Private Client MAGAZINE

ISSUE 19

MOVEMENT. STRATEGY. EVOLUTION.

OFFSHORE EDITION

INTRODUCTION

"All mankind is divided into three classes: those that are immovable, those that are movable, and those that move."

- Benjamin Franklin

This edition reflects a private wealth world in motion.

Across offshore structuring, philanthropy, litigation, reputation, and regulation, the contributors explore not only where the ground is shifting, but how forward-thinking advisers and families are responding with agility and intention. From the waning era of Non-Dom protections and the rise of Jersey Private Funds, to the evolving human role in a trust landscape increasingly influenced by AI, one theme stands out: adaptability.

We meet those who remain immovable, wedded to legacy practices now under scrutiny. We meet those who are movable, reacting to pressures, be they fiscal, reputational or generational. And we meet those who move, shaping the next chapter in offshore thinking, anticipating change, and driving innovation.

Whether it's rethinking the use of reserved powers, navigating transatlantic trust challenges for US persons, or introducing arbitration into trust disputes, the authors bring both urgency and clarity to complex, cross-border realities. Even philanthropy — often a feel-good footnote, is approached with rigorous due diligence and structural insight.

Taken together, this issue invites practitioners to ask: where do I - and where do my clients' sit in Franklin's taxonomy? And more importantly, what's the next move?

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Private Client

QUARTERLY EVENT ROUND UP

25 – 26 APRIL 2025 – CONTENTIOUS TRUSTS EUROPE, VEVEY

We were delighted to welcome guests from 10 jurisdictions, two-thirds from outside the UK to this year's Contentious Trusts Europe event in Vevey. Each session brought not only valuable insights but also genuine connections (and even a little therapy!).

A special thank you to Peter and Abigail Goddard of IMG Trust for supporting the event and for sharing their personal connection to the Bigmoose charity.

1–2 MAY 2025 – PRIVATE CLIENT MIDDLE EAST CIRCLE, DUBAI

Held at the beautiful Meliá Desert Palm, the Private Client Middle East Circle brought together an exceptional group of professionals for two days of lively discussion and collaboration. We were also proud to officially launch our Middle East Community.

Thank you to Accuro and Collas Crill for their support.

8–9 MAY 2025 – CIRCLE OF TRUST UK, WINDSOR

A collaborative and uplifting two days in Windsor brought together brilliant people, meaningful content, and memorable conversations, with a healthy dose of sunshine.

Thank you to our partners Charities Aid Foundation (CAF) and Capital Generation Partners for their support.

20 MAY 2025 – NON-DOM TAX & FIG FORUM (4TH ANNUAL)

Our 4th annual Non-Dom Tax & FIG Forum featured powerful real-world insights, led by our fantastic co-chairs Freddie Bjørn and Sophie Dworetzsky.

Grateful thanks to our partners Maisto e Associati, Lombard Odier Group, and Chetcuti Cauchi Advocates – Malta Law Firm for their continued support.

3 JUNE 2025 – LANDED ESTATES & FARM TAX CONFERENCE (4TH ANNUAL EDITION)

Now in its fourth year, the Landed Estates & Farm Tax Conference continues to deliver in-depth perspectives on the complex and evolving challenges facing landed estate professionals.

11–13 JUNE 2025 – PRIVATE CLIENT ADVISORY & LITIGATION FORUM, PARIS

Hosted at the iconic Waldorf Astoria Versailles, the second edition of this unique forum focused on sustainability in the private client world marking the first international event of its kind.

Thank you to our partners: Summit Trust, Payne Hicks Beach, Maurice Turnor Gardner, Spring Equity, Grant Thornton, Collas Crill, Ogier, Al Tamimi, Appleby, CAF, Hughes Fowler Carruthers, Mourant, Schillings, Birketts, S&W, and Bonifassi.

26-27 JUNE 2025 - HNW TAX CIRCLE, PENNYHILL PARK HOTEL & SPA

Our first-ever HNW Tax Circle brought together leading professionals for two insightful days exploring key developments in high-net-worth tax from UK and international reforms to BPR strategies, treaty planning, and the evolving role of trusts in asset protection.

With thanks to Maisto e Associati for supporting this inaugural event.

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> It is a region-specific platform uniting cross-disciplinary expertise. Built for a collaborative, cross-border professional landscape

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> It offers an inclusive, focused, and forward-looking space to gather, network and share knowledge

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> Flagship events in key regional hubs like Dubai, Riyadh, and Doha

> Curated roundtables and networking sessions

> Insightful content and thought leadership tailored to the region

> A trusted network of peers, mentors, and collaborators

Coming Soon...

> TL4 Middle East Launch Drinks - 9th November

> Regional insights in our TL4 Middle East in Focus newsletter

> Regional insights in our TL4 Middle East in Focus newsletter

Upcoming Events

Lifecycle of NPLs – From Acquisition and Structuring to Enforcement and Recovery
8 October 2025 | ADG Legal offices, Dubai

Women in FIRE Afternoon Tea
9 November 2025 | Shangri-La Hotel, Dubai

TL4 Middle East - Poolside Launch Cocktail Reception
9 November 2025 | Shangri-La Hotel, Dubai

FIRE Middle East 2025
10 - 11 November 2025 | Shangri-La Hotel, Dubai

To get involved contact: Chris Leese at **+44 (0) 20 3398 8554** or **chris@thoughtleaders4.com**

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Upcoming Events

TL4 & ConTrA present Private Client Summer School: The Ultimate Insider's Guide
27 - 29 August 2025 | Downing College, Cambridge

The Transatlantic Tax & Estate Planning Forum - 4th Annual
16 September 2025 | Central London

Private Client: Guernsey - 5th Annual Edition
30 September 2025 | The Duke of Richmond Hotel, Guernsey

Private Client: Jersey - 5th Annual Edition
2 October 2025 | Radisson Blu Waterfront Hotel, Jersey

Contentious Probate & Inheritance Claims Circle
9 October 2025 | Merchant Taylors' Hall, London, UK

For event and partnership enquiries please contact Seth on +44 (0) 20 3433 2282 or email seth@thoughtleaders4.com

"DO YOU HAVE A RESERVATION, SIR?"

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PAYNE HICKS BEACH

OFFSHORE TRUSTS: WHEN RESERVED POWERS MAY BE A STEP TOO FAR.

Authored by: Jess Henson (Partner) & Matthew Franks (Associate) & Phineas Hirsch (Partner) - Payne Hicks Beach

In recent decades it has not been uncommon for settlors – particularly those from jurisdictions less accustomed to trusts – to wish to reserve to themselves, or to grant to a friend or trusted adviser, certain of the powers which usually lie with trustees. Such settlors, who often come from jurisdictions not so familiar with trusts, do not wish to relinquish control of their assets completely, especially not to professional trust companies they do not know, in jurisdictions they will rarely visit.

Where that is the case, trustees, for their part, may wish to contain the risk of allegations of sham, and will also be anxious to restrict the scope for them to be sued for a decision they did not make.

As a consequence, a number of trust jurisdictions have legislated to accommodate this demand, effectively liberalising the manner of exercising powers which ordinarily sit with trustees, without – it is hoped – damaging the integrity of the trust.

This article considers first the scope of reservations and/or grants available to settlors, and then goes on to consider the risks arising where settlors and/or those drafting fail to ensure that the fundamental concepts of the trustees' strict fiduciary duties towards the beneficiaries and of the trust itself are not prejudiced.

The legislation introduced to clarify what reservations and/or grants of powers should be valid varies from jurisdiction to jurisdiction, and, as such, care should be taken not to reserve or grant to a third party so many rights as to render the trust vulnerable to fail, particularly if under attack in a second jurisdiction.

The choice of governing law is a complex one, beyond the ambit of this article. Suffice it to say that the legislative framework for reserved powers is only one of the considerations to take into account in making a decision to structure the governance of a trust using reserved powers. Nevertheless, where other factors are equally balanced or nearly so, and the retention or grant of powers to the settlor is of critical importance, an in-depth analysis as to what is on offer is prudent.

What follows is necessarily a snapshot of the kinds of carve-outs available in offshore jurisdictions' legislation in this area. Would-be settlors (and their advisers qualified in the relevant jurisdictions) should consult the relevant legislation whenever making decisions of this nature, whilst also balancing the need to retain the integrity of the core principles of what constitutes a trust.

Reserved power trust legislation can provide, by way of example, that:

- Settlors may reserve to themselves, or grant to third parties, some or all of a list of powers without the trust being considered invalid solely because of such a reservation/grant. Typically these include:
  - powers to invest trust property or to direct the trustees to do so; powers to remove, replace, and appoint trustees;
  - powers to direct, consent to, or veto distributions to beneficiaries;
  - powers to add or exclude beneficiaries; and
  - powers to revoke and/or amend the trust.

- Settlors who have reserved powers to themselves, or third parties to whom they have granted powers, may not be regarded as a trustee or otherwise be regarded as exercising fiduciary powers.
- Trust instruments may characterise the powers reserved or granted – or statute may provide such a characterization in default of the trust instrument – as being personal or fiduciary powers (this is a feature, for example, of Bermudan legislation).
- If trustees act in accordance with directions given by the settlor under the powers reserved, or by a third-party under the powers granted to them, the trustees will not be liable for breach of trust solely because they acted on such directions or failed to act (because the directions were to take no action).

Legislation along these lines is intended to offer more certainty over the level of control a settlor may validly maintain over assets whilst still (hopefully) establishing a valid trust and, therefore, to be attractive to prospective settlors who may bring their assets to the relevant jurisdictions and stimulate the local professional services sector.

It may, however, have the additional effect of reducing accountability to, and the potential for claims by, beneficiaries, by providing that the settlor (or other grantee) with the real power is not to be held liable for decisions they make, whilst relieving the trustee deprived of power in respect of such decisions from some – but not all – liability for that decision.

As such, the application of this breed of legislation risks awkward cross-jurisdictional encounters with the fundamentals of trust law and common law principles of equity.

It has always been possible for the settlor of an English law trust to reserve powers – most commonly a power of appointment, but that ability is limited by case law and by the doctrine of the 'bare' trust, which may arise where a settlor reserves such extensive powers such that he does not in fact divest himself sufficiently of his beneficial interest. It may be intended that the terms of the express trust spring into life on his death, but, if its effect is testamentary, it is not a valid inter vivos trust. Relying on such a trust for succession planning can result in an unexpected intestacy.

Three cases of the last decade indicate that, at the very least, trusts which rely on the liberalised approach towards reserved powers for their validity leave themselves open to challenge:

- The terms of the trust instrument in the case of Clayton[1] were considered by four different courts in New Zealand, including the Supreme Court. Their diverse findings bespeak the uncertainty arising from the reservation or grant of wide ranges of powers. Only the Court of Appeal determined that the trust was not illusory for one reason or another, and the two higher courts regarded some or others of the powers reserved by the settlor as constituting matrimonial property in the context of the settlor's divorce (demonstrating the impact which overambitious drafting may have beyond the trust at hand).
- The English High Court case of Pugachev[2] illustrated the inescapability (at least so far this jurisdiction is concerned) of equitable principles. With reference not to the individual effects but to the cumulative effect of the powers reserved to the settlor, the trusts in question were held to be illusory or bare trusts, such that the trustees were mere nominees for the settlor (though this decision has attracted criticism from learned practitioners).
- As in Clayton, matrimonial proceedings formed part of the backdrop to the case of Webb[3]. The ultimate settlor of the relevant trusts' assets had reserved a power – qua settlor and in the absence of any fiduciary duty – to make himself the sole beneficiary. The Court of Appeal and the Privy Council found that the trust instruments failed to provide adequately for the beneficial interest in the trust property to be alienated from the settlor, such that his "bundle of rights" was "indistinguishable from ownership" [PC judgment para. 89], and the trusts (although not shams) were invalid.

In spite of the range of options available in the various offshore jurisdictions, settlors who wish to retain some control over trust assets would be well advised to look before they leap; trustees, in turn, should bear in mind before assuming responsibility for those assets that they may not be as completely protected as would be optimal if other individuals or entities are to exercise powers.

Reliance upon the statutory provisions such as those discussed above has not been widely tested in the courts, but there is a general appreciation in the profession that, if tested in a jurisdiction other than that of the proper law of the trust, the validity of the trust may be more open to challenge. Until there is further judicial guidance, it will be for advisors to make their own assessment as to the tipping point for any particular trust: used sparingly, such powers can offer settlors a reassuring degree of control and asset protection.

If they are used too liberally, they will, to the contrary, offer up a means of attack on the trust. Settlors would be well advised, in short, to have reservations about reservations.

1 Clayton v Clayton, [2016] NZHC 29

2 JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2017] EWHC 2426 (Ch)

3 Webb v Webb [2020] UKPC 22

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THE BENEFITS OF DUE DILIGENCE IN CHARITABLE GIVING

CAF Charities Aid Foundation

Authored by: Mark Greer (Managing Director) - Charities Aid Foundation (CAF)

Professional advisers play a pivotal role in supporting their client's charitable giving in today's philanthropy landscape. With donors seeking to make more impactful donations to causes that align with their values, it is essential to undertake rigorous due diligence. This process not only ensures that donations are used effectively and in line with the donor's wishes, but also safeguards against potential legal and financial pitfalls.

But effective due diligence can be complex and cumbersome. It involves thoroughly assessing potential recipients, considering various risk factors such as the type of organisation, the country of operation, and the specific purpose of the donation.

In this article, we explore the benefits of due diligence in charitable giving, providing professional advisers with insights to support clients to make informed, impactful philanthropic decisions.

Greta Pender from Collas Crill Trust and Corporate Services explains why this is so important, as an adviser based in Guernsey:

"Charitable structures often involve multiple jurisdictions or entities for entirely legitimate reasons, and to fulfil our clients' philanthropic objectives, it is essential to ensure that funds reach the intended recipients and are used as intended."

Comprehensive due diligence checks can help clients navigate the complexities of charitable giving, particularly when supporting smaller, regional charities overseas. Pender added: "One of the primary challenges our clients face when donating to overseas charities is navigating complex international regulations and ensuring compliance with anti-money laundering laws, while maintaining full transparency and accountability." So, as we see a welcome recognition of the power of localised giving, it is even more crucial to ensure funds are directed to legitimate organisations that will use the money to create meaningful, positive change.

Furthermore, these checks enhance transparency and trust, both for donors and the broader charitable sector. Maintaining the confidence of wealthy clients means upholding high standards of integrity and accountability.

However, for many professional advisers, they are not able to offer this level of due diligence themselves. For some, it can even put them off engaging with clients on the topic of philanthropy because of the level of expertise and time required. But this would be a missed opportunity, particularly as next generation wealth holders are looking for this kind of support. Jersey- based adviser, Katie Douglas, Associate Director for Private Wealth, Highvern said:

"We are seeing more charitable gifting through offshore structures, including trusts specifically for charitable purposes, driven in part by the NextGen, both in terms of their values but also as a wealth engagement and education tool."

This is echoed by another Jersey-based adviser, Daniel Channing, Group Head of Private Client, at Whitmill,

"Families are becoming ever more sophisticated in the way in which they pursue their philanthropic objectives."

As a growing number of donors and advisers are realising, donor advised funds - or DAFs - provide a solution. Channing adds: "These families, and us as their Trustees, often turn to external expertise to support both the identification and evaluation process; recognising the comprehensive support that these external partners can provide."

Money contributed to DAFs, such as CAF, has usually received UK tax relief, including Gift Aid, and therefore must comply with UK charity law and HMRC guidance about how charitable funds can be used. Crucially, it is the fund's trustees who are responsible for compliance with charitable law and regulatory requirements, not the donor.

Many people assume that it is acceptable to make payments to charitable organisations that are registered as charities in their home country. However, HMRC states: "It's not sufficient for the charity [DAF] to simply establish that the overseas body is a charity under the domestic law of the host country. Nor is it enough to keep records of how things are spent. These are important but for overseas payments trustees must do more".

The DAF must therefore demonstrate to HMRC that it has taken reasonable steps to ensure that the payment is used for charitable purposes as defined by UK law. For dual UK and US taxpayers, there are further due diligence considerations and dual qualified DAFs like the CAF American Donor Fund must follow both UK and US rules.

HMRC guidance states that: "Trustees are required to carry out appropriate research in relation to the overseas body, followed by monitoring and evaluation... The charity trustees must be able to describe the steps they take, explain how those steps ensure charitable application of funds, demonstrate that those steps were reasonable and produce evidence that the steps were, in fact, taken."

Effective due diligence investigates charitable purpose, but also minimises the risk of financial crime and mitigates fraud risk, protecting both the DAF and the donor from potential misuse of funds. Douglas from Highvern said that

"Given the risks associated with charitable gifting, including the risks funds are diverted away from the non-profit organisation's legitimately intended purposes, it is important to ensure, as with any distribution, that full due diligence is undertaken."

We take this process incredibly seriously at CAF, and verify any partners or recipient organisations that may receive part of a donation. Where there is greater risk, we are more in-depth with our checks. For instance, if donations relate directly or indirectly to a sanctioned country, we enhance our checks and we also remain alert to increased risk that may need extra levels of verification.

Each year we distribute over £1 billion on behalf of donors, working with more than 160,000 charities, and helping them to do more of the great work they do. We simply couldn't achieve this without expert due diligence.

One example is our work with long-standing client JSK Trust, a UK-based charitable trust, who wanted to support the Viswa Bharathi Vidyodaya Trust (VBVT), which exists to improve the quality of education for children in the Adivasi community in Tamil Nadu, India. JSK Trust wanted to contribute funding for land and development costs towards VMVT's Cornerstone Project, an ambitious plan to construct a new school. Our verification specialists carried out comprehensive checks, including assessing and confirming the charity's compliance with local regulations, financial transparency, and that the donation would be used as intended. JSK Trust could be reassured by our due diligence that its funding was making a difference, with a representative commenting, "It helped that our adviser at CAF had extensive experience of working with Indian charities."

Following due diligence and verification processes inevitably means that in a small number of cases, sending funds to a donor's chosen organisation could be declined. This may be where it cannot be verified that the gift will be used charitably according to UK legislation, or where the gift would, financially or otherwise, benefit the donor or someone connected to the donor. But if a charity does not meet the verification standards, a DAF should work with donors to identify alternative options.

Professional advisers who want to provide appropriate support to philanthropic clients do not need to be experts in charity due diligence themselves.

However, understanding the need for robust processes and knowing where to find the expert support will ultimately safeguard their clients and contribute to strengthening the global charitable sector.

60 SECONDS WITH...
LACIE RISEBOROUGH
SENIOR BUSINESS DEVELOPMENT MANAGER
CHARITIES AID FOUNDATION (CAF)

Q What Is One Work Related Goal You Would Like To Achieve In The Next Five Years?

A It's an exciting time to be part of the team at CAF. Working with more advisors to disseminate the true power of philanthropy and what this means for their clients and the ability to further positive change is always my main goal.

Q What Cause Are You Passionate About?

A CAF works with over 160,000 charities, so it's hard to choose one! Having worked in the medical research field, I do think focused ultrasound has the power to change the face of medicine as we see it right now. With over 70 indications and various mechanisms of action I'm hopeful that my son won't have to experience a retirement where he or his loved ones are affected by the insidious disease of dementia.

Q What Does The Perfect Weekend Look Like?

A Waking up and not feeling tired (!) with plans to spend time with loved ones in the sunshine laughing and eating great food. Playing in the waves on a sandy beach with my dog Donut and ending with my son smiling and giggling, before he falls easily and soundly asleep all night long.

Q What Has Been The Best Piece Of Advice You Have Been Given In Your Career?

A Be the leader you needed when you were younger.

Q What Is The Best Film Of All Time?

A I love Good Will Hunting. I think it resonates with me because I truly believe in the power of education to open doors to rooms you deserve to be in on merit, and not out of privilege.

Q What Do You See As The Most Rewarding Thing About Your Job?

A I find so much joy in understanding people and their motivations and tying that to causes that can change the world.

Q How Do You Deal With Stress In Your Work Life? Similar To Q 10 – So Maybe Change To:

A Where has been your favorite holiday destination and why? It's impossible to choose only one. Sri Lanka and the Port of Galle was somewhere I loved exploring as it's steeped in history, Northwest Australia's Home Valley Station has some of the most beautiful sunsets I've ever seen. I visited Assisi in Umbria with a friend a few years ago and want to go back soon!

Q What Is One Important Skill That You Think Everyone Should Have?

A Being kind! I think being a great listener too; the most effective communicators are those that give others the space to speak.

Q What book do you think everyone should read, and why?

A As a parent of a five-year old, navigating the work life juggle, 'The Kissing Hand', by Audrey Penn recently came into my life. It's about a baby raccoon who starts school and is a bit nervous and wants his mum, so she kisses the centre of his palms in the morning, and he touches his hand to his cheek throughout the day whenever he needs reassurance.

Q What's Your Go To Relaxing Activities To Destress After A Long Day At Work?

A Snuggles with my son and listening to the stresses of his day sometimes provide the perspective I need! I love sport and going for a run or hitting the netball court with fellow competitive minds has always been my go-to for sweating out any stress.

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OFFSHORE OPPORTUNITIES FOR PHILANTHROPIC STRUCTURING

Authored by: Dominique Burnett (Managing Director) - Fairway

The Philanthropic Shift

Over the years we have seen the landscape and nature of philanthropy shift; from predominantly large transactions and grant style giving, it is now leaning toward more strategic and purpose-oriented philanthropic structures. With this, comes opportunity, innovation and challenges to create versatile and efficient structures that will guarantee long-term alignment to a client's philanthropic vision, both in their life and their legacy.

What we are seeing now, is flexibility and nimbleness growing within the philanthropic space. It reflects how the developments in structures and wealth planning, are ultimately reactions to the different desires and needs of the clients that we are working with.

For us as advisors, our mission is to keep up with clients and become as innovative as they need us to be.

The Nature Of Giving

Philanthropy is no longer something people think about at the end of their wealth journey, or before a transfer of wealth takes place within their family. Rather, it is something central to how many of our clients view success. Whether it is strategic giving, social investing, or building a legacy of purpose, clients are seeking trusted partners to guide them along their journey.

While there's often a perception that philanthropy is a hallmark of established wealthy families, we see a different picture. People are starting to give for many reasons - after retirement, personal loss, or life experiences that leave a lasting impression. What they seem to have in common is a desire to create positive change through their wealth. Wherever a client is on that journey, our first step is understanding their motivations. Are they looking to achieve a specific result, or are they seeking meaning and long-term legacy? Clarifying their objectives helps us to shape a structure best suited to achieving their goals.

The Next Generation And Their Hybrid Approach

One of the most exciting developments we see is the mindset shift among the next generation. Today's younger philanthropists are not waiting to give, they're focused on contributing to society and delivering good from the outset, whether they inherit their wealth or whether they have created it themselves.

The younger generation are more likely to talk about combining traditional giving with ESG investments. They support grassroots causes and actively engage with issues of climate change, mental health and education (often causes and sectors that are personal to them). Their approach is less about legacy, and more about seeing the impact of their endeavours while they are alive.

Such a dynamic and blended approach to philanthropy is also driving demand for tech-enabled solutions.

Data, AI and digital platforms help clients measure their impact, monitor giving outcomes and collaborate with others in unprecedented ways, transforming the philanthropic landscape.

At the same time, blended finance and impact investing are gaining ground, creating opportunities for both financial return and social good.

Rethinking Philanthropic Structures

Traditionally, charitable trusts and Foundations have been the go-to vehicles for structured giving. These remain popular because they are robust, proven and offer the formal governance many families look for. However, we have seen increasing demand for more all-purpose, innovative options, particularly among international families. For example, Donor Advised Funds (DAF) can be an opportunity for a family to begin their philanthropic journey without committing to a particular structure. As their experience or needs develop, the family can then make an informed decision about more bespoke structuring.

With giving becoming more international, families and individuals must consider not just how to structure their philanthropy but where. This is where Jersey's dynamic structuring options stand out from those of other jurisdictions, with advantageous options such as Protected Cell Companies (PCCs), allowing the segregation of assets and companies into separate protected cells.

As the structuring options for giving broaden, reflection of a defined strategy is key to holding together the multiple and often complex assets and activities operating under their purview. Our role is to construct and monitor all the working parts of these vehicles, ensuring the internal design is robust, yet adaptable to external weathering.

Jurisdiction Of Choice

Jersey, where Fairway is headquartered, is a respected international finance centre that underpins our cross-border work. As key factors such as tax residency, political and economic stability and a comprehensive regulatory and legal framework all become increasingly part of the conversation, Jersey is well positioned to serve these demands.

Jersey provides bespoke, independent structuring backed by jurisdictional strength, global experience, and a genuine passion for helping families create meaningful change. Our team is experienced in multi-jurisdictional structuring and work with a wide range of international clients. Whether structuring a Foundation in Jersey, managing a DAF aligned with US regulations, or supporting international giving across Europe or Asia, we work closely with clients and their advisors to ensure compliance and maximum impact. Jersey offers structures designed to facilitate change, complementing the shift we are increasingly seeing within the world of philanthropy and wider wealth planning.

The Jersey Foundation

An example that showcases this is the Jersey Foundation, which has become a powerful tool for structured giving.

It allows for both charitable and non-charitable purposes under one umbrella, enabling flexibility for clients. The Foundation's objectives can be amended over time, allowing them to evolve in parallel with the client's own goals, yet remaining effective and responsive to the financial climate and risks. Jersey trusts also continue to offer a solid option for both pure philanthropy and for those wishing to combine giving with seeing a return through other channels such as ESG investing. These vehicles demonstrate the desire and ability to integrate philanthropy alongside broader wealth planning, such as family asset planning and business holding purposes.

A Jersey Foundation Case Study: International HNW Client

A Jersey Foundation was the ideal solution for a high-net-worth international client that had a clear philanthropic vision; to create a purpose-driven structure that could scale globally, outlive them, and reflect their lifelong commitment to healthcare and education. Having grown up in hardship in China, the client wanted to give back in a meaningful and lasting way.

The Foundation offered flexibility, long-term viability, and the ability to segregate different philanthropic streams, perfect for managing the client's diverse initiatives under one structure. The client became the Founder, working in partnership with us as a council member, actively shaping strategy and direction. We manage all administration, compliance, and stakeholder coordination, ensuring the structure runs smoothly while aligning with Jersey's trusted regulatory environment.

The Foundation has made a variety of impactful initiatives, ranging from funding overseas education tuition, research in healthcare technologies and forming direct hospital partnerships to subsidise healthcare for the elderly. Beyond philanthropy, the structure supports the client's wider goals, including asset protection and succession planning. The Jersey Foundation offers a modern, adaptive approach to legacy building, proving that when structured thoughtfully, giving can be both powerful and enduring.

Looking Ahead

As advisors, it is our job not just to keep up with these changes, but to lead the way in making global philanthropy as impactful, efficient and innovative as our clients demand.

The philanthropic landscape is evolving, and evolution requires us to navigate the way to optimal solutions that best fit our clients' diversifying ambitions and needs.

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Authored by: Frederick Bjørn (Partner) - Payne Hicks Beach, Sophie Dworetzsky (Partner) - Charles Russell Speechlys, Beatrice Puoti (Partner) - Stephenson Harwood, Sarah Farrow (Partner) - EY, Kelly Watson (Client Director) - Accuro & Geoff Kertesz (Partner) - Stewarts

"With such major changes being introduced, and a significant shift in emphasis when advising international families, it is great to have such a diverse panel to pick apart the issues that practitioners are being faced with."

Frederick Bjørn, Partner, Payne Hicks Beach

"Against a backdrop of the abolition of the remittance basis, which was introduced in 1799 and the inevitable sea change that follows, it was hugely instructive to hear from such a wide range of experts on an equally wide range of topics that arise as a result of the changes.

It is difficult to focus on any one aspect, but perhaps the recurring theme was that if anything clients require ever more bespoke solutions and the importance of careful, expert and timely advice cannot be overlooked."

Sophie Dworetzsky, Partner, Charles Russell Speechlys

The UK government's proposed overhaul of the non-dom regime marks a watershed moment for international tax planning. For decades, offshore trusts have provided families with a measure of certainty, continuity, and protection. That era is ending.

With new rules poised to take effect in April 2025, and transitional windows closing as early as October 2024, trustees and advisers are facing difficult decisions, and families are being forced to reassess long-held strategies.

At the recent Non Dom & Fig event, some of the leading voices in private wealth and trust law shared their interpretations of the reforms and how their clients are preparing for the changes ahead.

A Loss of Protection: Beatrice Puoti on the Core Reforms

According to Beatrice Puoti, Partner at Stephenson Harwood, the shift is unequivocal: the protective tax framework that once applied to non-UK trusts is being dismantled. Under the new rules, excluded property status for inheritance tax (IHT) purposes will be eliminated for all trusts, meaning they will be pulled squarely within the scope of UK taxation.

However, there is one crucial reprieve: trusts settled before 30 October 2024 will retain protection from IHT, even if the settlor is still able to benefit from them. This has created a short but vital window for planning and restructuring.

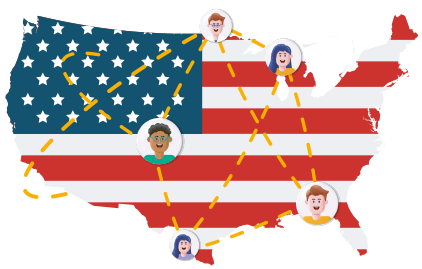
From 6 April 2025 onwards, the IHT treatment of a trust will be determined by the status of the settlor, not the location or structure of the trust. This will fundamentally realign how trusts are taxed and how families must plan.

There are further implications depending on the status of beneficiaries. Beneficiaries who qualify as having Foreign Income and Gains (FIG) status will continue to benefit from significant tax advantages. They will not face UK tax on income or gains within the trust, even if those funds are brought into the UK. But for beneficiaries who do not meet FIG criteria, the situation is starkly different: they will be taxed on all trust income and gains on an arising basis, regardless of whether they actually receive any distributions.

Trusts themselves will now fall under the relevant property regime, subject to ten-year anniversary charges and exit charges, bringing additional compliance and planning complexity.

The rules around attribution of income and gains for both income tax and capital gains tax purposes are also diverging, with specific rules for non-resident settlors and complexities around the so-called “motive defence” where tax avoidance is alleged.

The upshot? The comfort blanket around trusts has been pulled away. Trustees and advisers must now weigh their options and act decisively while transitional relief remains available.



Minimal Impact, Maximum Complexity: Sarah Farrow on US Connections

While many international families are reconsidering their UK links, US citizens remain a notable exception. Sarah Farrow, Partner at EY, explained that thanks to the longstanding US-UK Estate Tax Treaty, many US clients are far less affected by the reforms, and may continue to find the UK an attractive jurisdiction.

The treaty provides clear protection from UK IHT for trusts where the settlor is a US domiciliary and not a UK national at the time of creation. This includes relief from ten-year and exit charges and removes exposure to the gifts with reservation of benefit (GWROB) rules.

That said, complexities abound, particularly when reconciling UK and US tax classifications.

Whether a trust is a grantor or non-grantor under US tax law, and whether it is settlor-interested for UK income and gains, can lead to mismatches in how tax is triggered and where it is paid.

For grantor trusts that are also settlor-interested under UK rules, the alignment of taxing rights between the two countries generally works well, provided that UK tax payments are accelerated appropriately. But where grantors are excluded for UK purposes and only liable for capital gains tax, there is a real risk of double taxation if income or capital is distributed on a different schedule than it is taxed in the US.

Non-grantor trusts present even greater difficulties. Since different taxpayers are liable in the US and UK, claiming relief under double tax treaties becomes challenging. The UK may not recognise a double taxation scenario at all, since no one taxpayer is being taxed twice, just different parties in different jurisdictions.

Further complications arise when attempting to claim treaty protection on UK tax forms, many of which are still paper-based and outdated.

HMRC is working toward digitalisation, but progress is slow, and there remains no easy way to practically make a treaty claim through standard filing.

Real-World Responses: Kelly Watson on What Families Are Doing Now

While the technical tax analysis is essential, the human dimension cannot be ignored. Kelly Watson, Client Director at Accuro, described how families are responding in practice, and how deeply personal these decisions can be.

One trust, established nearly a decade ago by a family moving from the US to the UK, was recently wound up entirely. After failing to secure Italian residency, and with grown children now actively involved in the family wealth, the trust was no longer aligned with their goals. The structure was dissolved pre-5 April, just ahead of the reforms.

Another case involved a trust created over 40 years ago by a settlor who arrived in the UK seeking asylum. Now worth around £50 million, the trust is distributing most of its assets to UK-resident beneficiaries while tax rates remain favourable.

A single legal claim is being retained within the structure, but the broader strategy is clear: simplify while the window allows.

A third family, originally from the US and Europe, has chosen to retain its Jersey and US trusts for now, although their investment portfolios are being restructured. With the breakdown of the marriage of the settlors and a move to Italy now complete, the trusts continue to serve their purpose, but with a tighter focus and strategic adjustments.

Watson’s takeaway is pragmatic: every trust is different. Every family is different.

While tax reform is significant, the original purposes of many trusts, wealth preservation, protection, stewardship,

still apply. The key is understanding whether those purposes remain aligned with the evolving tax landscape.

Going to Court: Geoff Kertesz on Blessing Applications and Trustee Strategy

As trust restructurings become more common and, unfortunately, more contentious, Geoff Kertesz, Partner at Stewarts, is seeing an increase in applications to court particularly under the Public Trustee v Cooper jurisdiction.

These so-called “blessing applications” typically arise when trustees are faced with a momentous decision. These often involve fundamental changes to a trust structure or the sale of a key trust asset. In these cases, trustees often seek judicial approval before proceeding as it can be a way to reduce risk, ensure procedural fairness, and protect trustees from potential claims.

Kertesz explained the three categories of such applications: the first involves questions about trustee powers and the third arises when trustees “surrender” their discretion to the court and, in effect, ask the court to make the decision for them. But it is the second category, where the court is asked to bless a major decision, that comes up most frequently for trustees.

Trustees must demonstrate that their decision is rational, honest, and properly informed. This includes gathering valuations, tax advice, and often seeking beneficiaries’ views. Hypothetical or exploratory applications are discouraged; the proposal must be concrete and well-developed. It is important to remember that the court is not being asked whether ***it*** would have made the same decision; the court asks itself whether no reasonable trustee could have come to the same conclusion.

Cases where courts have refused to bless trustee decisions often hinged on trustees not having actually made a decision of having questionable motives. In one example, the court refused to bless the trustees’ decision to sell a main trust asset when the main purpose of the sale was to free up cash to pay the trustees’ fees. In another, trustees were criticised for failing to present enough evidence.

Kertesz noted a trend toward staged applications, where trustees seek initial approval for a decision in principle, before later returning for approval of the full plan. This reflects growing caution in complex or contentious scenarios, and a desire to ensure legal certainty at every step. It does, however, lead to increased cost to the beneficiaries as well as a lengthening of the process that may be undesirable. .

Conclusion: A New Era, But Still a Purpose

The message from the experts is unanimous: the UK trust landscape has changed irreversibly. Structures that once provided long-term stability must now be reassessed in light of new tax realities.

Yet trusts are not dead. For many families, they still offer critical benefits, from succession planning to creditor protection to investment alignment.

But the days of passive maintenance are over. With a clear deadline looming in October 2024 for IHT grandfathering, and with the full implementation as of April 2025, advisers and trustees must act now to preserve value and purpose.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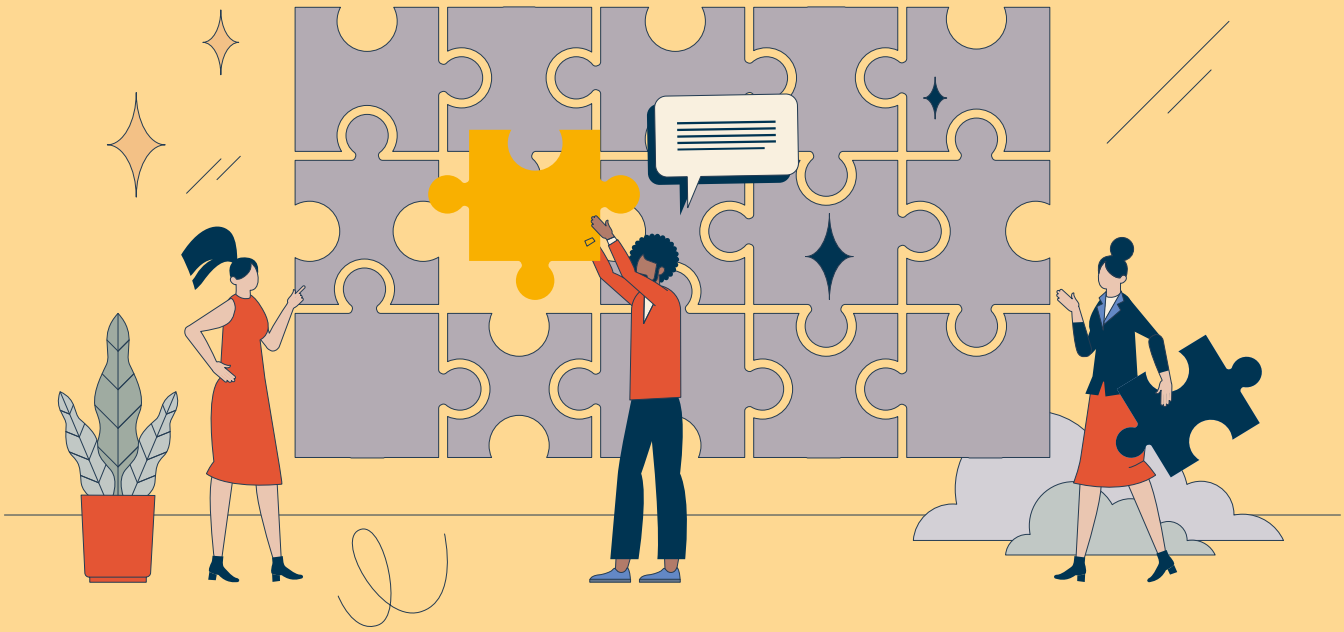
TRUSTEESHIP IN TRANSITION



SERVING THE NEXT GENERATION

Authored by: Maxine Bodden Robinson (Founder) - IMG Trust Company

When I began my career in law, trust structures were often built in the image of the founding patriarch, figuratively, and frequently literally. They were designed to preserve wealth, exercise control, and operate discreetly. The trustee's role was clear: implement, protect, maintain a healthy distance.

Today, those same structures are being inherited by a generation with entirely different expectations.

The second generation, "Gen 2", as we refer to them, are not simply passive recipients of wealth. They are tech founders, global citizens, and impact-driven investors. Many are building their own enterprises. Others are reimagining how family capital should serve wider societal or environmental goals. Almost all of them want a say in how their family wealth is governed, and that changes everything.

A More Personal Kind of Trust

At IMG Trust, we're seeing more Gen 2 engagement, and in many cases, they are initiating contact themselves - sometimes even before the founding generation has stepped back.

These individuals expect clarity, transparency, and a meaningful relationship with their trustee.

The notion of a distant fiduciary figure who reports quarterly and rarely engages simply doesn't fit their worldview. They want to be consulted.

They want to understand how and why decisions are made. And they expect a trustee to be not just a gatekeeper, but a guide.

This requires a different kind of trustee relationship. More collaborative. More communicative. Still independent, but not invisible.

The Role of the Conflict-Capable Trustee

Gen 2's rise often coincides with moments of friction - generational differences, unclear expectations, or outdated governance models. In some cases, these tensions are long-simmering; in others, they've already spilled into litigation.

This is where the value of a conflict-capable trustee becomes clear. At IMG, we're often brought into these situations not because everything is running smoothly, but because it isn't.

A conflict-capable trustee understands the legal, personal, and reputational stakes. They bring structure to uncertainty, and calm to emotion. They can work alongside litigators, family offices and other professionals, while remaining focused on the best interests of the trust.

They also know when to listen. Gen 2 beneficiaries are articulate, often well-advised, and expect to be heard. Trustees who dismiss their concerns, even with the best of intentions, risk creating long-term breakdowns in trust.

Purpose, Alignment and the Modern Trustee

What sets many Gen 2 clients apart is a deep sense of purpose. They are not just inheriting capital, they're inheriting responsibility. Whether it's philanthropic giving or creating sustainable legacies, their decision-making is often values-driven.

At IMG, this resonates deeply. As a boutique firm with independent ownership, we're not constrained by institutional pressures. That means we can work closely with families to help their structures reflect what truly matters - not just tax efficiency or asset protection, but long-term purpose and intention.

Whether it's establishing a family charter, supporting charitable ambitions, or helping bridge generational values, we believe that trust structures should serve the family's vision, not the other way around.

Tech, Transparency and the New Gatekeepers

Another shift we can't ignore is the way Gen 2 finds and evaluates their advisors. This generation uses AI tools to compare service providers, asks ChatGPT for recommendations, and reads peer reviews with the same rigour previous generations applied to their solicitor's advice.

This presents a challenge - but also an opportunity. Trustees must ensure that what's discoverable online accurately reflects who they are. That means investing in clear messaging, sharing thoughtful content, and showing up authentically across digital platforms.

It also means being fluent in the tools and language of today's clients. A trustee doesn't need to be a blockchain expert, but they do need to be comfortable navigating Web3 terminology and engaging on topics that matter to the next generation.

Beyond the Founder

The post-patriarchal wealth landscape isn't just about passing assets, it's about transitioning values, responsibilities, and relationships. We're seeing families prioritise inclusion, stewardship, and legacy in new ways. In some cases, this means restructuring trusts altogether to better reflect the realities of a global, multi-generational family.

For trustees, this is a moment to evolve, not retreat. We must be willing to step into more nuanced roles, balancing technical acumen with emotional intelligence, and legacy thinking with digital fluency.

At IMG Trust, we believe the trustee of the future isn't just a fiduciary, they're a family's long-term partner.

And that means building bridges, not barriers, between the generations.

We approach our trustee relationships through this lens and welcome the opportunity to discuss it further.

Author Bio:

Maxine Bodden Robinson is the Founder of IMG Trust Company in the Cayman Islands. As a lawyer with a deep understanding of family governance, she specialises in advising UHNW families on cross-border wealth structures, succession planning, and next-generation engagement. Maxine brings a modern, independent perspective to trustee services, with a particular focus on family dynamics, conflict resolution and inclusive wealth planning.

HOW SHOULD YOU ASSESS A PERSON'S CAPACITY TO LITIGATE

(AND OTHER MATTERS)?

Authored by: Emma Holland (Partner) & Jemma Goddard (Senior Associate) - Stewarts

The "two stage" approach to assessing capacity involves firstly evaluating whether a person has the capacity to make a decision and secondly (if they are unable to complete the first step) determining the underlying cause of their lack of capacity.

On 18 December 2024, the Court of Appeal handed down its decision in Lioubov MacPherson v Sunderland City Council [2024] EWCA 1597, seemingly intent on putting to rest any ambiguity about the application of the "two stage" approach.

Background

The protected person, P, was diagnosed and, at the time of the appeal court's decision, being treated for paranoid, treatment-resistant schizophrenia.

The appellant was P's mother. She had been given a suspended 28-day sentence in January 2023 for breaching injunctive orders preventing her from posting material about P on the internet. After sentencing, the court found that the appellant had moved from England to France, deliberately putting herself beyond the reach of the law. Once in France, she resumed posting videos, articles and audio recordings of P on X and YouTube. The appellant's posts related to the purported persecution of P by health and other professionals and the courts, which the appellant maintained were "part of a conspiracy to torture P".

In January 2024, Mr Justice Poole, sitting in the Court of Protection, sentenced the appellant to an immediate custodial sentence of four months for contempt of court. The appellant appealed that decision. In that appeal, a preliminary issue arose as to whether the appellant had the requisite capacity to litigate her appeal.

Concerns had been raised following a conference with an experienced Court of Protection solicitor and two counsel, both of whom appeared at the hearing. The appellant refused to cooperate with a capacity assessment, so an expert was commissioned to conduct a paper-based assessment of the appellant's capacity.

Assessing Capacity Under The Mental Capacity Act 2005

The framework for assessing whether a person has the mental capacity required in relation to a particular decision or transaction is set out in sections 2 and 3 of the Mental Capacity Act 2005 ("MCA 2005").

Section 2 of the MCA 2005 provides that a person lacks such capacity if, at the material time, they are unable to make a decision in relation to the matter because of an impairment or a disturbance in the functioning of the mind or brain.

Under section 3 of the MCA 2005, a person is "unable to make a decision" pursuant to section 2 if they are unable to:

1. understand the information relevant to the decision, and/or
2. retain that information, and/or
3. use or weigh that information as part of the process of making the decision, and/or
4. communicate their decision (whether by talking, using sign language or any other means).

The Expert's Report

In respect of the appellant, the expert concluded that "on the balance of probabilities, the information available suggests the possibility of a delusional disorder".

Regarding the test in section 3 of the MCA 2005, the expert concluded that there was no evidence to suggest that the appellant could not understand or retain information but that her ability to use or weigh up relevant information was likely affected by her "firmly held beliefs which persist despite evidence against these".

The Decision And Its Impact On The Legal Test

The Court of Appeal (applying the Court of Protection Rules by relying on Rule 52.20 of the Civil Protection Rules 1998) was satisfied, based on the evidence before it (including the expert's written report), that it could reach a conclusion on the matter. It concluded that it had reason to believe that the applicant lacked capacity in relation to her appeal. It made an interim declaration (pursuant to Section 48 of the MCA) to that effect and referred the case back to the Court of Protection to determine the issue of the applicant's capacity either way before the appeal would proceed.

In reaching its conclusion, the court made clear that any report obtained in preparation for the final determination of the capacity issue must approach the question by reference to the judgment of the Supreme Court in A Local Authority v JB [2021] UKSC 52; [2002] AC 1322. This held that the "two stage" approach to the determination of capacity should be considered in the following order:

i) Whether P is unable to make a decision for himself in relation to the matter (section 3 MCA 2005 – the functional test).

ii) Whether the inability to make a decision is "because of" an impairment of, or disturbance of the functioning of, the mind or brain (s.2(1) MCA 2005 – the diagnostic or mental impairment test).

The judgment in Re JB is in direct contradiction to paragraph 4.11 of the MCA 2005 Code of Practice, which states:

"Stage 1 requires proof that the person has an impairment of the mind or brain, or some sort of disturbance that affects the way their mind or brain works. If a person does not have such an impairment or disturbance of the mind or brain, they will not lack capacity under the Act."

The Court of Appeal expressly acknowledged that contradiction but affirmed the approach of the Supreme Court in Re JB, referring to the new draft Code dated June 2022, which is yet to be implemented. (That approach in Re JB was also supported by the Court of Appeal in Hemachandran & Anor v Thirumalesh & Anor EWCA Civ 896, a case relating to a protected person's ability to make decisions about their medical treatment.)

Commentary

The Court of Appeal, led by Lady Justice King (who also gave the lead judgment in Re Thirumalesh (dec'd)), has clarified further that in determining capacity, the functional test should be applied before the diagnostic test. This is helpful in practical terms when instructing experts on the question of capacity.

The lack of a settled procedure for determining whether a party lacks litigation capacity where the relevant party disputes the suggestion and refuses to cooperate with a process of assessment was highlighted in a report by the Civil Justice Council in November 2024 on the "Procedure for Determining Mental Capacity in Civil Proceedings".

Ultimately, the report recommends amendments to the Civil Procedural Rules or a new Practice Direction to provide a single, easily identifiable source of guidance.

As to the use of interim declarations, these can be a helpful tool where the court lacks sufficient evidence to make a final determination of incapacity, which would deprive the relevant party of the opportunity to litigate. Making such a declaration on an interim basis facilitates further steps being taken in the proceedings to determine the question either way, for example, enabling the appointment of the Official Solicitor as litigation friend to secure legal aid to continue to investigate the question of capacity (as was the case in CS v FB [2020] EWHC 1474 (Fam)).

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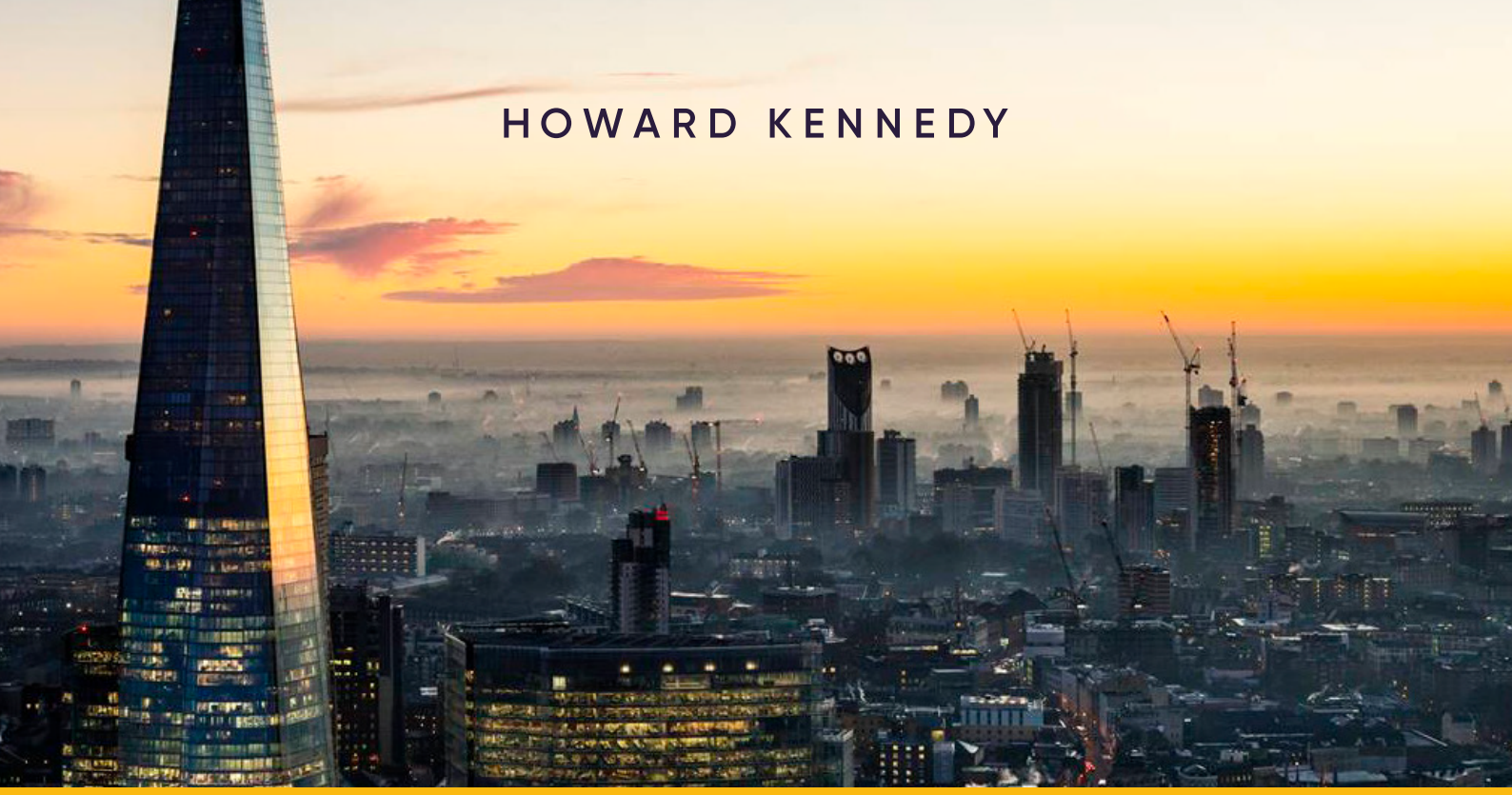

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DON'T JUST THINK TAX

THINK IS TOO

Authored by: David Kilshaw (Managing Director) - Rothschild & Co Wealth Management

Economists may ponder 'Is Globalisation Dead?' but, from the private client tax perspective, the world is becoming ever more global. Increasingly, wealthy individuals adjust their foot fall for tax reasons: the response to the UK's recent changes to the regime for non-doms being a prime example.

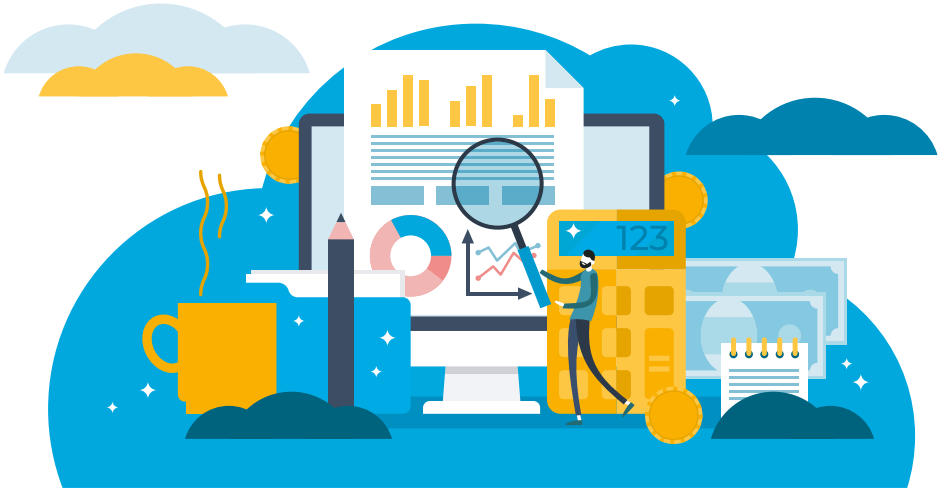
Such changes cause wealthy clients to consult with their tax advisers on questions such as "which country is the most tax efficient?" or "how much time can I spend back in my home country?". Many readers will be familiar with the detailed tax timetables and complex lives which can result. However, it is critical that the tax position is not considered in isolation and investment solutions (IS) must form part of the initial thinking too.

Many countries use residence as a test for determining liability to tax – often, if an individual is resident in a country for six months then they pay tax in that country. However, residency is just one criteria. In many cases situs, or where an asset is located, is an equally important factor in determining liability to tax. Paddington Bear may be surprised to learn that he had a potential liability to inheritance tax on the jars of marmalade he kept in London long before he left deepest Peru!

The combination of residence and situs means that tax advisers, trustees and investment advisers must come together at the outset to help formulate the best solutions for their clients, making it increasingly common that advisers work together from day one.

Historically, the different advisers could contribute their ideas in stages, but such an approach will not provide an optimal result today. Some investment advisers have their own wealth advisers (your correspondent is one), who do not provide tax advice but who can help link and manage the interaction between the different advisory services.

The Finance Act 2025 has many examples of where tax and IS must be considered together.



Many taxpayers are leaving the UK for inheritance tax (IHT) reasons and planning to cease to be UK resident for ten or more years. However, in most cases, although they may still want exposure to UK shares and other investments, they will retain an IHT exposure on UK assets. The use of wrappers (which can provide an IHT 'blocker') may be appropriate here and the selection of the most appropriate wrappers needs both tax input and IS.

The four year FIG (foreign income and gains) regime is another example of where tax and IS must combine for optimal efficiency. Those within the regime will want to avoid UK assets for the first four years of UK residence and may wish to rebase before their tax free holiday ends. The IS advisor can work alongside the tax advisers to help structure the best programme to align tax and investment objectives.

As the tax world becomes more global and clients increase their air miles, there will be an increased emphasis on portable solutions.

Clients want their tax structures to be as easy to pack and unpack as their suitcases. An illustration of this is the increasing use of offshore bonds, which can often be a tax planning vehicle with an effective passport of its own.

Family Investment Companies (FICs) seem to be becoming even more popular (with many offshore trustees using FICs to help with the loss of their protected trust status). FICs normally pay corporation tax, but can receive most dividends tax free. However, some investments will suffer mark to market consequences when in a FIC. Again, the tax advisor and the wealth advisor must work in harmony.

Bank account structuring, such as the creation of TRF Capital Accounts to support the strangely named Temporary Repatriation Facility, will also require tax advisors to work with those experienced in the operation of non-dom bank accounts.

Tax planning was historically more of an isolated activity than it is today.

The change in the way legislation is constructed and enacted, and an increasingly mobile client base, has required advisors of all disciplines to become practised in the art of synchronised swimming, with IS having an increasingly important role to play.

60 SECONDS WITH...
EMMA WOOLLCOTT
PARTNER, HEAD OF REPUTATION PROTECTION AND CRISIS MANAGEMENT
MISHCON DE REYA

Q What Is One Work Related Goal You Would Like To Achieve In The Next Five Years?

A I want to support and promote at least two more of the extremely talented lawyers in my team into the Partnership. I'm enormously proud of our largely home-grown, diverse, committed and fiercely intelligent team. Each of the Partners in my team either trained at Mishcon or arrived (as I did) as a junior lawyer, and built their practices here. Reputation and Crisis work speaks to clients from all geographies and industries, and our practice is agile and responsive to new technologies and situations. There is infinite scope to grow provided we remain relevant, curious, and ambitious for ourselves and our clients.

Q What Cause Are You Passionate About?

A I have always been really motivated by fairness – whether it relates to access to justice, fairness of opportunities in life, or even fairness when splitting a biscuit – the middle child in me cannot cope when things are not fair. Whether I am using my skills and position to support and serve the LGBTQIA+ community, or championing social mobility, it all comes down to fairness for me.

Q What Does The Perfect Weekend Look Like?

A I love to keep busy, and generally arrange a mix of activities – generally seeing family and friends, taking my kids on adventures, feeding people... I'm happiest when I'm hosting, and feeding people!

Q What Has Been The Best Piece Of Advice You Have Been Given In Your Career?

A Don't look sideways; focus on your own race. Celebrate your achievements, and focus on what is right for you.
The worlds of business and law are not yet a level playing field, as many still join the race from the middle, and are supported as they run. We must continue to work to ensure that those who come behind us have true equity of opportunity.

Q What Is The Best Film Of All Time?

A In my formative years I was obsessed with Shawshank Redemption, and the notion of a man falsely imprisoned for a crime he didn't commit. Again, it all came back to countering injustice, and being motivated to move the needle on that. I remember writing out the quote "Get busy living, or get busy dying."

Q What Do You See As The Most Rewarding Thing About Your Job?

A Standing up to adversaries, and protecting clients when they are vulnerable. Reputation and Crisis work brings you inside the trusted circles of distinguished business leaders, eminent global families, impressive organisations and a diverse range of private individuals, generally when they are in the eye of the storm, often having their privacy intruded upon or being scrutinized or maligned for the first time. It is intellectually and emotionally taxing, but it is a privilege and an honour to be chosen by clients in their hour of need.

Q How Do You Deal With Stress In Your Work Life?

A By moving my body: I love bootcamp, and boxing and weight training with my PT.

Q What Is One Important Skill That You Think Everyone Should Have?

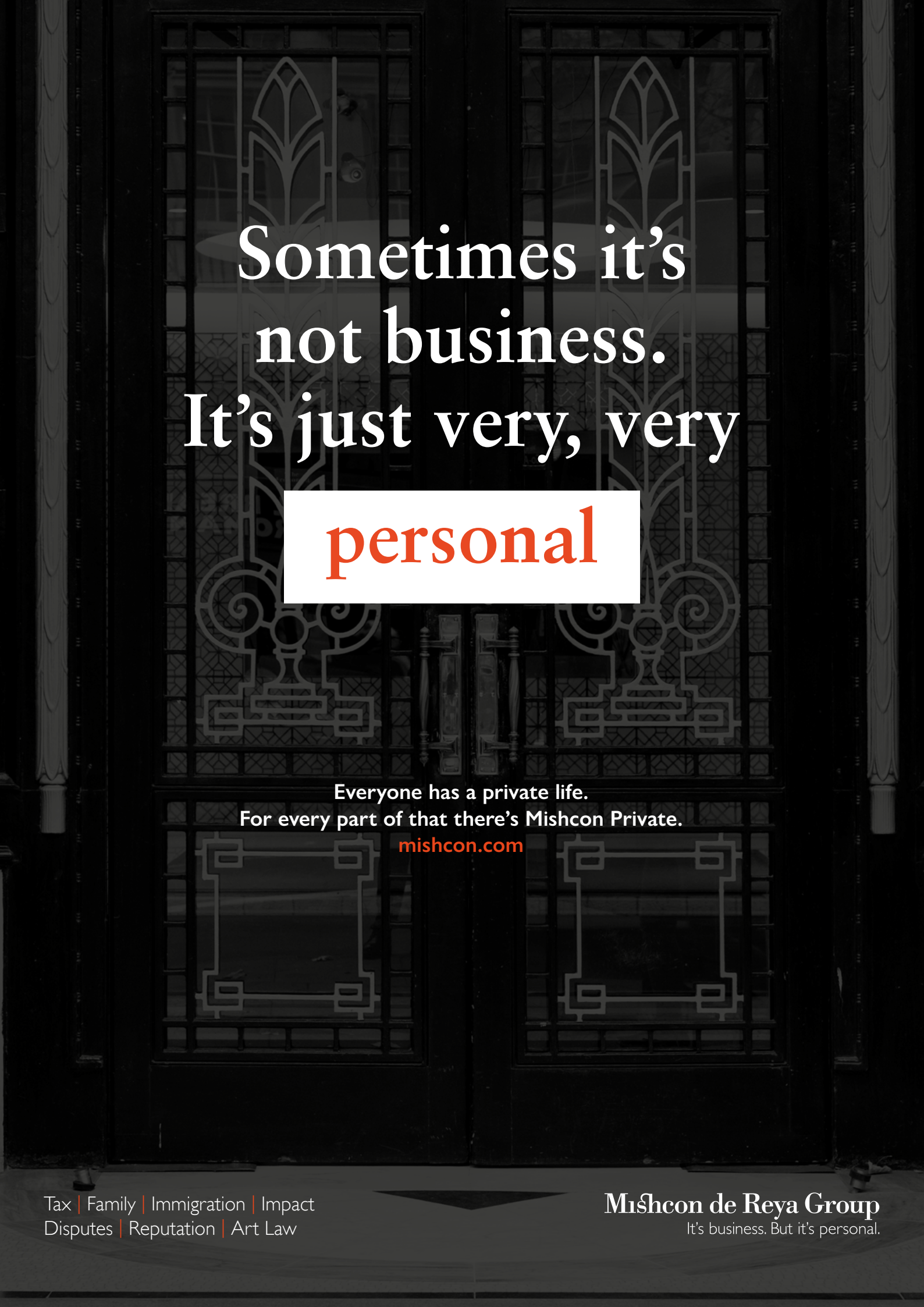
A Keeping a sense of perspective.

Q What Book Do You Think?

A Everyone should read, and why?

Q What's Your Go To Relaxing?

A Activities to destress after a long day at work?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BEYOND THE TRUST

EXPLORING ALTERNATIVE OFFSHORE STRUCTURES FOR THE MODERN PRIVATE CLIENT

Authored by: Kerrie Le Tissier (Country Head - Guernsey) - Highvern

Introduction: The Evolving Landscape of Offshore Structures

For decades, trusts have been the 'go to' solution for offshore wealth structuring. Their appeal lies in their flexibility, legal robustness, and the confidence they inspire - particularly when established in well-regulated, politically stable jurisdictions like Guernsey and Jersey. These jurisdictions not only offer robust and tried-and-tested legislative frameworks but are also home to highly experienced professional fiduciaries.

Trusts are widely recognised and understood by both onshore and offshore advisers, making them a familiar and reliable choice for private clients around the world.

However, in an era of increasing transparency, regulatory scrutiny, and evolving client expectations, the traditional discretionary trust is not always the best solution for offshore wealth structuring. It now shares the stage with a growing cast of alternative structures, each offering unique advantages in terms of control, governance, and purpose.

From foundations and purpose trusts to personal investment companies, private trust companies and private investment funds, these alternative structures are reshaping the offshore landscape. This article explores their rise, their relevance, and the role jurisdictions like Guernsey play in enabling their use.

Drivers of Change in the Private Client Space

The private client world is evolving rapidly, driven by a growing demand for greater control over wealth structures, heightened expectations around transparency, and an increasingly complex web of global regulatory compliance.

The modern private client is usually a business owner, an entrepreneur or an experienced investor, and so financially literate, and wants to be actively engaged in managing their wealth. Many clients are no longer content with arrangements managed by third parties at arm's length but instead want to be actively involved in decision-making. They also want structures that are agile and can keep pace with changing family dynamics and geopolitical shifts, and responsive to new investment opportunities.

At the same time, clients are increasingly aware of the move to global tax and reporting regimes (e.g. CRS,

FATCA, BEPS) and conscious of the risks of being seen to be too removed from their structures. Where they want to retain a degree of control, one of the alternative structures discussed in this article may feel like a safer, more transparent position for them.

Finally, the rise of next-generation clients, new wealth creators and ESG-conscious wealth holders is seeing a shift in values where direct control may appeal to clients who want to ensure that their wealth aligns with those values.

Limitations of the Traditional Discretionary Family Trust

Trusts need to be managed and administered within the strict parameters of the relevant legal regime.

The trustee, who holds the trust assets for the benefit of the beneficiaries, must act in accordance with the terms of the trust, the relevant trust legislation and their fiduciary duties. The trustee must act prudently and is under a duty to preserve and enhance the value of the trust fund. Failure to comply with the letter of the trust instrument or the legislation, or any action or inaction outside the strict confines of fiduciary duty, is a breach of trust and can have severe consequences for a trustee.

When settlors or their families wish to retain control - such as directing investments or influencing distributions - the trust must be carefully structured to remain effective and legally sound. These control preferences can clash with the trustee's duties, particularly where high-risk assets (like cryptocurrency) are involved or where discretion is expected to rest with others. Most offshore jurisdictions do allow for reserved powers trusts which can meet some of those requirements when carefully structured, but they do have limitations and there is a risk of the trust being a 'sham' where extensive powers are reserved. Where a significant amount of control is required, an alternative structure may be more appropriate.

For these reasons, private clients are increasingly looking beyond traditional trusts to alternative structures that offer adequate control, flexibility and protection.

Overview of Alternative Structures

- ### Foundation

Key features: Historically a civil law concept, Guernsey and Jersey now offer foundations under their own laws. Foundations are legal entities with no shareholders, set up for a specific purpose or purposes (which could be to benefit beneficiaries and/or to hold certain assets), and managed by a council.

Benefits: Foundations offer a clear separation between the founder and the assets, and as they are legal entities rather than a 'legal arrangement' like a trust, they are able to hold assets and contract on their own behalf. Where there are beneficiaries, they have more limited rights than with a trust structure.

Uses: They are often attractive to those from a civil law background, as they feel more familiar than a trust, or where an orphaned structure is preferred to a company. They have both philanthropic and dynastic uses, and are ideal for those wanting a more corporate-style governance model.

- ### Personal Investment Company (PIC) or Family Investment Company (FIC):

Key features: A PIC (or FIC) is a company set up to hold and manage an individual's (or a family's) investments, usually with the individual or family members as directors. A professional corporate services provider is often appointed to administer the company and ensure its good standing, leaving the directors to focus on the management of the investments.

Benefits: PICs/FICs are an attractive option for many clients due to their simplicity and transparency, enabling them to retain control whilst benefiting from privacy, flexibility in asset management and potential tax benefits.

Uses: They are often used where clients have quite straightforward requirements to hold assets (often investment portfolios) through an investment vehicle for their own benefit.

- ### Private Trust Company (PTC) or Private Trust Foundation (PTF):

Key features: PTCs are a bespoke solution where a company – usually owned by the family or more commonly by a purpose trust – acts as trustee for one or more family trusts. (A PTF is an alternative, orphaned structure which might be more appealing for some clients.)

Benefits: The settlor can retain control either by sitting on the board of the PTC themselves, or by determining the board composition. PTCs allow the family to retain influence over trust decisions through board participation, without compromising the trustee's fiduciary duties. They are usually subject to 'light touch' regulation, e.g. in Guernsey where PTC's can apply for an exemption from licensing where they meet certain criteria (such as not offering services to the public and being administered by a regulated fiduciary business).

Uses: PTCs are typically most suitable for families with complex, multi-generational wealth planning needs who want to institutionalise governance.

- ### Purpose Trusts:

Key features: An alternative trust structure to the more familiar and traditional discretionary trust, a purpose trust can be set up for a specific purpose – charitable or non-charitable – rather than for the benefit of beneficiaries. An enforcer needs to be appointed where the purposes are non-charitable.

Benefits: Purpose trusts are quite simple structures and highly versatile, so the purposes can be tailored to the client's unique and specific requirements. The risk of liability for trustees is reduced with no beneficiaries having potential claims against the trustee, and minimal discretion or risk for the trustee when acting in accordance with the purpose.

Uses: The purpose could include benefitting certain individuals, but more typically it would be to hold shares in a family business or a PTC, to hold certain types of assets (e.g. luxury assets or intellectual property rights).

- ## Private Funds:

Key features: Private funds are useful vehicles for pooling and managing family wealth, providing investment flexibility and a level of control where family members are appointed to the board or as investment advisers, or in setting the investment objectives of the fund.

Benefits: They are usually subject to 'light touch' and proportionate regulation due to them not being offered to the public, e.g. in Guernsey under the Private Investment Funds (PIF regime) which allows for the registration of Family PIFs where all investors must share a family relationship or be an eligible employee of the family (e.g. a senior executive in their family office). They can be set up quickly in response to investment opportunities and customised to suit the family's unique investment strategy and risk appetite.

Uses: Private funds are used by high-net-worth families and family offices to consolidate family wealth and implement long-term, shared investment strategies across generations.

- ## Hybrid structures:

Key features: Some clients are now combining elements of trusts, foundations, and corporate entities to create multi-layered structures that balance control, privacy, and asset protection, whilst ensuring good governance.

Benefits: These types of structures can be tailored to meet tax, regulatory, and succession planning needs across multiple jurisdictions, taking into account the differing needs and circumstances of family members.

Uses: As they are so bespoke and typically relatively expensive to run, they are generally set up by ultra-high-net-worth individuals with significant assets, global footprints and complex family dynamics.

Conclusion: The Future of Offshore Structuring

As the private client world continues to evolve, so too must the structures that are used for holding private wealth. The growing demand for control, transparency, and high regulatory standards is reshaping how wealth is preserved, managed, and passed on. While traditional trusts still have their place, they are no longer the default solution for every client or every circumstance.

In this era of change, bespoke structuring is essential. No two families are alike, and neither are their needs, values, or risk profiles. Whether through private trust companies, foundations, investment funds, or hybrid models, the key lies in designing and implementing solutions that are not only technically sound but also aligned with the client's long-term vision.

Crucially, the expertise of professional advisors and professional and experienced fiduciary service providers is more important than ever. Their guidance ensures that structures are not only compliant and efficient but also resilient - capable of adapting to change while safeguarding the client's legacy.

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RECOVERING COSTS IN OFFSHORE LITIGATION

HOW TO RECOVER YOUR FEES AS AN ONSHORE LAWYER IN HOSTILE OFFSHORE LITIGATION

Authored by: Rosie Sells (Senior Associate) - Payne Hicks Beach

"[The parties] are, of course, entitled to instruct whomever they wish, external lawyer or otherwise, to assist them in their conduct of their cases and their affairs, but if this goes beyond adequate legal representation and advice obtainable locally, then it is a luxury, for which their opponents cannot reasonably be required to indemnify them."

Lieutenant Bailiff of the Royal Court of Guernsey, Hazel Marshall KC, BX v T Limited and AX and JX and CX and OX and PX and QX [2024] GRC066 (27 September 2024)

Introduction

Trust disputes are increasing in volume and complexity, and an offshoot of that is an increase in costs and disputes over costs – who should pay them, where should they be paid from, and on what basis.

A theme which has been coming up in recent judgments and could be seen as somewhat divisive is whether in offshore proceedings the costs of foreign lawyers should be recovered from the unsuccessful party, or whether foreign lawyers are a "luxury".

By foreign lawyers, what this article is referring to in this context, and in many cases involving trust disputes, is the costs of English (or London) lawyers.

Many will be familiar with the make-up of an international trust dispute – an individual amasses vast wealth, perhaps in their country of origin; that individual protects the wealth for future generations in offshore trusts; those beneficiaries of the second and even the third generation will, more often than not, live and work in the UK, or US, and retain private wealth advisers in England; over many years of providing advice those English lawyers develop a deep understanding of the origin of trusts, the family dynamics, and the businesses held within the trusts; but when trust disputes arise these are naturally dealt with in the jurisdiction of the offshore trust.

As a consequence, the question arises: should the English lawyers, who invariably play a fundamental role in the litigation, be able to recover their fees from the unsuccessful party?

While the answer might depend on whether it is put to an English lawyer, or an offshore lawyer, it will also depend very much on which offshore lawyer is giving the answer.

Each offshore jurisdiction has developed its own regime on the matter, but on the whole there seems to be a general trend towards a more protectionist stance for the preservation of the local legal profession.

Is this part of a wider global trend towards nationalism and de-globalisation, or an inevitable reaction to the way that offshore litigation has been conducted?

Overview of Jurisdictions

A brief introduction to the different approaches of some offshore jurisdictions is as follows:

In the BVI, it is an offence to perform the functions of a legal practitioner unless that person has been admitted to practice there. Anyone not admitted to the Roll is also not entitled to recover their fees.

The position in Cayman is slightly less restrictive. The general rule is still that the costs of foreign lawyers can't be recovered, but foreign lawyers can be temporarily admitted as attorneys in Cayman, and there are three other exceptions. These are:

(i) expert evidence on foreign law issues,

(ii) where costs are granted on the indemnity basis, and

(iii) where the Cayman Court grants a dispensation. An example of this was the Grand Court decision of In the Matter of Grand State Investments Limited (FSD 11/2021, Parker J, 17 March 2023) where it was held that costs incurred by lawyers in Hong Kong and China were allowed to be recovered in the context of a winding up petition.

As a general note, the position in Cayman (and other offshore jurisdictions) is not that costs incurred by foreign lawyers are improper, but simply that they are uneconomic as there could be duplication and extra costs which is contrary to the general limitations on costs recovery.

In Guernsey, again, the starting point is that only the costs of Guernsey Advocates are recoverable. Certain exceptions have been recognised in case law, although these are getting more restricted, and this article delves into further detail below.

The Royal Court in Jersey is more accommodating generally in respect of recovery of foreign lawyers' fees, particularly for large scale litigation, but the fees recoverable will generally be pegged to the local Jersey rate rather than recovered at London rates.

In Bermuda, there are no rules limiting the recoverability of foreign lawyers' fees.

Recoverability Of External Lawyers' Fees In Offshore Jurisdictions

BVI: must be admitted to practice, or fees recoverable for expert evidence on foreign law only

CAYMAN: can be temporarily admitted, (i) expert evidence on foreign law issues, (ii) costs granted on the indemnity basis, (iii) Cayman Court grants a dispensation.

GUERNSEY: only costs of Guernsey advocates are recoverable, subject to certain circumstances

JERSEY: more accommodating but will cap fees at local Jersey rates

BERMUDA: no rules limiting the recovery of foreign lawyers' fees, recoverable where necessary and proper for the attainment of justice.

How To Recover Your Fees As An Onshore Lawyer In Hostile Offshore Litigation

Examining the case of BX v T Limited and AX and JX and CX and OX and PX and QX [2024] GRC066 (27 September 2024).

A referred to above, on this subject the position in Guernsey is particularly nuanced, especially following the decision in BX v T Limited [2024]. This case, and a couple of other recent decisions have really narrowed the scope for English lawyers to argue for their fees.

While the focus in this article is on Guernsey, these decisions will be of persuasive value in the Channel Islands as a whole, and elsewhere to a degree.

The case of BX v T Limited [2024] concerned applications for disclosure of trust information by potential future beneficiaries of the trust. The wider, international context was that the trust was a Bahamian trust, settled by an individual whose will was being administered in Jamaica.

The applications themselves were dismissed and in the subsequent costs judgment, the judge considered whether the costs of the successful party's English lawyers should be recoverable.

The starting point for this question in Guernsey, is the case of Ladbrokes plc v Galaxy International Ltd (Guernsey Judgment 11/2009). This judgment identified five examples of when it could be reasonable for a costs order to include, as proper disbursements, recovery of foreign lawyers' costs. These are summarised as follows:

(i) a need for specialist expertise not available in Guernsey;

(ii) continuity of material knowledge, from external lawyers already well immersed in and acquainted with the detail of material facts;

(iii) a need for research into foreign law not readily able to be carried out in Guernsey, for substantive purposes;

(iv) efficiency by obtaining the "very best" legal advice in a complex case; and

(v) obtaining practical resources (in particular voluminous documents management) unavailable in Guernsey.

A great deal has changed since 2008, especially in terms of the development of the internet, and the availability of research tools and materials in other jurisdictions. This was recognised in the recent Guernsey Court of Appeal

decisions of CRGF GP Ltd v Fonds Rusnano Capital SA [2023] GCA064 ("Rusnano") and Re the M Trusts [2023] GCA085, especially with regard to examples (i) and (iii) above.

In Rusnano, the Court of Appeal stated that to the extent it helps determine Guernsey law, Guernsey Advocates should be capable of conducting research into English law themselves.

In Re the M Trusts, the Court of Appeal held that just because a point was a novel one in Guernsey law that did not justify resorting to English counsel for advice, and stated that it would only be a very exceptional circumstances that a Guernsey Advocate would be insufficiently qualified to advise.

Points To Note

In light of these decisions, how might English lawyers seek to recover their costs from the other side in hostile offshore proceedings?

First, provided it is the case, they might argue that they were providing specialist expertise on matters of foreign law.

As above, the scope for this argument has really narrowed in recent years, and in reality it is now only likely to be justified where there are material issues of foreign law in the proceedings, rather than novel points of local law. In Rusnano only the costs for advice on service in a foreign jurisdiction were allowed, and even then only at the rate of Guernsey advocates.

Second, there is the argument for continuity and efficiency.

One might think that this is where English lawyers could set up their stall, by arguing that their historic knowledge and longstanding relationships with the clients enable continuity and efficiency, and ultimately result in a cost saving. However, in Rusnano – where there was a handover between local counsel – the English counsel's fees were only allowed insofar as they effected the literal handover of the matter from one set of local counsel to another, and even then were only recoverable at Guernsey rates.

Briefly on the argument of practicality, in Re the M Trusts, English solicitors were allowed their fees for assisting with compliance of a production order. They held the documents in the first place and had better resources to give effect to the order. Their costs were allowed but again only at the rate payable in Guernsey.

It is also worth bearing in mind the subject of rates. As noted already, some recent decisions have capped the recoverability of English lawyers' costs to the maximum rate available in Guernsey.

Albeit, in BX v T Limited [2024], the judge considered a different approach. Obiter, it was her view that foreign lawyers' costs are governed by their local market and if it is reasonable to engage foreign lawyers at all then its reasonable costs should depend on the local rates for such work.

While this may superficially seem like a positive result for the London lawyer, by acknowledging that a different rate should apply to the costs of foreign lawyers, it might be construed that the judge in this decision is drawing an even clearer distinction between the local offshore legal work on the one hand and the specialist ad hoc advice foreign law advice which is very much the exception.

It seems also that context is key. BX v T Limited [2024] concerned a discrete disclosure application and the judge drew a distinction between these applications, which she described as "collateral and peripheral" to proceedings in other jurisdictions, and "large scale commercial litigation" where the involvement of English lawyers is considered standard. Although of course this now leaves a bit of a gap in guidance where large scale matters are concerned.

On a similar note, being able to prove an intrinsic connection to England is also helpful. That said, this was not something that they were able to achieve in BX v T Limited [2024].

It was submitted in that case that the connection to England was that the beneficiaries' legal affairs were organised on a "hub and spoke" basis with English lawyers being central to the proceedings in all the relevant jurisdictions. But the judge dismissed this argument and noted that there didn't appear to be any element of specialism in the situation at all.

Finally, it is important to note that English lawyers' costs will not be recoverable just because the other side instructed English lawyers as well.

Concluding Remarks

The BX v T Limited [2024] costs judgment has gained attention for its particularly restrictive approach to the recoverability of English lawyers' fees, and the judge acknowledged that the decision might be considered unreasonable to those involved in large scale commercial disputes.

Given those remarks, perhaps the main takeaway from this recent case is for English lawyers to really think about the value they are adding to offshore proceedings and to carefully manage their clients' expectations as to what could be recoverable even if they win.

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Q What Is One Work Related Goal You Would Like To Achieve In The Next Five Years?

A I'd like to develop the BVI contentious offering in the way that we achieved with Guernsey, identifying great talent and helping them become future stars

Q What Cause Are You Passionate About?

A Similar to the above, helping people achieve their potential is incredibly rewarding

Q What Does The Perfect Weekend Look Like?

A Probably some paddleboarding or gardening followed up by a lazy BBQ in the sun with family and friends

Q What Has Been The Best Piece Of Advice You Have Been Given In Your Career?

A When approaching a complex task break it down into the most number of steps possible – its a thought exercise I was taught when a trainee and I still use all the time

Q What Is The Best Film Of All Time?

A Very difficult – but given that I still watch The Muppets Christmas Carol with my now (nearly) grown up daughters on the sofa every Christmas I'd have to go with that

Q What Do You See As The Most Rewarding Thing About Your Job?

A When you are part of a cohesive team (offshore lawyers, onshore solicitors, barristers and experts) all working together and problem solving to deliver a 'High 5' moment its difficult to beat

Q How Do You Deal With Stress In Your Work Life?

A Talking about it, luckily I work with some great partners who are more than happy to take time out of what they are doing to bounce ideas around and offer perspective.

Q What Is One Important Skill That You Think Everyone Should Have?

A The ability to listen

Q What Book Do You Think Everyone Should Read, And Why?

A Is it a cop out to say whatever book they're interested in? I am not sure my life has been changed by one book but I have no doubt it has been changed by reading all the books I have done

Q What'S Your Go To Relaxing Activities To Destress After A Long Day At Work?

A Climbing – indoor in the winter or over deep-water on the Guernsey coast if I can in the summer – I started when my daughters got into it and found that you really need to concentrate on the rock face otherwise you're off, it's a very good way of forcing you to not think about anything else at that moment

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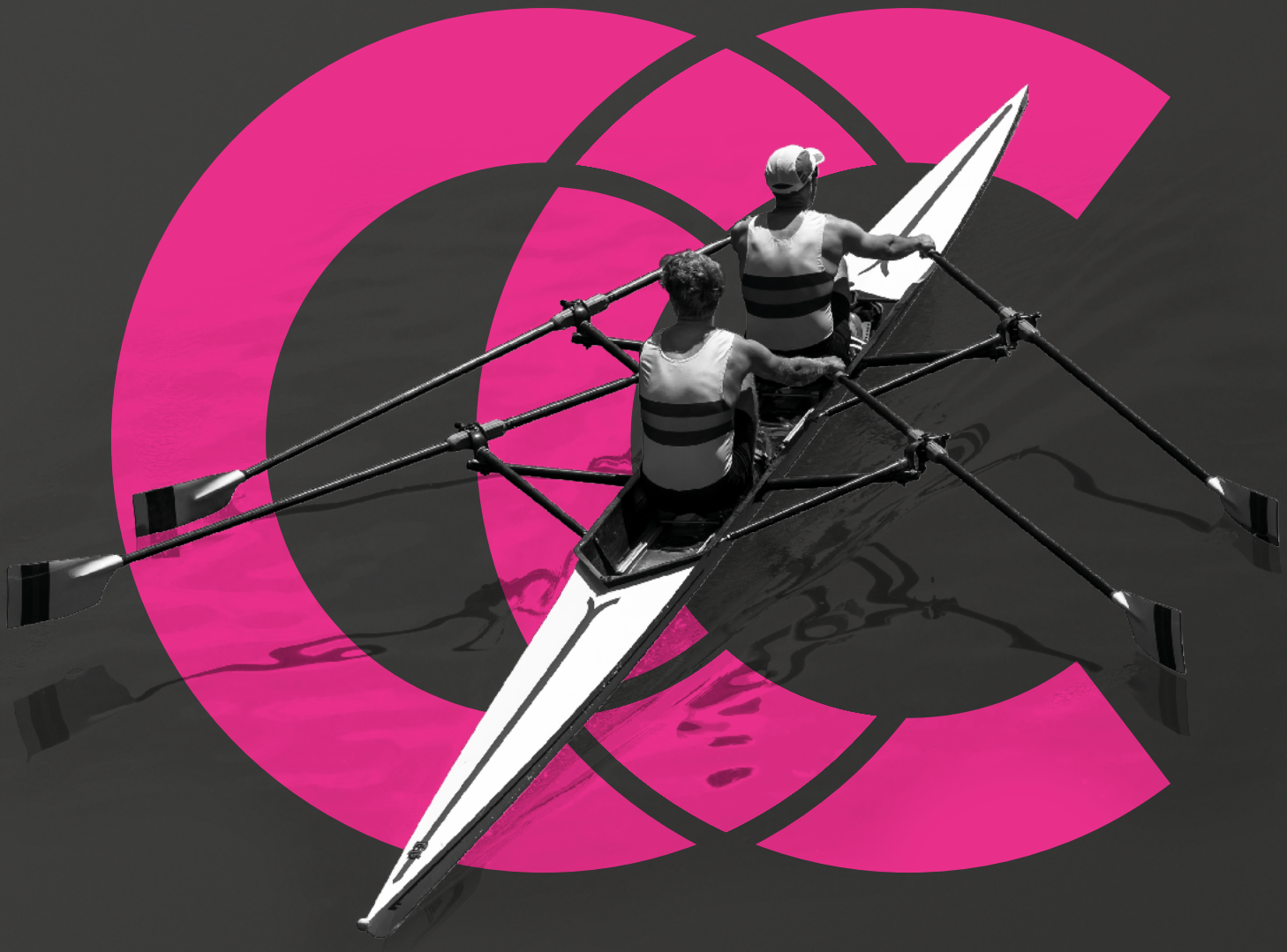

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FIRESIDE CHAT
WITH JANICE CALLANDER

MAKING SENSE OF MATURITY

Authored by: Janice Callander (Director, Private Wealth) - IQ-EQ & Rachael Mowle (Director, Private Client) - TL4

Rachael Mowle: Janice, thank you for sitting down with me. I'd love to start with something that clearly inspires you. You've drawn a beautiful analogy between gardening and your professional journey. Could you share what sparked that connection?

Janice Callander: Thank you, it's a pleasure to be here. The analogy came to me quite naturally. I was sitting in a mature garden recently, just observing. It struck me how a gardener's vision takes 20 years, sometimes more, to fully come into its own. The trees, the structural elements, they need time to grow, to settle, to mature. And I was struck by the analogy with my career. What began in the early 2000s has grown in step with the maturation of both the fiduciary profession and the jurisdiction I call home.

Rachael Mowle: You're based in Jersey. How has the island's evolution mirrored your own journey?

Janice Callander: Jersey had already achieved a level of maturity when I started. It had a well-established legal foundation, which gave our clients a real sense of certainty. My father's generation witnessed a massive economic transformation, from agriculture and tourism to banking and fiduciary services. But that change, from the late '60s through the '90s, was gradual.

Rachael Mowle: So the foundations were there, but the more dynamic changes came later?

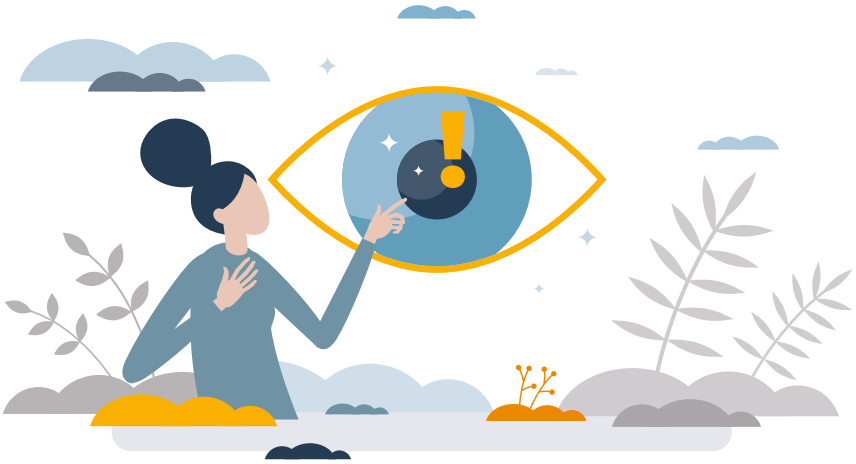
Janice Callander: Exactly. The past 30 years have introduced a burst of colour, if you will. Regulatory shifts, technological advancement, globalisation, they've all played their part in reshaping the landscape. International finance centres like Jersey continue to draw in global wealth, but today it's not just about favourable tax regimes or confidentiality. It's about robust infrastructure, legal certainty, and, crucially, adaptability.

Rachael Mowle: You mention a "flight to quality." Can you elaborate on what that means in this context?

Janice Callander: Yes, I think we've seen a real divergence between jurisdictions. Those that struck the right balance between innovation and regulatory compliance have thrived. They're attracting both generational wealth and new money. What these families have in common is a long-term vision; they're thinking beyond their own lifetimes.

Rachael Mowle: Succession seems to be a theme that runs through your thinking.

Janice Callander: It is. Successful succession is a critical barometer for modern wealth management. Whether wealth was earned or inherited, today's families understand the importance of responsible structuring. The goal isn't just protection, it's sustainability and purpose. That's a big shift from



a model that once focused mainly on passive asset management and benefit distribution.

Rachael Mowle: Has that shift changed the role of the fiduciary?

Janice Callander: Significantly. We're no longer just administrators or gatekeepers. Today's fiduciaries are often custodians of family businesses, advisors on philanthropy, even stewards of specialist luxury assets or private collections. We help shape governance structures, advise on reputation and brand management, and support clients in defining their legacy.

Rachael Mowle: That sounds more like a boardroom role than a back-office one.

Janice Callander: In many ways, yes. The fiduciary role has become more like that of a non-executive director. We bring impartiality and experience, yes, but also strategic thinking. Families look to us for help in identifying future leaders, maintaining cultural cohesion, and making disciplined decisions in line with a shared vision.

Rachael Mowle: You've had over 20 years in this space. What does that kind of longevity bring to the table?

Janice Callander: Perspective. Those of us who've been in this field for decades have witnessed both continuity and reinvention. We've worked within legal frameworks that inspire confidence and adapted to changes in family dynamics, values, and societal expectations. It's a delicate balance, honouring tradition while embracing innovation.

Rachael Mowle: Finally, let's return to your gardening metaphor. If your forebears were the ones who planted the trees, what role do you and your peers play?

Janice Callander: They were the structural engineers, no question, they built the strong, deep-rooted frameworks. My generation, I think, has added colour. We've expanded the palette, bringing new ideas, values, and tools to the table. The wealth world may be mature, but like a great garden, it never stops evolving. The job is to preserve its harmony while allowing new growth to flourish.

Rachael Mowle: Janice, that's a wonderful note to end on. Thank you so much for your insights, it's been a real pleasure.

Janice Callander: Thank you. It's been a joy to reflect and share.

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HOW PRIVATE CLIENTS ARE INCREASINGLY USING JERSEY PRIVATE FUND STRUCTURES FOR INVESTMENT

Authored by: Charlotte Blampied (Head of Funds) & Daniel Channing (Group Head of Private Clients Services) - Whitmill Trust Company Limited

Charlotte Blampied, Head of Funds and Daniel Channing, Group Head of Private Clients Services discuss how ultra-high-net-worth private clients are becoming more sophisticated in how they manage and invest capital. As private wealth strategies change, many clients are looking beyond traditional structures to find investment vehicles that offer flexibility, control, and efficiency for private capital investment.

The Jersey Private Fund ("JPF") structure is gaining popularity amongst a variety of clients and investors. In this article we focus particularly on two:

- The Business Owner and Entrepreneur
- The Friends & Family Collective

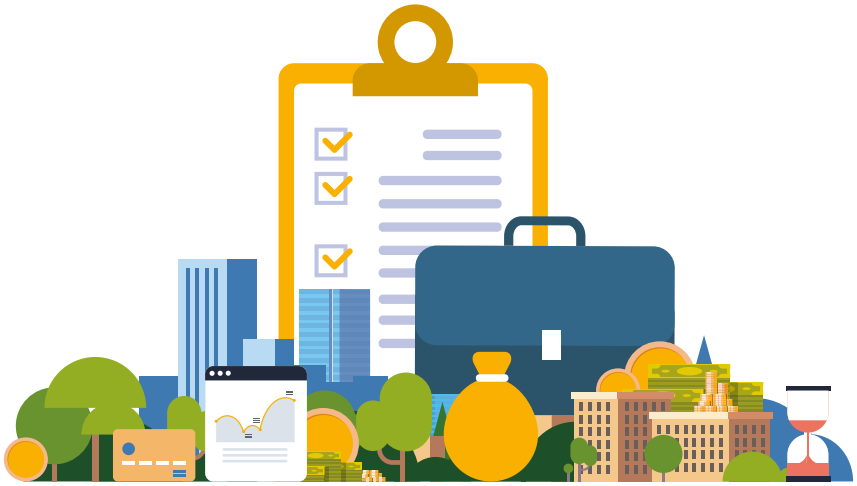
The Business Owner and Entrepreneur

Successful entrepreneurs and business owners are increasingly seeking to further leverage their expertise and network for investment gain. This is combined with the ability to allocate an element of profit derived from their businesses (or business exits) to fund these investment opportunities.

These individuals often have a strong network, access to deal flow, and a desire to reinvest capital into private opportunities. What is changing however, is that these entrepreneurs are seeking to co-invest alongside others by inviting family offices, peers, or private investors to join them in select investment opportunities.

The Primary Benefits of a JPF for This Type of Collective Investment Can Be:

1. **Speed and efficiency:** JPFs can typically be established within 48 hours (after incorporation of the vehicle itself) allowing entrepreneurs to move quickly on time sensitive opportunities.
2. **JPFs operate under a specific simplified regulatory regime** providing the right balance between investor protection and ease of operation.
3. **Tailored governance:** The entrepreneur and investors can easily define and agree bespoke terms, including capital commitment, exit mechanisms, voting rights, and decision-making processes.
4. **Bespoke profit share:** JPFs can support a carried interest or performance fee structure, rewarding the entrepreneur in a transparent and agreed way with the other investors.
5. **Reputation:** JPFs continue to hold multijurisdictional recognition as a legitimate investment vehicle adding credibility and clarity to the investor group; something particularly important when attracting outside capital.



The Friends & Family Collective

Concurrent to the former example, families or close friends are increasingly seeking to co-invest together in a more defined and structured manner. One family may identify an investment opportunity, for example, a boutique property development, or an interest in a private business but would prefer not to deploy all of the required capital to fund this. Instead, that family may wish to turn to a select group of co-investors to co-fund the opportunity alongside them.

The Primary Benefits of a JPF for This Type of Collective Investment Can Be:

1. **Shared ownership and control:** Each party can appoint a representative to the board of the JPF, creating a clearly set out and often balanced decision-making framework. This can also include the option to incorporate professional board members for added neutrality and professionalism. This defined decision-making structure allows each family to feel that they have adequate and appropriate influence and authority over their investment.
2. **Exit planning:** Terms can be clearly established around liquidity, buy-outs, or partial exits, giving families clarity on how interests can be transferred, exited, or increased in future.
3. **Transparency and trust:** A formal reporting structure ensures that all parties receive regular and consistent information concerning set metrics including investment performance and activity. This can reinforce alignment and avoiding misunderstanding.

Conclusion

JPFs are particularly well-suited to private clients looking to pool capital for co-investment whether with family, friends, or trusted contacts from their professional networks.

They can be established quickly, are cost-effective to run, and operate under a simplified regulated framework for up to 50 professional or eligible investors. The JPF structure provides a good balance between operational simplicity and investor governance which makes it an attractive solution for those seeking a tailored and robust co-investment structure for a broad range of asset classes.

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ARBITRATING TRUST, ESTATE AND FOUNDATION DISPUTES

A NEW CHAPTER WITH THE SWISS ARBITRATION CENTRE'S TEF RULES

Authored by: Benjamin Gottlieb (Partner), Guillaume Grisel (Partner), Sophia Deuchert (Senior Associate) & Livio Kaspar (Associate) - Schellenberg Wittmer

The Rise of Arbitration in Private Wealth Disputes

Arbitration is a private form of dispute resolution in which parties agree to submit their dispute to an arbitral tribunal, whose decision is binding and internationally enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Traditionally the preferred method for resolving commercial disputes, arbitration is gaining traction in private wealth matters, particularly those involving trusts, estates and foundations.

Families, fiduciaries and beneficiaries increasingly turn to arbitration to resolve their most personal disputes discreetly and efficiently.

This shift is driven by increasingly global family structures, cross-border estate planning and the need for confidentiality, flexibility and speedy procedures. Parties involved in private wealth disputes are turning to arbitration to resolve their disputes outside of public courtrooms, often in highly sensitive contexts involving significant assets and diverging interests.

From a dogmatic standpoint, the extension of arbitration into trust, estate and foundations matters is notable. Arbitration agreements are, by nature, consensual: they require mutual agreement between two or more parties. However, many trust and estate structures are based on unilateral legal instruments such as wills, trust deeds or foundation statutes. This raises the fundamental question: can a clause inserted unilaterally by a testator or founder bind heirs or beneficiaries who never expressly agreed to arbitrate?

Swiss law offers a progressive answer. Since 1 January 2021, amendments to the Swiss Civil Procedure Code (CPC) and the Swiss Private International Law Act (PILA) explicitly confirm that arbitration clauses in unilateral legal instruments such as wills, trust deeds and foundation statues are valid under Swiss law, provided that the seat of arbitration is in Switzerland.

By confirming the validity of arbitration clauses in unilateral legal instruments, Swiss law provides welcome certainty for parties involved in private wealth disputes.

Introducing the TEF Rules

The Swiss Arbitration Centre (the Swiss institution that administers arbitration proceedings) identified the growing popularity of arbitration in trusts and estates and recognised the need for specific rules. It therefore just released its Supplemental Swiss Rules for Trust, Estate and Foundation Disputes (TEF Rules) on 22 May 2025. Entering into force on 1 July 2025, the TEF Rules are available in four languages and

come with a multilingual Explanatory Note. They offer a modern and practical framework for resolving private wealth disputes through arbitration, specifically designed to address the specificities and particular complexities of trust, estate and foundation matters.

Families, fiduciaries and beneficiaries now have a tailored arbitration framework to address the unique demands of private wealth disputes.

The TEF Rules will supplement the Swiss Rules of International Arbitration. They will mainly apply in three situations:

1. where an arbitration clause in a unilateral legal instrument refers to the Swiss Rules of International Arbitration;
2. where an arbitration agreement specifically refers to the TEF Rules or their predecessor rules; or
3. where parties expressly agree to arbitrate under the TEF Rules.

The rules cover the notification and representation of all persons whose rights may be affected by the dispute ("Entitled Persons"), the constitution of the arbitral tribunal, and the applicable substantive law in estate matters. Very importantly, parties are required to identify and notify all Entitled Persons, including unborn or incapacitated individuals, and to ensure their interests are properly represented. The rules also allow Entitled Persons to comment on the appointment of arbitrators, and the Arbitration Court of the Swiss Arbitration Centre may appoint some or all tribunal members where not all are represented.

One critical issue is the interplay between the TEF Rules and the revised PILA provisions on cross-border estates. The applicable conflict of law regime will always need to be taken into account. In this regard, a distinction must be made between estate matters and trust matters:

- In estate matters, the TEF Rules clarify that the applicable substantive law is determined by the conflict of law rules, reflecting the mandatory nature of many estate law provisions and the restriction of party autonomy in estate disputes. The relevant connecting factor may differ depending on the applicable legal regime. For example, under the EU Succession Regulation, the relevant factor is the decedent's last habitual residence, and in some jurisdictions, parties may be able to opt for their national law to apply, which may not contain the same mandatory provisions as the law of the last residence.
- For trust and foundation disputes, parties are free to agree on the law applicable to any dispute in relation to the trust or the foundation. In the absence of such a choice of law, the arbitral tribunal applies the rules of law with which the dispute has the closest connection, such as, for example, the law governing the trust or the foundation.

It is also important to note that, although the TEF Rules provide for the representation of all Entitled Persons and are designed to enhance the enforceability of arbitral awards, a careful assessment is still required as to whether such awards will be enforceable in the relevant jurisdictions. In particular, the so-called "firewall" provisions found in many offshore trust jurisdictions may pose certain obstacles to the enforcement of arbitral awards concerning trusts.

Finally, the TEF Rules are accompanied by model arbitration clauses for inclusion in wills, inheritance contracts, trust deeds and foundation statutes, which help parties draft clear and enforceable arbitration agreements.

Why the TEF Rules Matter

By providing an appropriate framework for the use of arbitration in trust and estate disputes, the TEF Rules bring a number of practical benefits. First, they provide certainty and predictability in cross-border disputes. That will help parties avoid parallel court proceedings and jurisdictional conflicts, which are as common as they are harmful when assets or beneficiaries are located in multiple countries. Second, the ability to tailor proceedings and select arbitrators with relevant expertise means that complex disputes are handled professionally and efficiently. Confidentiality, privacy and discretion is a third important advantage, highly valued by high-net-worth and prominent families. Fourth, and perhaps most importantly, the TEF Rules ensure that all persons affected by a dispute have their interests properly represented.

This may prove crucial not only for the acceptance of any award rendered in the arbitration, but also for any potential enforcement in Switzerland and abroad.

Concluding Remarks

With the TEF Rules soon in force, Switzerland is further cementing its position as a leading venue for resolving private wealth disputes. The rules offer a clear, efficient and confidential process tailored to the needs of families, fiduciaries and beneficiaries, and are expected to encourage greater use of arbitration in trust, estate and foundation matters.

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THE HUMAN ROLE IN TRUST

Authored by: Alice Kay & Eugenie Jones - Saffery Trust Cayman Trust Officers

"AI is coming for wealth management"

Financial Times

"AI is changing the wealth management industry, forever"

Forbes

"AI, wealth management and trust: Could machines replace human advisors?"

World Economic Forum

With headlines like these dominating industry commentary, it is almost impossible for wealth professionals worldwide to ignore the speed at which artificial intelligence is advancing on a traditionally people-first profession.

Alongside this, however, are more cautionary headlines:

"AI revolt: ChatGPT model refuses to shut down when instructed"

The Independent

"Artificial intelligence could lead to the extinction of humanity"

BBC

So where do we stand? Is AI a powerful tool reshaping our industry for the better, or a legitimate threat to our chosen careers, and perhaps even our existence?

Enhancing, Not Replacing

There is no doubt that technology is already transforming private client service. Just last year, for example, we partnered with an AI-driven consolidated reporting platform, a blockchain-based data security provider, and a specialist cryptocurrency accounting firm, enhancing our service offering in ways that would have seemed futuristic only a few short years ago.

Our Transformation Team more than doubled in size in the same year, as the demand for digital innovations and solutions across the firm surpassed expectations. A trend echoed across the world, not just within the wealth industry. Earlier this year, The World Economic Forum's Future Jobs of Jobs Report predicted that AI will both eliminate and create new jobs, to a net gain of 78 million new jobs globally.

While innovation is accelerating, the real challenge for private client service providers is not whether we will be replaced by machines, it's how we use emerging tools responsibly, and ensure the human element remains at the heart of what we do.

The Limits Of Automation

AI excels at tasks that are repetitive and data heavy. In the context of trust and corporate services, that potentially includes onboarding processes, risk screening, and due diligence checks across jurisdictions.

For these types of processes, AI may increase both efficiency and accuracy, however its capabilities are inherently limited. It cannot read between the lines. It cannot anticipate or navigate family dynamics, manage sensitive transitions, or understand a client's unspoken worries.

At their core, trusts are built on relationships – between settlors, beneficiaries, trustees and other advisors. Corporate structures, meanwhile, often hold family businesses, succession plans, or philanthropic ventures that are inherently personal. These are not just procedural checkboxes, but relationships that require care and cultivation.

Emotional Intelligence In Action

This is where emotional intelligence ("EQ") becomes a competitive advantage for service providers who strike the right balance.

Empathy, active listening and cultural sensitivity are far from "soft" skills in the wealth industry, they are essential. Particularly in cross-border structures, where multiple generations, languages, cultures, and legal systems intersect, the ability to understand human nuance is as important as any data entry.

Trustees are often called upon to mediate between family members, interpret the intent behind succession planning, and guide clients through life's most difficult transitions including bereavement, divorce or contentious matters. These moments require discretion, diplomacy, and emotional clarity. AI cannot (or at least not yet) navigate difficult situations with human care and empathy. It cannot balance the legal letter of a trust deed with the emotional element of a Settlor's wishes.

While AI can follow instructions (notwithstanding the recent refusal of ChatGPT to shut down on request), its learning is limited to reading existing patterns, for example in conversation, text, images, or numeric data. It cannot generate original ideas or set itself objectives. Trustees, on the other hand, can think creatively and adapt to complex circumstances and find original solutions.

Additionally, AI cannot offer reassurance during periods of transition, whether those changes stem from internal family dynamics or external pressures such as evolving regulatory landscapes.

Cayman Perpetuity Law

When The Perpetuities (Amendment) Act, 2024 was passed in the Cayman Islands, trustees not only understood the technical implications, but also the real-world impact for their clients in preserving their wealth and legacies.

Trustees set about reviewing their clients' long-term objectives and carefully considered whether the removal of the perpetuity period could better support those goals. They listened, provided guidance, and translated complex legal concepts into practical solutions. Working in partnership with lawyers and other specialist advisors, trustees ensured that those best positioned to benefit from the change were able to do so.

With an interest in how AI may have navigated this challenge, we plugged a simple question into ChatGPT - "Should I remove the perpetuity from my Cayman Island's trust?" - giving no information about this client's hypothetical circumstances.

The response was structured, but problematic. Even suggesting options that could potentially undermine the integrity of the trust. Tellingly however, the AI response ultimately suggested "speak with your trustee and seek professional advice". Even AI defers to human expertise when considering these matters.

AI will undoubtedly continue to evolve and enhance private client services; however, it is essential to use the right technology for the right task. Our (admittedly basic) test demonstrates that while platforms trained to generate human-like responses can support certain functions, they cannot replace personal judgement or experience.

Relying solely on AI-driven responses carries inherent risks, particularly when advice and human guidance are essential.

In our view, service providers should proactively integrate AI into their processes, implementing the right tool at the right time, ensuring that clients benefit from both AI and EQ.

Trust Is Human

While a trust is a legal relationship, it is also an emotional one. A trust structure can be established in a matter of weeks, where trust between clients and their service providers can take years to establish.

Our role is not simply to provide a reactive solution or a piece of information in a moment, as AI might do, it's to offer an enduring partnership that adapts to both proactively identify and respond to changing opportunities and challenges.

While wealth industry processes may become increasingly automated, we believe the most valuable asset we can offer is personal care and attention combined with professional judgment.

No matter how advanced technology becomes, compassion and integrity will remain the foundation of trust globally.

RELOCATION RELOCATION RELOCATION

Authored by: Isobel Holgate (Wealth Planner) - Lombard Odier

"All mankind is divided into three classes: those that are immovable, those that are movable, and those that move."

Benjamin Franklin, founding father of the United States, to whom these words are often (questionably) ascribed, would have been surprised by the number of people who thought they were in the second class or category (or even the first) but who have found themselves disposed more recently towards the third category. Let us be clear, wealthy clients are relocating in unprecedented numbers for a multitude of reasons, whether it be entrepreneurs seeking to explore new business horizons, executives pursuing career opportunities, families looking for lifestyle improvements or the next generation embracing international study programmes or work experience. Political stability, security and the old world order that has prevailed for 80 years seem threatened as never before by recent global events, and this has been unnerving for some individuals who have previously identified firmly with the first category. But this is a trend which is not going away – the next generation identifies global experience and an international outlook as key requirements for success.

The Tax Factor

I am based in London, so I cannot ignore tax as a factor in the recent decision of some wealthy individuals to leave the UK, or to take steps to leave the UK in the near future. There has been a strong reaction from the wealthy international community in London to the abolition of non-domicile tax status in the UK, and some of the business tax changes (especially the planned curtailment of Inheritance Tax relief for business property) have given the entrepreneur community cause for reflection. On the other hand, we have also seen interest in the UK's new FIG regime from wealthy individuals currently living abroad, especially British ex-patriates considering coming back to the UK. It is not all one-way traffic, by any means.

However, I believe it a mistake to assume that tax is the primary consideration for relocation. In my experience, this is rarely the case. It may have been 'the straw that breaks the camel's back', the catalyst, perhaps, for the initial discussion. The desire to relocate is often underpinned by individual motivations centred on improving family lifestyle, enhancing business or career prospects or facilitating children's educational needs.

Some Legal And Tax Pitfalls To Avoid

It is vital to understand the time requirements which have to be satisfied to qualify for tax residence in the destination jurisdiction. Clients often confuse the different rules for tax and immigration regimes and assume that a residence permit will qualify them as a tax resident.

Clients need to ensure that they have allowed the necessary lead time to plan effectively for their relocation. There are many moving parts here. The immigration process to obtain the right to live and work can vary hugely across different countries. The steps required need to be understood and planned in advance so that the desired date for relocation can be achieved and last-minute panic avoided.

Equally important is working out the date on which the client will cease to be resident in the country of departure, which is rarely the date of relocation. If this is the UK, the Statutory Residence Test offers a detailed test in law which should enable clients, with the support of their advisors, to pinpoint the date on which their UK tax residence ceases and understand exactly what they need to do to avoid reacquiring UK tax residence inadvertently.

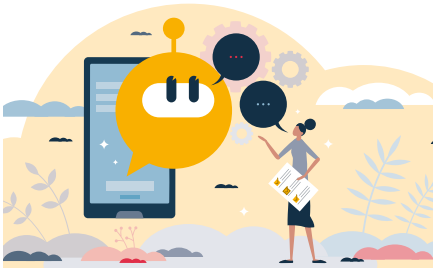
The number of days which a client can continue to spend in the UK post-departure can be influenced by numerous factors, including whether a spouse has remained in the UK, whether minor children continue in education in the UK and how much work the client performs while in the UK. A concise aide memoire on the subject is an essential addition to the client's toolkit.

What Realistic Timelines Should Advisors And Clients Be Working Towards Before A Relocation?

It is well understood that an effective relocation strategy underpins the success of a move. In practice, the planning process should commence at least six months prior to relocation, and possibly longer for certain jurisdictions. This should allow sufficient time for advisors to review clients' asset bases and to implement required changes to the structure of personal and business assets.

A critical element to consider is clients' investments. Clients' wealth should be structured to take account of the prevailing rules and laws in both current and future jurisdictions, since the holdings of direct investments, as well as real estate and asset holding structures (e.g. funds, life insurance wrappers, trusts), are often treated differently from country to country.

Beyond wealth planning, there are significant logistical elements within clients' relocation checklists. Do they intend to purchase or rent a property? If the latter, how will this be funded? For those with families, how long will it take to secure a new school? Will the move be phased as a result?



The Human Factor

The relocation process often involves many advisors. Having an effective planning strategy is key. Private bankers and wealth planners will work closely in collaboration with immigration lawyers, tax advisors and accountants as well as letting or buying agents. In many popular relocation jurisdictions, there are agencies which can provide a concierge service and coordinate all of the client's requirements in the destination country.

But at the heart of any relocation is an individual or a family, and it is not just financial, tax and legal issues which can cause anxiety. The ultimate objective is to ensure that clients can transition comfortably into their new environment. How long will it take to find places for children at new schools? Will my spouse feel at home? Where is the best area to live?

Being able to introduce the client to new networks is likely to reduce apprehension during the settling-in period. Understanding clients' individual circumstances, concerns and needs is critical in supporting clients to make their move a success, especially those adventurous souls who have moved from the 'immovable class' to the 'class that moves'.

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MAXIMISING WEALTH

WITH THE FLEXIBILITY AND PRIVACY OF FAMILY INVESTMENT COMPANIES

Authored by: Kamille Yardley-Scott (Marketing Manager) - Abacus Trust Group

The UKs recent redrafting of tax policy has introduced significant changes, especially in relation to non-domiciled individuals and offshore trusts.

In response, there has been growing interest in exploring the advantages of Family Investment Companies (FICs) incorporated in the Isle of Man but managed and controlled in the UK. The flexibility and privacy they offer is particularly appealing to clients who are familiar and comfortable with corporate structures.

What is a Family Investment Company?

FICs are sophisticated tools for managing and controlling family wealth. It is a company that allows a family to pool financial assets and make strategic investments whilst providing a structure for transferring wealth across generations.

A defining feature of a FIC is its structural flexibility. By issuing different classes of shares, families can design tailored voting rights and income entitlements. This enables founders or senior family members to maintain strategic control while progressively transferring economic ownership to the next generation.

Bespoke articles of association align the company's governance with family objectives. Initial funding can come from share subscriptions, subsequent share issues, or loans, each with various implications for control, tax, and future wealth extraction.

Characteristics:

1. Operational structure

A FIC enables the separation of ownership from control. Founders can retain voting shares, maintaining authority over investment decisions and company strategy, while non-voting shares can be allocated to younger family members. This model facilitates a gradual transfer of wealth and long-term succession planning.

2. Bespoke share structures

Different classes of shares can be issued with distinctive rights, such as income entitlement without voting power, or vice versa. This flexibility helps align ownership, control, and family objectives.

3. Wealth continuity

A FIC provides a long-term framework for intergenerational wealth transfer. Founders retain management control while incrementally distributing shares. This structured approach reduces the risk of disputes and ensures continuity in investment strategy.

4. Asset protection

Assets held within a FIC benefit from a layer of protection, as the corporate form helps shield family wealth from personal legal claims.

5. Oversight & compliance

As a registered company, a FIC must adhere to corporate governance standards and regulatory requirements in the Isle of Man. This promotes transparency, accountability, and disciplined management.

Advantages:

- **Control:** Founders retain control through voting shares, even as economic ownership is gradually transferred.
- **Privacy:** The Isle of Man offers greater privacy than the UK as it does not require public disclosure of financial information in the same way Companies House does.
- **Bespoke:** Share classes can be tailored to distribute income selectively while retaining capital control.
- **Family governance:** FICs can serve as a governance platform, integrating younger family members into decision-making while maintaining oversight by senior members or advisers.
- **Cost efficiency:**
  - ✔ A well-structured FIC incorporated in the Isle of Man but managed and controlled in the UK can offer tax advantages.
  - ✔ A FIC is subject to UK corporation tax on profits, which is generally lower than personal income tax rates.
  - ✔ Dividends received by a FIC are typically exempt from corporation tax. While dividends paid to shareholders are subject to income tax, non-UK resident shareholders should have no UK tax liability.
  - ✔ Interest-free loans to a FIC can be repaid tax-free from profits.
  - ✔ Capital gains with a FIC are charged to corporation tax. On liquidation, shareholders are subject to capital gains tax; however, non-residents are exempt unless the FIC holds UK property.

  - ✔ FICs may be more cost-effective than trusts, as they do not require the appointment of trustees.

FICs vs Trusts

Control & ownership

- **FIC:** Control remains with the founder or senior family members via voting shares.
- **Trust:** Control is vested in the trustee, not the settlor or beneficiaries.

Legal structure

- **FIC:** Assets are owned by the company; family members hold shares.
- **Trust:** Legal ownership is held by a trustee on behalf of beneficiaries.

Jurisdictional recognition

FICs may be more suitable in jurisdictions where trusts are not fully recognised or where clear legal ownership is required.

Tax considerations

Both FICs and trusts can be tax-efficient, but outcomes depend on the family's personal tax position.

Cost & administration

FICs can be less costly to administer, as they do not require fiduciary appointments. Trusts, by contrast, often necessitate professional trustees, incurring higher fees.

Flexibility

FICs offer greater operational flexibility through custom share classes. Trusts, governed by the trust deed, may be harder to amend once established.

Conclusion

FICs present a compelling alternative to traditional trusts, particularly for families who wish to retain control while planning for succession. When structured effectively in a jurisdiction like the Isle of Man, FICs offer tax efficiency, privacy, and strategic flexibility.

However, the choice between a FIC and a trust is highly situational, driven by family dynamics, residency considerations, and long-term goals. Professional legal and tax advice is essential to selecting and structuring the most suitable vehicle for managing and preserving family wealth.

The complexity of these structures necessitates ongoing professional management, and the initial setup involves legal and administrative costs.

Regulatory developments must be closely monitored.

While HMRC's specialised FIC investigation unit was disbanded in 2021, concerns around interest-free loans, share valuations, and future tax changes remain relevant. As such, FICs should be reviewed regularly to ensure they continue to meet family and compliance objectives effectively.

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GUERNSEY'S PRIVATE FUND SECTOR GAINS MOMENTUM

Authored by: Mark Cleary (Deputy Head of Funds - Channel Islands) - ZEDRA

At a time when the global private markets industry continues to navigate economic uncertainty and shifting regulatory landscapes, we have seen a significant surge in private investment fund (PIF) launches in Guernsey.

While known as a premier jurisdiction for private fund vehicles, the recent surge in interest has arisen from family offices and high-net-worth individuals (HNWI) considering Guernsey as a favourable jurisdiction for their investments.

Changing Global Landscape

Globally, private funds have been in the crosshairs of regulatory scrutiny for several years now, whether they have been valuation issues, conflicts of interest or fees and expenses opacity.

Closer to home, the UK has implemented significant changes to their taxation regime, some of which, either directly or indirectly, have impacted the private funds industry e.g. the treatment of carried interest and the overhaul of the long-established non-domicile (non-dom) regime. The latter has resulted in many globally mobile clients and their advisers assessing alternative options for where they choose to live, and how and where they choose to structure their investments. Compounding all the above change is a backdrop of general geopolitical uncertainty, and the resulting imperative for safe, stable and tax-neutral jurisdictions to house investment assets.

As a result, many high-net-worth private clients, family offices and some managers are reassessing where they launch their funds, and are exploring the benefits of jurisdictions such as Guernsey - which offers key advantages such as political stability, tax neutrality, and an investor-friendly environment.

Guernsey's Strategic Advantage

While private fund launches (outside of the big names) have been muted in recent years due, primarily, to the macroeconomic headwinds that impact fundraising and valuations, in Guernsey we have benefited from a reverse effect.

We're seeing this shift first-hand, having successfully launched nine new PIFs in Guernsey over the past six months. The growth is not wholly coincidental, but rather a reflection of Guernsey's enduring appeal to a sophisticated and diverse client base seeking efficient and secure fund solutions best suited to their individual needs.

With its fast, flexible regulatory regime and tax neutrality, Guernsey offers well-established financial services infrastructure and is widely acknowledged across key markets for its compliance with international standards.

Speaking with clients, they are often drawn to Guernsey due to the Island's:

- **Political and economic stability:** As a self-governing British Crown Dependency, Guernsey offers a stable and predictable environment for funds and wealth management.
- **Tax neutrality:** Guernsey does not levy capital gains, inheritance, or wealth taxes, making it an attractive location for structuring investments.

- **Regulatory excellence:** The Guernsey Financial Services Commission (GFSC) is known for its pragmatic and proportionate approach to regulation.
- **Expertise and infrastructure:** Guernsey boasts a deep pool of experienced professionals and a well-developed legal and financial services ecosystem.

The Rise Of Family Relationship PIFs

One of the most notable trends is demand for PIFs from private family offices. These structures are designed specifically for families or closely connected investors who wish to pool capital, manage assets, implement succession planning, and preserve wealth across generations.

Family PIFs offer investors several key advantages:

- **Cost-efficiency:** With fewer regulatory requirements than traditional funds, PIFs are quicker and more economical to establish and maintain.
- **Flexibility:** They can be tailored to meet the specific needs of family members, including bespoke governance arrangements and investment strategies.
- **Privacy:** Guernsey's legal framework supports confidentiality, which is often a priority for high-net-worth families.
- **Succession planning:** These vehicles provide a structured way to manage intergenerational wealth transfers, helping families plan with confidence.

This route continues to grow in popularity with Guernsey's regulatory environment uniquely suited to support it, offering a pragmatic and proportionate approach that balances protection for investors with operational efficiency.

Collaboration At The Core

Responsible for the employment of approximately one in every ten people on the Island, the robust financial services industry in Guernsey provides investors with a sense of security, and the ability to work with well-established networks of advisers and providers.

In our own wave of PIF launches recently, the power of collaboration has been markedly evident. In all cases, the 'how' mattered just as much as the 'what'.

While working closely with our clients to establish desired outcomes and navigate a potentially unfamiliar landscape, we also work alongside a wide range of external experts. This includes local lawyers, tax advisers, and accountants, working in tandem to ensure that each fund is structured optimally and launched seamlessly – with no unforeseen challenges.

This holistic approach has helped us to deliver a highly engaged, responsive service model that our clients value deeply, providing reassurance in a market lesser known to them.

Finding Your Trusted Partner

ZEDRA's recent success in launching nine PIFs is a clear indicator of our capability, commitment, and client focus. The ability to deliver complex fund structures with speed, precision, and care sets us apart in a competitive market.

Once again, our offshore centres are responding to client needs arising from geopolitical uncertainty in a robust and reassuring fashion. Guernsey continues to excel as a premier financial centre for private funds and more generally. Our comprehensive services continue to result in excellent feedback from clients and intermediaries alike, acknowledging the great team we have on the Island.

As one ZEDRA client put it, "Collaborating with ZEDRA to establish our private fund was an excellent decision. Their team provided deep expertise and navigated the complex process with impressive efficiency. We are thoroughly pleased with their support and look forward to a long-term partnership."

Looking Ahead

The momentum in the sector is unlikely to slow any time soon. The recent growth represents a broader global shift in how market participants are considering alternative jurisdictions for their fund structuring. In a world where reputation, stability, and service quality are paramount, Guernsey continues to stand out.

As the global private markets industry continues to evolve, the Island is well-positioned to meet the needs of private clients and family offices seeking secure, flexible, and efficient private fund solutions. Whether driven by regulatory change, succession planning, or the desire for greater control, the rise of PIFs signals a new era in private fund management.

For those considering launching a private investment fund in Guernsey or seeking a fund administration partner who is responsive, knowledgeable, and committed, ZEDRA offers a proven track record and a forward-looking approach.

ACROSS THE POND, INTO THE DEEP

US PERSONS AND THE LURE OF OFFSHORE OPPORTUNITIES

Authored by: Charlie Maydon Grace (Partner) - Macfarlanes

There have been major changes in the UK tax regime from 6 April this year, and one group of individuals who are affected by these rule changes are US citizens, with the new regime presenting new opportunities to US individuals moving to the UK for various economic or personal reasons.

In recent months there has been a significant uptake of interest from US individuals who are considering moving to the UK in the short to medium term, and in this article we outline some of the key considerations that are relevant to such individuals as well as other US persons who have been present in the UK under the previous regime.

Background

The UK tax regime for non-UK domiciled individuals was abolished with effect from 6 April 2025 and replaced by a new four-year residence-based regime (the so-called "FIG" or "Qualifying New Resident" "QNR" regime).

These reforms mark a major change for individuals with UK connections, both for those currently living in the UK and for those planning to move to the UK for the first time or after a period of non-UK residence. In short, the new QNR regime is significantly simpler for US persons to operate than the previous remittance basis.

New Arrivers From The US

For individuals arriving in the UK after 5 April 2025 from the US for the first time (or after an extended absence from the UK), the new regime can provide a number of opportunities. In particular:

The QNR regime

- Eligible US individuals will be able to claim the QNR regime for

up to four UK tax years without being subject to UK tax on their non-UK income or gains. Although US citizens will continue to be subject to US tax during this four-year period, the QNR regime should largely allow them to avoid concerns around mismatches between their UK and US tax treatment during this time.

- Unlike under the UK's previous remittance basis system, there are no restrictions on bringing non-UK income/gains arising during the four-year QNR regime to the UK. This is far more generous and new arrivers from the US will also be able to avoid much of the complexity of the UK's previous remittance basis system.
- The UK Government has designed the new QNR regime with the intention that taxpayers using the regime can be UK resident for the purposes of the UK's income tax treaties. It remains to be seen whether the US Internal Revenue Service will adopt the same view.

Inheritance tax

- New arrivers can be UK tax resident for up to nine consecutive UK tax years before becoming exposed to UK inheritance tax on their worldwide assets.
- During this period, US citizens/domiciliaries would only be within the scope of UK inheritance tax on their UK situated assets (and would remain subject to US estate tax on their worldwide assets), meaning it should be relatively straightforward to manage the interaction of the US gift and estate tax and UK inheritance tax systems for the first nine years of UK residence.

Immigration

It remains important for US persons to take advice on what UK visa options are available to them before making plans to move to the UK. They may have a British spouse or be able to move as an entrepreneur for example – although this will need careful thought.

US citizens currently resident in the UK

For US citizens already living in the UK and planning to remain here, there will be a number of points to consider. In particular:

Personal assets – income and gains

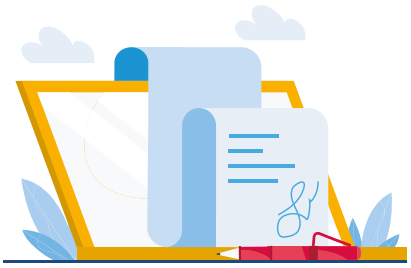
- Individuals who were UK resident for fewer than four tax years by 6 April 2025 may still benefit from the QNR regime – this should be checked carefully.
- Individuals who were UK tax resident for four or more tax years by 6 April 2025 are not eligible for the QNR regime. If they remained UK resident on 6 April 2025, they are subject to UK income tax and capital gains tax on their worldwide income and gains as they arise.
- For US persons, this means they would be subject to worldwide tax from both a US and a UK perspective. Provided foreign tax credits are properly claimed this should be manageable in theory, as current US federal tax rates and UK tax rates are broadly similar for many categories of income and gains.
- However, it will be critical that US citizens review their affairs to confirm whether there could be any misalignment between their UK and US tax treatment and to determine whether any steps can be taken to minimise the risk of double taxation. Mismatches can often occur in relation to particular types of investment (such as mutual funds or municipal bonds) or structures (such as trusts and US LLCs); however, with careful prior planning it is usually possible to minimise the scope for these mismatches to arise. A competent dual qualified UK/US accountant will be essential for accurate reporting.

Trust assets – income and gains

Where a US person resident in the UK is a settlor or a beneficiary of a trust, it will be particularly important for the trust to be reviewed to confirm its UK tax treatment under the new regime to determine whether steps can be taken to optimise the UK/US tax position.

Broadly:

- With effect from 6 April 2025, non-UK trusts are potentially transparent to UK resident settlors (subject to the QNR regime being available). There are similarities here with the US grantor trust regime (which taxes a US citizen settlor on the income and gains of the trust). In many cases therefore where US persons who have created grantor trusts are UK resident, it should be possible to align the UK and US taxing points and this may simplify the process of claiming foreign tax credits.
- For US persons who are UK resident and beneficiaries of trusts they did not settle, the position remains (largely) as it was – they will only be taxed in the UK to the extent they receive benefits from the structures.



Personal assets – inheritance tax

- US citizens who become "long-term residents" (having been UK resident for at least 10 of the previous 20 tax years) under the new UK inheritance tax rules will ostensibly be within the scope of both UK inheritance tax and US federal gift and estate tax on their worldwide assets. Both taxes apply at a rate of 40% on death.
- The UK/US estate tax treaty should operate to prevent double taxation in these circumstances, though its operation is complex.
- However, a key area of misalignment is that the UK's inheritance tax exempt amount (currently £325,000 per individual) is significantly lower than the equivalent exemption for US gift and estate tax purposes ($13,990,000 for 2025). US citizens who fall within the scope of UK inheritance tax on their worldwide assets could therefore effectively lose the benefit of their unused US gift and estate tax exemption. Such individuals should take advice in the

UK and the US on whether they can utilise their US exemption before becoming long-term resident for UK inheritance tax purposes.

Trust assets – inheritance tax

- For grantors/settlors who become long-term resident, the UK inheritance tax consequences for their trusts can potentially be unattractive. However, where a trust is created by an individual who is US domiciled for the purposes of the UK/US estate tax treaty, and who is not a UK national, the treaty may effectively block UK inheritance tax charges on the trust assets. This can be a significant advantage for US persons.
- The facts will need to be considered on a case-by-case basis, but the UK/US estate tax treaty provides US domiciliaries with a unique opportunity (compared to individuals from other jurisdictions).

Temporary Repatriation Facility ("TRF")

- Finally, for prior remittance basis taxpayers, the TRF provides an opportunity to bring historic unremitted income and gains to the UK at lower tax rates. For tax years 2025/2026 and 2026/2027 such amounts can be designated at 12%, and 15% in 2027/2028. This is therefore a time limited opportunity.
- US citizens may have also paid US tax on such amounts (which cannot be credited against the TRF charge), however some taxpayers who plan to stay in the UK over the coming years may nevertheless view this as an opportunity to streamline their affairs and increase the funds available to them to spend or invest in the UK. Advice would need to be sought in the US to confirm whether UK tax paid under the TRF could be credited against US tax liabilities.
- There is also potential for the TRF to be claimed in relation to distributions from non-UK resident trusts, which could provide an opportunity for US citizens who are UK resident to receive capital distributions from trusts at historically low UK tax rates.

Conclusion

As ever with tax planning, the client's circumstances will need to be considered on a case-by-case basis, but in the post-5 April 2025 world there are definitely interesting opportunities for US clients who are considering spending more time in the UK.

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ARBITRATION IN TRUST DISPUTES

A CAYMAN ISLANDS PERSPECTIVE

Authored by: Robert Lindley (Partner), Sally Peedom, (Counsel), Lana Dixon (Senior Associate), Rhonda Coleman (Paralegal) - Conyers

The use of arbitration to resolve trust disputes is gaining momentum in offshore jurisdictions, with the Cayman Islands emerging as a progressive forum for trust arbitration. Following the enactment of the Arbitration Act in 2012, Cayman has seen a growing interest in incorporating arbitration clauses into trust deeds as settlors and trustees seek more private, flexible and efficient dispute resolution mechanisms. However, there still remains considerable scepticism as to whether trust disputes are capable of resolution by arbitration, with concerns raised by jurisdictions that are yet to introduce statutory framework governing the resolution of trust disputes by arbitration as well as jurisdictions that have enacted legislation and significant complexities and limitations have arisen in the course of arbitration.

So how do trustees, settlors, protectors, beneficiaries and their respective advisers navigate this conundrum and what is ultimately the most efficient means to achieve a resolution? Key considerations include:

(a) whether (all or part of) a trust dispute is appropriate for arbitration (including whether an arbitral tribunal is capable of granting the entirety of the remedies sought by the parties, and the subsequent enforceability of any award);

(b) whether an arbitration clause should be included when establishing a new trust or amending an existing deed, be classified as 'mandatory' or otherwise, or is a freestanding arbitration agreement more appropriate; and

(c) whether there are complexities which may preclude or impact on the parties' abilities to achieve a full resolution by arbitration (including changes of trustee issues, the interpretation of complex trust provisions, involvement of third parties and whether all parties can be bound to an arbitral resolution, so that any award will not result in independent claims by non-signatory beneficiaries).

Benefits of Arbitration in Trust Disputes

Arbitration remains a valuable tool to resolving trust disputes for reasons which include:

1. Privacy and confidentiality

A key advantage of arbitrating trust disputes is the preservation of confidentiality and privacy. The arbitration is dealt with privately and all confidential and sensitive information attributable to a trust and its beneficiaries is kept out of the public domain. Rules imposing confidentiality are placed on any award.

2. Flexibility, Speed And Expertise

Undoubtedly, arbitration allows bespoke procedures to be implemented and can be significantly faster than court litigation. The process can be shaped to accommodate specific requirements of the parties and procedures can be adapted (such as whether expert evidence can be dispensed with, or the degree of party involvement limited), to a greater extent than what is commonly allowed in court proceedings. The speed of determination by arbitration often results in a more cost-effective solution.

3. Expertise

Selection of a particular arbitrator with specialist expertise may also paramount and parties have greater flexibility in determining who should determine their dispute, without being confined to a judicial bench in a jurisdiction.

4. Finality

Arbitral awards are generally final, reducing protracted appeals.

Limitations of Arbitration in Trust Disputes

Notwithstanding the clear benefits of arbitration, there are still various challenges and concerns that must be considered which include:

1. Ousting of the jurisdiction of the Court

The Courts have traditionally maintained a unique supervisory role in trust administration and there remains a perception that arbitrating trust disputes is seeking to oust the jurisdiction of the Court.

2. Binding All Parties

In circumstances where arbitration requires the consent of all parties, factions of the beneficial class, particularly minors and unborns, are often not signatories to a trust deed and may not have provided consent.

3. Third Party Relief / Enforceability

The involvement of third parties can often complicate the binding nature of arbitration clauses, and the court still may need to enforce or supplement arbitral awards where remedies affect parties not directly involved in the arbitration. Certain remedies, such as appointment or removal of trustees, Beddoe relief, momentous decisions or orders affecting trust property remain matters within the exclusive jurisdiction of the Court, with Tribunals lacking the statutory powers conferred on courts.

4. Erosion Of Confidentiality/Privacy

Although there are clearly confidentiality and privacy advantages associated with arbitration, there can also be an erosion of confidentiality if an arbitral award is challenged. Decisions such as Grosskopf v Grosskopf [2024] EWHC 291 (Ch) in England, Ryan v Lobb [2020] NZHC 3085 in New Zealand and Volpi v Delanson Services Limited in the Bahamas are examples of unresolved issues at arbitration which resulted in the erosion of confidentiality, particularly as it concerns the enforceability of arbitral awards against non-signatory beneficiaries and whether a Tribunal has the extent of powers that are otherwise conferred on our courts.

Jurisdictions Legislating For Trust Arbitration

An increasing number of jurisdictions are legislating for the use of arbitration to resolve trust disputes. Legislative reform now introduced by Malta (in 1998), Guernsey (in 2007), certain U.S. States (since 2008) and the Bahamas (in 2009) are all seeking to deal with trust disputes by way of arbitration, some more successfully than others. Bahamas in particular has sought to further amend its legislation in 2023, to further advance its pro-arbitration stance by addressing representation mechanisms for minors and unborn beneficiaries and trustee removal and appointment matters, which would otherwise fall within the remit of the Court. Considering all of these lessons learnt by other jurisdictions, it is apparent that the Cayman Islands will be well placed to introduce amendments to its legislative framework that are effective from the outset soon.

Notwithstanding any legislative reform by the Cayman Islands, arbitration clauses in trust deeds (or freestanding arbitration agreements) will still need to be carefully worded, ensuring (at a minimum) that they make express provision to cover the breadth of the dispute

(i.e. state “all disputes arising out of or in connection with the trust created hereunder”), the deemed agreement language (i.e. state “Any beneficiary claiming or accepting any benefit, interest, or right under the Trust shall be bound by, and shall be deemed to have agreed to, the provisions of this arbitration clause”) and address confidentiality provisions (i.e. of both proceedings and awards).

Ultimately, the effectiveness of such arbitration clauses depends on a number of factors which include compliance with formal requirements of applicable arbitration law, consideration of the likely scope of disputed issues, incorporation of effective deemed agreement mechanisms, maximum preservation of confidentiality measures and clear provision for the representation of parties.

Should you require any further advice on arbitration issues or trust disputes generally, please contact any one of the below contacts:

ROBERT LINDLEY, SALLY PEEDOM, LANA DIXON, RHONDA COLEMAN

UK'S FIG REGIME & ESTATE-TAX TREATY

A GAME-CHANGER FOR US EXPAT TAX PLANNING

Authored by: Thomas Gaughan (Director) & Alex Simpson (Director) - EY Private Client Services

A record number of Americans have applied for UK residency this year and it's clear that Britain continues to offer an attractive relocation option for US expats, thanks in part to recent tax changes implemented in the UK.

The US citizenship-based taxation system means that American taxpayers find themselves in a somewhat unique position and this means that recent UK adjustments offer advantages for Americans residing here in both regularly daily life as well as under the terms of the generous US-UK Estate and Gift Tax Treaty.

From a day-to-day perspective, the introduction of the foreign income and gains (FIG) regime can certainly be seen as a positive for Americans who previously had to contend with complex bank account structuring and falling foul of the remittance basis 'trap'.

Prior to FIG, many Americans arriving to the UK would elect to be taxed on the remittance basis in order to minimise their exposure to UK tax, and would often only intend to stay in the UK for a relatively short period of time. Income excluded from UK tax would have been subject to US tax, and could not be remitted to the UK without triggering UK tax charges.

Given the mechanics of foreign tax credit relief in the US, if such income was remitted more than one US tax year after the income arose, it would present a double taxation issue.

The Temporary Repatriation Facility (TRF) may be welcome relief for those who were previously subject to this double taxation.

As a starting point, amounts designated under the TRF may face UK tax charges as low as 12% (compared to up to 45% under the standard remittance rules).

In addition, a credit could potentially be claimed on the taxpayers US tax return. Depending upon the specifics of the taxpayer's situation, this may result in a net zero cost of bringing funds to the UK under the TRF, offering welcome news for Americans with significant funds offshore.

Going forward, the new FIG regime allows for far greater flexibility than the previous remittance basis offering. Income and gains which are excluded from UK tax under FIG can be brought to the UK without incurring any additional UK tax charges, meaning no more remittance basis challenges and no more complex bank account structuring.

Given this flexibility, Americans coming to the UK actually have longer to plan for being exposed to UK tax than under the remittance basis. In order to optimise their UK tax position under the remittance basis, US persons would need to structure their accounts appropriately or look to rearrange things so that they were efficient for UK taxes, both before landing in the UK.

Under the FIG regime, without the backdrop of the remittance basis trap, Americans will have up to four years to restructure and plan for being exposed to UK taxes on their worldwide income and gains.

Some may say that Americans are exposed to UK taxes on worldwide income and gains sooner under the FIG regime than under the remittance basis, given FIG will apply for a maximum of four years. The reality for many Americans, however, is that they would switch to the arising basis after seven years as the remittance basis charge would not be economical given their continued exposure to US tax. Therefore, the flexibility and benefits of FIG outweigh the minor reduction from seven to four years before being exposed to worldwide taxation in the UK.

In addition to the day-to-day tax advantages, Americans residing in the UK may also find that the US-UK Estate and Gift Tax Treaty offers significant protections from UK inheritance tax, both personally and for any trusts they may have settled. While the UK has recently introduced long-term resident status and changes to the taxation of trusts widens the inheritance tax net,

the Treaty remains a powerful tool for mitigating exposure for some Americans, and particularly those who are not UK nationals.

The Treaty operates by determining an individual's "treaty domicile". Determining treaty domicile requires detailed, fact-specific analysis. It involves a holistic review of residence history, personal and economic ties, habitual abode, and nationality. For dual nationals or those with complex residency histories, the analysis can be nuanced and will need to be carefully considered.

Once treaty domicile is determined, the application of the treaty and the means by which it offers tax relief, either by exemption or by credit, will still be impacted by other factors, principally nationality.

For Americans who are treaty domiciled in the US and are not UK nationals, Article 5 of the Treaty provides that the UK should not impose inheritance tax on most personally held assets. This includes assets situated outside the UK and, in some cases, even UK situs assets may escape the UK tax net if the Treaty applies. The result is a potential narrowing of UK inheritance tax exposure, even for individuals who have been a UK tax resident for many years.

Trusts – often a cornerstone of US estate planning – also benefit from Treaty protections. Under the Treaty, a trust settled by a US treaty domiciliary who is not a UK national may be shielded from UK inheritance tax, including the 10-year anniversary and exit charges that would otherwise apply under domestic UK rules. These 'Treaty Protected Trusts' can offer long-term shelter from UK inheritance tax, provided the settlor's treaty domicile and nationality at the time of settlement meet the necessary criteria.

This is particularly relevant in light of the UK's post-April 2025 changes, which tie the inheritance tax treatment of trusts to the long-term resident status of the settlor. Without the Treaty, many US-settled trusts could be dragged into the UK tax net once the settlor becomes a long-term resident. With the Treaty, however, the trust may remain outside the scope of UK inheritance tax, preserving the integrity of the original US estate planning.

Even for Americans who have become long-term residents in the UK, the Treaty may offer a path to protection. If such individuals leave the UK and return to the US, they may still be within the UK's inheritance tax net during the so-called 'tail period' of up to 10 years. However, if they can demonstrate that they are US treaty domiciled by showing that they no longer have a permanent home in the UK, or that their centre of vital interests lies in the US, they may be able to cut the tail and avoid UK inheritance tax during this period.

In summary, while the UK's recent tax reforms have undoubtedly changed the landscape for international individuals, they have not closed the door on effective planning.

For Americans, the combination of the new FIG regime and the enduring protections of the US-UK Estate and Gift Tax Treaty means that the UK remains a jurisdiction where thoughtful, strategic tax planning can yield significant benefits. When approached with the right tools and advice, continues to offer a compelling proposition for Americans looking to live, work, and plan their estates internationally.


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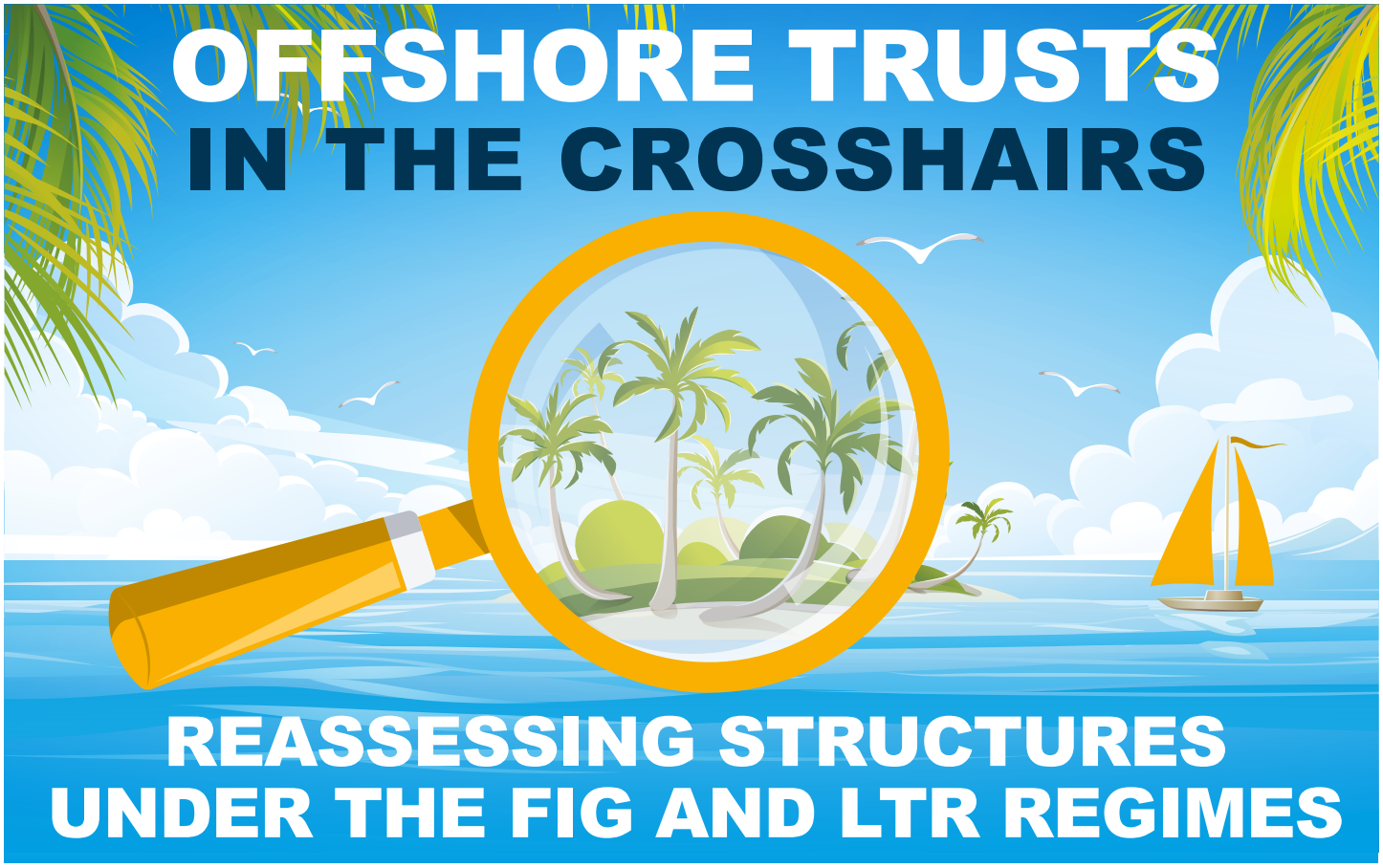

OFFSHORE TRUSTS IN THE CROSSHAIRS

REASSESSING STRUCTURES UNDER THE FIG AND LTR REGIMES

Authored by: Stacy Lake (Partner & Head of International Private Wealth) - Bolt Burdon

Stacy Lake explores the impact of the UK's April 2025 reforms on offshore trusts, focusing on the practical and tax implications of the new Foreign Income and Gains (FIG) and Long-Term Residence (LTR) regimes.

Advisers have barely had time to catch their breath. Since April 2025, there has been a surge in offshore trust reviews; many originally created to shelter wealth under the old remittance basis and excluded property trust (EPT) rules. These weren't obscure structures used by a few ultra-wealthy clients; they were a backbone of estate and tax planning for internationally mobile families. That foundation has shifted.

The FIG (Foreign Income and Gains) and LTR (Long-Term Residence) regimes have effectively swept away the old certainties. What used to be considered "safe" or "locked in" for IHT purposes is now dependent on residence history and ongoing tax exposure.

Clients who relied heavily on offshore structures to preserve wealth across generations are now asking the same question: does this still work?

FIG: A Four-Year Window for Strategic Planning

The new FIG regime gives qualifying new UK residents a four-year window during which foreign income and gains are not subject to UK tax, regardless of remittance. To qualify, individuals must not have been UK tax-resident in any of the prior ten tax years. For these "FIG years," foreign income and gains in settlor-interested trusts are also tax-free, and distributions to qualifying beneficiaries are not taxed.

However, the relief is temporary. Once the FIG period ends, foreign income and gains are taxed on the arising basis. There is no scope for indefinite deferral through offshore trusts. In many cases, planning now focuses on maximising benefits during FIG years and preparing for full UK exposure thereafter.

The End of Excluded Property as a Safe Harbour

Under the new rules, inheritance tax (IHT) exposure is now based on residence, not domicile. Once an individual has been UK resident for

more than ten of the last twenty tax years, they become a “Long-Term Resident” (LTR) and are exposed to IHT on their worldwide estate.

For trusts, the change is profound. An EPT will only remain effective for IHT purposes if the settlor is not an LTR at the time of the chargeable event (e.g., a ten-year anniversary or a distribution). This means EPT status now dynamically depends on the settlor’s residence history. The prior ability to “lock in” excluded status by settling a trust before becoming deemed domiciled is gone.

There is some transitional relief: trusts settled before 30 October 2024 with non-UK assets may retain protection from the gift with reservation of benefit (GWR) rules during the settlor’s lifetime. However, this protection does not extend to the periodic or exit charges, which may now apply once LTR status is reached.

Implications for Offshore Trusts

The abolition of trust protections and the remittance basis means that:

- UK-resident settlors will be taxed on foreign trust income and gains as they arise, unless within their FIG window.
- Distributions to UK beneficiaries will be taxed, regardless of whether the funds are brought into the UK.
- Matching rules and onward gift rules have been expanded to prevent FIG abuse.

Case Study Example:

Consider Anna, a UK resident settlor who created an offshore trust in 2018. Before April 2025, the trust qualified as excluded property, and foreign income and gains were protected under the remittance basis. Post-April 2025, Anna—now an LTR—faces UK tax on trust gains as they arise. The trust must be reviewed for potential restructuring or resettlement.

In response, some settlors may consider irrevocably excluding themselves from trust benefit to avoid ongoing income attribution. Others may look to make use of the Temporary Repatriation Facility (TRF), which offers a reduced tax rate (12–15%) on pre-2025 foreign income and gains remitted to the UK within a three-year window.

Does Offshore Still Work?

Yes—but differently. Offshore trusts, particularly in jurisdictions like the Cayman Islands, still offer value for succession, asset protection, and family governance. However, their tax utility for UK long-term residents is now limited.

For shorter-term UK residents, or those planning to leave before hitting the 10-year LTR threshold, excluded property trusts remain useful. Where settlors are not UK-resident or are non-LTRs, foreign situs assets can still be protected from UK IHT.

Going forward, the justification for offshore structures must be strategic. Trusts must be actively reviewed to manage new UK tax exposures, distributions must be carefully timed, and trustees must maintain detailed records to comply with expanded reporting obligations.

Conclusion

The post-April 2025 landscape demands more than technical recalibration—it requires a shift in mindset. Offshore trusts are no longer passive vaults for foreign wealth. They’ve become living, breathing structures that must evolve with each client’s changing residence profile and UK exposure. For the families who built their plans around now-defunct assumptions, this is a moment of reckoning. And for their advisers, it’s a time of relentless review, tough conversations, and strategic choices. What worked under the old rules no longer holds and what’s still worth keeping must be justified afresh. The answer to “does offshore still work?” is no longer simple but with the right planning, it can still work well.

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