Super-stability
(and where to find it)

WHY CLIENTS LOOK TO BERMUDA IN AN AGE OF UNCERTAINTY
W ith the current global geopolitical uncertainty, the world may already have much to worry about. However, George Friedman’s book *The Next 100 Years* predicts a third world war in about 30 years’ time and a military conflict between the US and rising superpower Mexico towards the end of the century. According to Friedman, Russia and China are destined to significantly weaken politically and economically, and Japan, Turkey and Poland to successfully grow economically and increase the territory under the rule of their respective governments. Perhaps, ‘We ain’t seen nothing yet’. Rapid-fire economic, political and legal changes may be the new norm. Ultra-high-net-worth individuals increasingly seek to establish or re-domicile trusts and structures in politically, economically and socially stable tax-neutral jurisdictions that are reputable and well situated. The number of jurisdictions that meet these criteria may be diminishing. Bermuda continues to satisfy them.

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

Bermuda continues to refine its economic substance requirements to provide outcomes that balance addressing international concerns with respecting the privacy of legally compliant structures. At the same time, Bermuda’s trust law continues to evolve sensibly, providing certainty and flexibility.

Alongside London, New York and Zurich, Bermuda is one of the key reinsurance hubs in the world, a leader in both the property and casualty reinsurance and the insurance captive markets. We are fortunate to have highly respected practitioners from around the world contribute articles and commentary for our cover feature on geopolitical certainty and the private client world. We trust that private clients, family offices and their advisors from around the globe will find this edition interesting and helpful when deciding where to establish or re-domicile trusts, family offices and other private client structures.

Geographically, Bermuda is situated in the North Atlantic Ocean, not in the Caribbean, and has direct flights to London, Toronto and numerous north-east American cities, including New York and Miami. Bermuda has carefully introduced laws to implement the Foreign Account Tax Compliance Act, the Common Reporting Standard and a central private beneficial ownership register, and it continues to refine its economic substance requirements to provide outcomes that balance addressing international concerns with respecting the privacy of legally compliant structures.

At the same time, Bermuda’s trust law continues to evolve sensibly, providing certainty and flexibility. Alongside London, New York and Zurich, Bermuda is one of the key reinsurance hubs in the world, a leader in both the property and casualty reinsurance and the insurance captive markets. We are fortunate to have highly respected practitioners from around the world contribute articles and commentary for our cover feature on geopolitical certainty and the private client world. We trust that private clients, family offices and their advisors from around the globe will find this edition interesting and helpful when deciding where to establish or re-domicile trusts, family offices and other private client structures.
There will be FUD

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

By Elliot Wilson

If you are by nature an optimist, you are more likely to believe in a better future, and to instinctively buy books (Steven Pinker's The Better Angels of Our Nature) that paint a rosy picture of us and the world we inhabit. Pinker's theories will depend on your view of life. Was it better then? Is the world better or worse than it was a year ago, or last decade? Is it more or less stable? Should investors embrace risk by being more expansive and adventurous, or favour timidity and caution? Does it matter where you put your assets and capital are located?

The answer to some or all of these questions will depend on your view of life. If you are by nature an optimist, you are more likely to believe in a better future, and to instinctively buy books (Steven Pinker's The Better Angels of Our Nature, Hans Rosling's Factfulness) that paint a rosy picture of us and the world we inhabit. Pessimists, whether due to instinct or collective memories of a golden era when life felt richer and happier, may point to reasons to be fearful. After all, we are assailed by messages in mainstream and social media, not to mention a host of analyst notes, warning us the world we know and love is coming to an end – a trend known as fear, uncertainty and doubt (FUD).

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

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

Fears real and imagined

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

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

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

Once, a good portion of that money would have been rerouted to the UK, settling into real estate – directly and via funds – and private equity. But, notes Field, 'with all the concerns around Brexit, notably a weakening pound, the money is going elsewhere – to Switzerland, Singapore and Bermuda.' There is little doubt that those jurisdictions and a smattering of others, including Jersey, benefit from the widespread perception that instability and uncertainty are a mortal lock. The Global Economic Policy Uncertainty Index, a GDP-weighted average of national economic policy uncertainty indices for 20 of the world's largest economies, hit an all-time high of 3.48 in July 2019. To offer a sense of perspective, the index didn't breach the 200 mark until 2011, but has spent most of the last three years north of that line.

Jumping at shadows

Even if the fear of the unknown currently outmatches the actual threat posed to personal financial safety, it is clear that more long-term capital is being reallocated and redirected to locations seen as the best and most stable long-term bets. There are several broad reasons for this shift. First is the fact that many big economies, long revered by investors for their all-round solidity in areas ranging from taxes to economic growth to political stability, are showing signs of wear and tear, either self-inflicted or as a result of external sources.

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

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

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

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Integrity 
Stability 
Quality

R&H Bermuda has been safeguarding and growing client wealth for over 50 years.

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

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

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

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

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

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

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

In this context, considerations around trends in political risk and shifting geopolitics are key. Grob continues. ‘Here in Bermuda we are seeing an uplift in business based on these considerations. Many jurisdictions have a young history, and a future with changes ahead. Clients have generated and hold the majority of their wealth in their home jurisdiction – for their families’ future security they seek long-term protection and stability elsewhere. This sits alongside the boom we are seeing in citizenship and residency planning.

Bermuda’s steadiness, matched by long-standing innovations that clients implicitly trust, helps explain its ability to continue to win new business. Financial advisors point to the value of innovations like non-charitable purpose trusts. First introduced in 1989 and a firm favourite of clients ever since, they allow trusts to be established whereby trust property may be applied towards clear and lawful purposes, instead of (or in addition to) holding assets or property for one or more beneficiaries. But stability remains the jurisdiction’s chief calling card. ‘For clients looking for a cost-efficient jurisdiction, Bermuda is highly competitive,’ says Nicolas Malumian TEP, a Partner at Buenos Aires-based Malumian Associates. He says his Latin American clients ‘seek protection against confiscation, expropriation and all sorts of measures by governments. Therefore, long-term stability is key in a trust jurisdiction.’

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

GEOPOLITICAL RISK

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

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

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

The Bermuda legislature has also intervened to liberalise rules regarding perpetuities. At common law, trusts cannot exist indefinitely, but with the Perpetuities and Accumulations Act 2009 and the Perpetuities and Accumulations Amendment Act 2005, Bermuda has abolished perpetuity restrictions for new settlements (save in respect of Bermuda real property) and has streamlined the procedure for disallowing the perpetuity period in respect of existing trusts. The net effect is that Bermuda now welcomes the creation of dynastic and perpetual trusts and structures. When combined with its political stability, the abolition of perpetuity restrictions makes Bermuda an ideal location for settlors seeking to structure their wealth to achieve very long-term ambitions.

Adaptable trusts, adaptable courts

Another of Bermuda’s attractive features is the proactive and constructive approach of its courts to addressing practical issues in trust administration. Undoubtedly the best example of this is the manner in which the court has constructed and deployed ss 47 of the Trustee Act 1975. Section 47 is a statutory jurisdiction to grant power to trustees to vary the terms of a trust. In successive decisions dating back to 2011, the court has made clear that this is a jurisdiction that enables the administrative and dispositive powers and provisions of a settlement to be modified without needing to observe many of the formalities required for a variation of Trusts Act application. The result is a more flexible procedure, enabling the trustees and beneficiaries of Bermuda trusts to adapt quickly and efficiently to changing circumstances. The jurisdiction has been successfully invoked on a number of occasions, and in this author's experience it has proved so popular that the governing law of foreign trusts has on occasion been changed to Bermuda law to enable this jurisdiction to be accessed. While ss 47 is yet to be tested in appellate courts, this innovative use of an existing statutory jurisdiction is evidence of the court's willingness to assist in the efficient operation of Bermuda trusts.

A similar willingness to assist is evident in the Bermuda court's approach to the privacy of trust proceedings. In England, a recent trend towards transparency in trust matters has rendered it very difficult to invoke the court’s jurisdiction without private, and often sensitive, information about the financial affairs of the trust and its beneficiaries being made public. But in Bermuda, the court has taken a different approach. In a series of recent cases, the Bermuda court has affirmed the continuing importance of privacy in respect of internal trust affairs. Kawaley CJ said forcefully in the G Trusts case: The present proceedings concern the interplay between the decision of the English High Court in Pugachev (2013) and restore the rule in Hastings-Bazley, showing Bermuda's commitment to facilitating the smooth administration of trusts. Where an innocent error in trust administration has occurred (and third-party purchasers would not be prejudiced), the Bermuda court now has a statutory jurisdiction to intervene to undo the mistake, a power that has already been successfully invoked by trustees to undo potentially devastating damage to the trust.

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

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

Next steps

Its legislative framework, its supportive courts and its strong trust industry make Bermuda an ideal location for wealth structuring, but even more can be expected of this creative jurisdiction over the coming years. The author is aware of a variety of further projects of legislative reform, which will seek to improve Bermuda's standing as a leading trust jurisdiction yet further. In particular, proposals to improve Bermuda's firewall legislation, designed to protect the integrity of Bermuda trusts, are likely to be brought forward. As well as further legislative innovation, Bermuda's courts remain renowned for both their trust expertise and their willingness to seek to facilitate the operation of Bermuda trusts. Last year, Kawaley CJ retired and was replaced by a new Chief Justice, Nairnord Hargun. Hargun CJ is already the author of important judgments, including a very recent decision approving the trustees' proposal to act in accordance with the settlor's wishes. It is apparent that, in Bermuda, the court's jurisdiction in respect of the administration of trusts remains in very safe hands.

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

Andrew Holden TEP is chair of the private wealth committee of the International Bar Association and a partner at Walkers.
Advisors around the world enjoy repeating the maxim: ‘If you’ve seen one family office, you’ve seen one family office.’ In other words, all families are different, and so family offices (FOs), which are designed around the family they serve, are all different, too. However, there are some commonalities.

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

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

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

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

Evolution of a family office

Many families with an operating business are quite likely to have the functions of an FO provided to them by the executives in the family business. FOs of this kind are known as ‘embedded’ FOs. At some point, often for tax, compliance or management reasons, personal services are moved outside the family business into a stand-alone FO entity. When this move happened several generations earlier, the continuing FOs, including many well-known examples in Europe, can be thought of as ‘heritage’ FOs. These offices have managed to serve and survive across several generations, a topic of great interest today. In some cases, the younger family members of these heritage offices begin to question the economics of the continuing luxury of their own office. Without the original funding and subsidies from the senior generation, the younger generation often decides that the FO is a fairly expensive operation.

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

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

By Thomas J Handler and Barbara R Hauser

According to estimates, there are more than 10,000 single-family offices worldwide, but the actual number may be substantially larger
make an FO into a consistently profit-generating entity. The resulting ‘multi-family offices’ have been quite challenging in our experience, because they typically began as a service cost entity, not as a profit centre.

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

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

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

Another alternative is to avoid the bricks-and-mortar expense of a traditional FO and create a ‘virtual’ FO (VFO). VFOs can provide an excellent traditional FO and create a ‘virtual’ FO

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

Where Bermuda fits in
Bermuda scores very highly on the factors for choosing a jurisdiction. Its long history of excellent professional services and the general absence of income taxes and VAT, coupled with a strong regulatory environment, have won many admirers over the years. We interviewed a number of professionals and asked why their FO clients choose Bermuda. Vanessa Schrum TEP, a Partner at Bermuda-based law firm Appleby, reports that FO clients are attracted by Bermuda’s reputation as a blue-ribbon jurisdiction and its infrastructure. Other important factors include privacy (there is no register of trusts in Bermuda), the trust environment; and Bermuda’s enviable courts, legislation and jurisprudence, with ultimate right of appeal to the Privy Council in London. Schrum adds that ‘Bermuda is an ideal location for family members, many of whom are now scattered across the globe, to meet and converge.’

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

Randall Krebs TEP, Director of Harbour International Trust Company, one of many trust companies in Bermuda, says that his FO clients cite several elements of local trust law as important in their decision to choose Bermuda: ‘It is possible to have perpetual trusts in Bermuda, which is attractive for families wishing to create dynastic structures. Bermuda has also introduced a streamlined procedure for extending the perpetuity periods of existing trusts. Further, section 47 of the Trustee Act 1955 is a unique provision of Bermuda law that facilitates court-approved amendment of trusts, including dispositive provisions. Trusts from other jurisdictions are frequently migrated to Bermuda to utilise this unique variation provision.’

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

Finally, we spoke with a number of lawyers outside the island and asked why they and their FO clients have chosen Bermuda. Bill Bierce, a New York lawyer, has worked with Bermuda professionals for most of his career. ‘I’ve always liked Bermuda’s governmental discipline as a tax-neutral offshore jurisdiction,’ he says. ‘Bermuda has a well-deserved reputation built on local regulation that, by localising its business entities with duly authorised local management, retains its sovereignty. It offers a smart and culturally respectful venue for local operations that can fit within larger global businesses. It combines regulatory probity, compliance, good principles for corporate governance and a tax-friendly environment. It is not the cheapest, but it may be one of the best offshore jurisdictions.’

1. We will be writing about ‘single-family offices’, not the more standardised ‘multi-family offices’.
3. In 2019, Forbes estimated that there are more than 2,000 billionaires worldwide (bit.ly/2kYpthK).
5. Van Bueren and Ming, ‘Selecting the Right FO
6. For an excellent summary of these factors, see J. van Bueren and T. Ming, ‘Selecting the Right FO
7. Randall Krebs TEP, Director of Harbour International Trust Company, one of many trust companies in Bermuda, says that his FO clients cite several elements of local trust law as important
GLOBAL BERMUDA

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

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

500,000+ jobs are supported by Bermuda’s economic model globally

100+ treaty partnerships with nations around the world

10th largest aircraft registry among the 192 International Civil Aviation Organization Member States. Bermuda’s current registry of over 870 aircraft includes a mix of both private and commercial vehicles

400th anniversary of Bermuda’s political system in 2020 – the oldest outside of Westminster

$1.67bn contributed by Bermuda’s international business to the overall economy – that’s 26.7% of total GDP

2 hours direct flight time to major East Coast US cities

NEW HOTEL OPENINGS
- Azura Bermuda (2019)
- Bermudiana Beach Resort, Tapestry by Hilton (2020)
- St Regis Bermuda (2021)

NEW AIRPORT OPENING IN 2020 pre-clearance for US departures will remain

NEW SUPERYACHT LEGISLATION COMES INTO EFFECT ON 1 JANUARY 2020

102 UHNWIs have a primary business address in Bermuda

$120bn+ aggregated global capital of Bermuda (re)insurers

$100.3bn in global gross written premium written by Bermuda (re)insurers in 2018

100+ treaty partnerships with nations around the world

28 licensed trust companies in Bermuda, and 96 licensed corporate service providers

100 Women in Finance has an established Bermuda group with nearly 200 members

BERMUDA IS 20.54 MILES SQUARED

100% of gross foreign reserves are held offshore

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succession structures, and structures dedicated to family charitable and
philanthropic ventures. Many of these families are not resident, and nor do
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This article considers the reasons why Bermuda remains a popular jurisdiction for international structures.

International outlook and accessibility
Bermuda is well connected, with direct flights to the US and London (giving easy access to Europe), and is in a time zone that facilitates easy communication. Although Bermuda is itself a tax-neutral jurisdiction, families from jurisdictions with different tax regimes regularly work with and often based in a range of jurisdictions where tax rules are complex; assets are scattered and change in Bermuda.

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

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

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

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Millennials and their advisors need to make allowances

By John Gibbons

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

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

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

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

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

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

Big-picture issues

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

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

Desire for engagement

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

This desire for engagement means that advisors to wealthy, socially conscious millennials should consider that a seat on the board of a family foundation will not be enough. Millennials may be more satisfied with a smaller private charity that is more focused and agile, with hands-off!

Hands off!

Trustees should take a hands-off approach with such a structure, and funds should be appointed onto the new structure absolutely, but with the following provisos to ensure that they are not misspent. The vehicle should take the form of a charitable trust in order to set clear objectives for the charity and remove the ‘ownership’ from the beneficiary.

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Desire for engagement

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

By David Veness

In Bermuda, we continue to see our local trust industry winning mandates for private wealth structures. We also see structures move to Bermuda to access a legal process that is supportive of restructuring. Why is this happening? What advantages does Bermuda have that attracts those wishing to restructure? Why are families and their advisors choosing Bermuda structures, or choosing to relocate to Bermuda to restructure? Why are families and their advisors choosing Bermuda structures, or choosing to relocate to Bermuda to restructure? Why is this happening?

Families are dynamic and the original settlors may be deceased or domicile gives rise to different tax circumstances change or tax jurisdictions, or where tax circumstances change on the death of the settlor or grantor. Beneficiaries may move or choosing to relocate to Bermuda to restructure? Why are families and their advisors choosing Bermuda structures, or choosing to relocate to Bermuda to restructure? Why are families and their advisors choosing Bermuda structures, or choosing to relocate to Bermuda to restructure? Why is this happening?

Families at war

As an example, let us consider the ancient Greek house of Atreus. Atreus had two sons, Menelaus and Agamemnon, for whom he set up a trust. In our example, Atreus asked his grandfather Tantalus to be protector and Zeus Trustees (Bermuda) Ltd was appointed as trustee. When Atreus set up the trust he did not know that the tribulations that his family would face. This was not a happy family. Unfortunately, Atreus did not know that Menelaus and Agamemnon, who were happily married to Helen and Clytemnestra, respectively, when the trust was drawn up, would suffer the turmoil in their lives caused by Helen running away with Paris to Troy. Nor did he know that, in the ensuing ten-year war that followed, Clytemnestra would take up with Aegisthus, and, on Agamemnon’s return to Mycenae, Aegisthus and Clytemnestra would murder him.

This might be considered an unusual case, but it illustrates the fact that families are dynamic and circumstances change. Marriage breakdowns are not uncommon, remarriages produce new families and external factors, such as a Trojan War-type event, may cause a change in the settlor’s business or the original investment objectives and strategies. As illustrated by the house of Atreus, disputes arise in families, sometimes due to grievances that have nothing to do with the trust. Changes in residence or domicile may lead to the need to restructure, to exclude beneficiaries, to split or resettle assets in new trusts or to make other arrangements. Often a trustee is faced with a situation where the purposes for which a trust was established are no longer relevant.

Asset protection

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

The need to protect assets against a Trojan War-type event, certainly a potential factor in our ancient Greek example, is often a factor in new restructuring and restructuring mandates. Asset protection is a legitimate objective where the rationale for a trust is not designed to defeat known or anticipated creditors. International clients may have their business affairs spread across multiple jurisdictions and seek a politically stable safe haven where sensitive data can be securely held. This is increasingly important in a world where financial AEOI regimes such as the US Foreign Account Tax Compliance Act and the OECD’s Common Reporting Standard have become the norm, and where the privacy and security of personal and financial data are perceived to be under threat.

Succession planning over the generations, and continuity of ownership of family businesses, is another driver for structuring or restructuring. Settlers may wish to ensure that family assets, including family businesses, will remain securely held through the generations, but often do not foresee difficulties that may ensue after they are gone, as families become more fragmented and scattered, with different needs and interests. There are many reasons that family needs diverge over the generations, and grievances and jealousies may arise as trustees try to deal with a diverse group of beneficiaries in an old structure.

Retaining control over key powers of the trust, such as investment, is also becoming more common, particularly for clients resident in jurisdictions where retaining such powers does not have adverse tax consequences. Bermuda legislation designed to facilitate the retaining of powers by trust parties is mature and many bespoke structures utilising this aspect have been set up over the years. In other cases, structures that may not have been set up with a private trust company originally have been restructured to adopt such a structure to allow more family control.

Section 47 – a jewel in the crown

Bermuda’s Trustee Act 1975 (the Act) includes provisions that enable trusts to be varied without the involvement of the court. The power to amend trust instruments may be lacking, or more modern investment powers may have been omitted from older trust instruments. For instance, powers to delegate or sub-delegate, or to deal with capital or alter beneficial interests in the trust, may be lacking. Often there is a need to add or exclude beneficiaries or create sub-funds or separate trusts for different groups of beneficiaries to resolve disputes or segregate investments. Protections afforded to trustees in modern trust instruments may be lacking.

Where it is not possible for the trustee to utilise existing trust law to effect an amendment or transaction, or to restructure as required by the particular circumstances, then s.47 and s.48 of the Act provide the court with the necessary powers to authorise transactions and vary trust instruments as required to alter beneficial interests. Under almost any varied set of circumstances that may apply in particular cases, Bermuda’s trust legislation has been designed to allow restructuring, or when a jurisdiction may not have the capacity to facilitate particular transactions, to revise adverse transactions and to support the restructuring of trusts. In particular, s.47 of Bermuda’s trust law has become internationally renowned, providing the Bermuda court with the power to permit transactions not authorised by the trust instrument, to vary provisions in the trust instrument, to permit a trust company originally set up with a diverse group of beneficiaries in an old structure to adopt such a structure to allow more family control.

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

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

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

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

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

OceanTech’s Mission Manager Andrew Smith explains that the idea for the charity grew out of his experience as Series Producer for TV series Ocean Vet, before he was drawn to an end, the late Dr Neil Burnie and I were discussing inventive ways getting OceanTech off the ground. Philanthropy has been vital to the start of next year. Smith says, ‘OceanTech is driven by students. It provides a link between classroom studies and real-world application. Its education programme allows students and teachers to design and run their own REMUS missions. This starts with a mission planning day in the classroom, during which students have the opportunity to work with the AUV pilot to understand how it operates.

‘The REMUS 100 embodies mathematics as a means of navigation, technology as a means of operation, science through its discoveries, engineering in its construction and computing through the data it gathers,’ Smith explains. ‘The most important takeaway for students is how STEAM education can lead to solving big and exciting real-world problems.’ OceanTech, it seems, has already succeeded in capturing the imagination of Bermuda’s education sector. A significant portion of its 2020 budget is set aside for an extensive public-school programme, with many original and compelling missions planned for the start of next year.

Smith says the charity is ‘focused’ with applications from both research organisations and schools. We are currently only able to support a handful. Our aim, with greater philanthropic support, is to deliver far more.‘

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