

The Middle East and the growing call for bespoke structuring

Insights - 12/12/2017

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.

Where are these ultra-high net worth clients coming from?

In Jersey we have seen in recent times a marked increase in instructions from ultra-high net worth individuals from the Middle East. 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 structures. Other key factors might include a desire to retain a measure of control and participation in 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.

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 coordinated 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 does Jersey have to offer?

Jersey is a major financial centre and has been at the forefront of global finance for over half a century. It has 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. Jersey has strong legal foundations with its 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 Jersey 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.

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

For Middle East clients a Jersey 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. 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 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 means that from a fiscal perspective the settlor may not need to be wholly disconnected from key aspects of the trust.

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.

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.

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 Jersey remain a very attractive proposition for Middle 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.

This article first appeared in STEP journal.

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