillion in wealth. To put it a slightly different way, 12% of the world's wealth is controlled by just 0.0004% of the planet's adult population. By 2020 the number of ultra-high net worth individuals is anticipated to reach 318,000 with compound annual growth of 9%. In short the rich are getting richer, and more numerous. These numbers are consistent with what we are seeing at Ogier in terms of an increase in instructions from ultra-high net worth individuals and those advising them and fundamentally a drive towards more bespoke and complex structuring. Filling the vacuum left by a founding patriarch or matriarch is often a pivotal moment. Having a co-ordinated succession strategy and tackling succession issues and concerns early long before the pivotal event will usually reap rewards later. Issues associated with succession, notably after the death of the founding patriarch or matriarch, have long been identified as one of the major impediments to the creation of further wealth and the erosion of existing wealth. Substantive trust and probate litigation can and does materially erode family wealth. Providing for an orderly transfer of wealth from one generation to the next is one of the key drivers to successful private wealth structuring. This is consistent with our experience with founding patriarchs and matriarchs who are increasingly motivated by legacy and a desire for dynastic structures created to stand the test of time thereby ensuring benefit for future generations of the family.

Where are these ultra-high net worth clients coming from and why are they structuring

now?

In Jersey and Guernsey we have seen in recent times a marked increase in instructions from ultra-high net worth individuals from the Middle East and those advising them. The motivation to structure and restructure family assets is being driven by a number of factors not least concerns with regard to political instability and nation state sovereignty following the Arab Spring and the continuing turmoil in Syria, Iraq and Libya. These factors have prompted ultra-high net worth families from the region to scrutinise where and how they want to structure their assets.

Furthermore, the continued growth of London both as a home for Middle East families or simply as a safe refuge or as a location for investment continues and is another factor as to why clients are choosing Jersey and Guernsey structures. In addition we continue to see an increase in instructions from ultra-high net worth individuals from the Far East. Indeed many of the factors which are driving structuring for Middle East clients apply equally for Far East clients. These might include: a desire to retain a measure of control and participation in the family (particularly noting the high number of Asian businesses held privately by the family), the orderly transfer of wealth from one generation to the next, protection against seizure by political means, to avoid estate duties and probate formalities, to provide flexibility to meet changing circumstances, as protection against profligacy and to ensure confidentiality.

Ultra-high net worth families are becoming increasingly international both in terms of location of individual family members (e.g. attendance at UK or US universities) and the location of family assets many of which have long been held outside of the Middle East or the Far East. Patriarchs and matriarchs increasingly want second and third generation beneficiaries to take an active role in the family business which has led to a call for more sophisticated structures that allow for more control and participation to be vested in the family and future generations.

Has the introduction of FATCA and CRS had an effect on structuring?

The introduction of FATCA and the implementation of the OECD's Common Reporting Standard ("CRS") has and continues to call for a co-ordinated global strategy for international families as regards compliance both now and in the future. It is simpler to co-ordinate this strategy if all relevant family members and assets have been properly considered and the assets structured accordingly. Private trust companies with in house specialist knowledge and expertise and with all assets structured and family members considered under one roof can offer an attractive solution here.

What do Jersey and Guernsey have to offer?

Both Jersey and Guernsey are major financial centres and have been at the forefront of global finance for over half a century. They have a long tradition of political stability and close links with the UK and Europe. There is a high quality of services available, both to act as trustee and

to enable a trustee to seek legal, financial and investment advice. Both islands have strong legal foundations with their trusts legislation being used as the model for similar laws in other jurisdictions together with an increasing body of judicial authority interpreting trusts law. In both Jersey and Guernsey the legislation applicable to trusts, companies and foundations places a strong emphasis on the importance of flexibility allowing for structuring tailored to individual client requirements.

In addition Jersey and Guernsey are readily accessible from London so that for those Middle East and Far East clients with business interests or family connections in London, choosing a Jersey or Guernsey structure also makes practical and logistical sense.

The legal profession in Jersey and Guernsey are also experienced in advising in relation to trusts and other structures and Ogier has long been at the forefront of this area.

Is it possible to create bespoke structures in Jersey and Guernsey that are Sharia compliant?

For Middle East clients a Jersey or Guernsey trust or foundation can be Sharia law compliant. The legislation governing trusts and foundations is sufficiently flexible to enable the creation of trusts and foundations that are fully or partially compliant with Sharia law notably with regard to the Islamic rules of inheritance and restrictions on investment. Inheritance and the investment of assets are usually two key areas which require careful consideration on the structuring of assets for Middle East families. Private wealth structuring compliant with Sharia law is a growing area – research forecasts that Islamic finance products are set to grow not just in the Middle East region, but also at a corporate level where access to Islamic capital markets is being sought.

What are the trends in terms of structuring options?

We are seeing an increasing demand from Middle East and Far East clients for trust instruments drafted with reserved powers (e.g. a reserved investment power). Understandably settlors from these jurisdictions want control (in varying degrees) over key aspects of the trust and the absence of sophisticated anti-avoidance legislation in many of the jurisdictions in the Middle East and the Far East means that from a fiscal perspective the settlor may not need to be wholly disconnected from key aspects of the trust. Drafted properly reserved investment powers can assist to mitigate trustee risk. However, there can be pitfalls with their use as well. Trustees should consider the application of reserved powers carefully and on a case by case basis rather than adopting a one size fits all approach to their use.

We are also seeing an increase in the use of private trust companies - rather than transferring assets to a service provider's trustee some clients may prefer to establish their own trustee (a "PTC") and for the PTC to act as trustee of one or more of the family trusts. Founders increasingly want more control and family participation. To this end experienced family

members and trusted advisers with experience and knowledge of the family and the family business or other assets being transferred into trust can become board members of the PTC usually to sit alongside directors provided by the professional service provider. A PTC board comprised on this basis with in house knowledge and skills will often be able to take key decisions quickly where circumstances require. A PTC can further allow for the next generation of the family to become educated and experienced with the PTC's activities, assets and values before important decisions need to be made (e.g. through membership of an investment committee).

Another noticeable trend is that the scope of our legal instructions is becoming wider and more involved – we are increasingly advising families on long term strategy to preserve and enhance family wealth and to ensure an orderly transfer of wealth from one generation to the next. For instance this might include the setting up of a private trust company established to fulfil the specific needs and requirements of a family. Further the drafting of a family charter the rationale of which is to provide a road map for the family and future generations on matters such as inheritance, distribution policy, the operation of the family business, investment, family participation, real estate and marriage/co-habitation (to include the importance of pre-nuptial agreements).

Are you seeing a demand from these clients for other legal services?

Consistent with the report about the growth in HNW families and individuals, we are also seeing a shift in the numbers. Ultra-high net worth families are creating more and more wealth. As the family grows family members may be situated far and wide thereby requiring legal advice in multiple jurisdictions. Many of these families and the underlying businesses which they own are operated like international corporates. We see this in the increasing demand from ultra-high net worth families for other legal services at Ogier notably corporate, banking, funds and private equity. This advice may be needed from one or multiple Ogier offices. We fully expect this trend to continue. Ogier is well placed to meet the demands of these families both in trusts and private client and in these other core areas from offices in Jersey, Guernsey, Cayman, the BVI, Hong Kong and Luxembourg.

How likely is it that the trend towards bespoke, complex structures will be sustained?

It seems clear that clients will continue to want structuring in stable and established jurisdictions which provide for both preservation of wealth from one generation to the next and which provide for a high degree of participation by the family. This means that both Jersey and Guernsey remain a very attractive proposition for Middle East and Far East ultra-high net worth individuals looking to structure assets, and we fully expect demand for more bespoke structuring and more specifically for private trust companies to continue. The nature of this work means that clients are looking for longer term relationships with their professional trustees and legal advisers.

James is a Jersey Advocate whose practice focuses on advising professional trustees, family offices, intermediaries and high-net worth families on all aspects of Jersey trusts, foundations and estate planning together with all related company and commercial law issues. He has a particular focus on the establishment and use of private trust companies.

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