Bermuda, host of the America’s Cup 2017, is about to show the world why it’s a winning destination for wealthy families.
Our Private Client & Trust team delivers bespoke, solution-driven advice to a diverse spread of international clients. Specialising in both contentious and non-contentious work, Conyers advises clients and onshore attorneys on the laws of Bermuda, the British Virgin Islands and the Cayman Islands. In tandem with Conyers’ private client legal team, our licensed trust company, Codan Trust, provides professional management of trusts and corporate structures for the purpose of preservation and protection of wealth, charitable purposes, and tax efficient succession planning for family businesses.

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n behalf of STEP Bermuda, the Bermuda Association of Licensed Trustees and the Bermuda Business Development Agency, welcome to our third annual STEP Journal supplement.

As many readers will know, Bermuda has a long and distinguished history as a trust domicile. However, our trust industry is acutely aware that this history is not enough in today’s complex marketplace to make Bermuda stand out as a leader in the field. Nonetheless, Bermuda does indeed intend to be that leader, and, in this year’s supplement, there is a special focus on Bermuda as a centre of excellence for family offices.

Bermuda’s reliable legal system and strong compliance and regulatory culture have attracted many family offices to the island in the past. We seek to build on this past success. There is no better time to do so, as the industry continues to promote an active programme of trust-law reform. In the past 12 months, this has resulted in an important reform to the Perpetuities and Accumulations Act 2009. Further reforms and innovations are in the pipeline. And the Supreme Court of Bermuda, which this year celebrated the 400th anniversary of its first sitting, continues to produce a significant number of important rulings concerning Bermuda trusts.

Of course, it would be naive not to recognise the significant challenges facing the global fiduciary industry as a result of modern regulatory and transparency regimes. Bermuda can rightly claim to be ahead of many of its competitors, given the level of prudential regulation of licensed trust companies by the Bermuda Monetary Authority, and aspects of Bermuda law such as publicly accessible ownership and management information in respect of Bermuda registered companies, which has been a feature of Bermuda law for many years. One of the key challenges that lie ahead is to communicate more effectively Bermuda’s record in this area.

While keen to highlight Bermuda’s long history in serving families, we also look forward to the America’s Cup 2017, which will take place in Bermuda next year. There is no better time to showcase what Bermuda has to offer high-net-worth individuals. We hope this publication shows that Bermuda is not only a world-class destination for those who love sailing, but also a world-class domicile for trusts.
everyone with a drop of salty sea in their blood has a favourite America’s Cup memory. Some shiver as they recall Ted Turner’s victory with Courageous in 1977; others hark back to Alan Bond’s Australia II, which in 1983 ended the New York Yacht Club’s 132-year monopoly over sailing’s most famous prize. Then 2013 saw a staggering come-from-behind win by Larry Ellison’s Oracle Team USA, which for nearly a month ruled the waves of San Francisco Bay.

This hallowed trophy is about to be fought over in a new location. In May and June 2017, the entire apparatus of the America’s Cup, including a coterie of blue-chip corporate sponsors, will decamp to Bermuda. There, under the gaze of a cheering global audience, a brace of crews in million-dollar catamarans will vie for supremacy in the dappled waters of the Great Sound. To the victor belong the spoils – and a place in the history books.

TWO OF A KIND

Even the casual observer – and there will be plenty watching this great event for the first time across the world – will immediately spot the connection between these two great brands. On the one hand, the America’s Cup itself, now in its 35th iteration, with its history of excellence, tradition, quality, teamwork and innovation. On the other, Bermuda, a glittering jewel in the bluest reaches of the western Atlantic, with its world-class financial-services industry, strict adherence to the international rules of law, and close ties to the world’s leading capitals.

Bermuda has ‘long been recognised as a superior jurisdiction to do business in’, says John Wight, President and Chief Executive of BF&M, the Cup’s official healthcare provider. ‘Hosting an event of this magnitude will increase the profile of the island, benefiting tourism and the amount of international business conducted from Bermuda. With Bermuda achieving Solvency II equivalence recently, the America’s Cup 2017 is expected to build on the island’s already great brand.’

For Grant Gibbons, Minister of Economic Development, the 2017 event offers Bermuda a once-in-a-generation chance to stand before the world in all its finery. A key figure in bringing the Cup to the serene waters of the Atlantic (San Diego, San Francisco and Chicago also bid to host the event), Gibbons notes that Bermuda has been promoting business-friendly policies.

‘Bermuda’s brand and the America’s Cup brand are both synonymous with quality, innovation and competition’
for 70 years, building a ‘world-class, blue-chip reputation’.

Like many who know the island well, from permanent residents to high-net-worth (HNW) holidaymakers and everyone in between, the America’s Cup is, says Gibbons, ‘a good match for Bermuda, representing the type of visitor we wish to attract’. He notes that ‘a significant number of family offices and HNW family trusts have called Bermuda their home for many years’, attracted by the island’s excellence across the financial spectrum, from insurance and reinsurance to asset management, funds and trusts.

Kiernan Bell, Group Head of Dispute Resolution in Bermuda at Appleby, the Cup’s official legal sponsor, adds: ‘Bermuda has long been a destination of choice for HNW families looking to visit or to avail themselves of our world-class financial-services industry, or seeking a place to have their primary or secondary residences.’ That the island won the right to host one of the world’s most prestigious sporting events ‘demonstrates that Bermuda’s brand and the America’s Cup brand are both synonymous with quality, innovation and competition’.

For Ross Webber, Chief Executive of the Bermuda Business Development Agency (see the box on the right), the key factor that drives and defines both brands is quality. Bermuda attracts the discerning individual, keen to find long-term, sustainable investment solutions. ‘We welcome those looking to build a quality presence in a globally respected environment’, he says. ‘We offer a corporate and leisure paradise with service-provider capability and sophistication more akin to onshore than offshore. And we feel the regatta will trigger a beneficial impact far beyond the immediate pay-off of the sailing event.’

HIGH-END EVENT
One need only look at the list of corporate marques sponsoring next year’s event to see that both the

WHEN the America’s Cup Event Authority announced in December 2014 that the 35th iteration of its world-famous regatta would be staged in Bermuda, our island celebrated throughout its 21 square miles. The result might have seemed unlikely: a small, mid-Atlantic, British domicile chosen to host this most dynamic of sailing races, defended by Americans and featuring a fleet of cutting-edge catamarans last seen carving up the San Francisco Bay in 2013.

But Oracle Team USA’s billionaire owner, Larry Ellison, was on to something. While TV time zones and business benefits may have played a part in his decision, he understood the core value of Bermuda as a partner for the ‘Auld Mug’. His decision had a lot to do with the quality of the Bermuda brand.

QUALITY’S THE WATCHWORD
The America’s Cup is backed by Airbus, Boeing, BMW, Land Rover, Sperry, Bremont, Louis Vuitton and Moët & Chandon – brand names that also happen to speak to the elite status of the jurisdiction. Like the 165-year-old race, Bermuda, too, is about tradition blended with innovation; history mixed with technology; and excellence combined with expertise – Bermuda is about winning and setting itself apart. Besides our centuries-old maritime history, our identity has always been about quality: quality sailing sloops, quality tourism, quality rum and – especially today – quality sailing sloops, quality tourism, quality rum and – especially today – a quality financial centre, recognised globally for its top-tier corporations, excellent service providers, and regulatory and compliance leadership.

Bermuda’s track record, longevity and blue-chip legacy put it on a par with the likes of New York and London, rather than its supposed counterparts offshore. Bermuda’s reputation was further boosted in 2016 when the EU recognised the island’s top-flight self-governance and delivered Solvency II equivalence with Europe’s own insurance regulatory system – just two non-EU jurisdictions have won that distinction.

Similarly, Bermuda’s asset-management, shipping and aviation, biotech, fintech, and trust and private-client sectors set the lofty standard that our domicile is known for. Quality over quantity has been the guiding tenet for business in Bermuda for almost a century, and continues to differentiate it today. Indeed, Bermuda has many advantages as a jurisdiction, from its handy location to its spectacular scenery and stable politics. Amid the snowballing global culture of regulatory compliance, our reputation is our biggest selling point.

ALL EYES ON BERMUDA
The America’s Cup complements that identity and, sailing aside, offers tangible tie-ins to our global business. Over several weeks in May and June 2017, as well as the preceding months, the regatta will attract a huge audience. Some will fly in on private jets; others will arrive by cruise ships or superyachts. Thousands more will tune in on laptops and TVs. We invite all to take stock of Bermuda’s evolving opportunities, especially for their own businesses.

The wealth-management and estate-planning industry, in particular, is a perfect fit. High-net-worth sponsors, sailors, clients, families and fans linked to the America’s Cup will recognise that Bermuda is the quintessential one-stop shop. They can not only set up a family office or a self-insuring captive here, but also launch a fund, invest in blockchain, or buy a magnificent home. The America’s Cup will broadcast Bermuda’s attributes to a worldwide audience.

Of course, we hope our island will enjoy a fruitful relationship with this revered brand through many future regattas, no matter who wins. But what is clear is that this is a perfect marriage of like-minded labels. Long after the gravity-defying aerodynamics of the America’s Cup are over, the legacy from which they were born will continue to enhance Bermuda’s own.

ROSS WEBBER
CHIEF EXECUTIVE OF THE BERMUDA BUSINESS DEVELOPMENT AGENCY (THE BDA)
Cup and the island are brands that will endure. From Moët & Chandon to Louis Vuitton, BMW and Sperry, these are blue-chip brands that have stood, and will continue to stand, the test of time. They are defined as much by the quality of their product as by the nature of their regular customers: high-earning and aspirational, with a keen sense of their personal wealth and value.

Take Bremont, a luxury, aviation-themed British watchmaker, based in Henley-on Thames, and founded in 2002 by Nick and Giles English. The brothers spent their formative years on the waves with their father, and one of Nick’s earliest memories is of the 1983 America’s Cup, which was held a few hundred miles north of Bermuda, in Rhode Island. An enduring love of sailing in general and the event in particular meant that Nick jumped at the chance when asked to make Bremont the official timepiece of the America’s Cup 2017.

‘For us, the America’s Cup isn’t just about sailing but also technology, whether it’s the wingsail catamarans of the 2013 event, or the winged keel of Australia II,’ says Nick. ‘We were in Bermuda for 2015’s Louis Vuitton America’s Cup World Series, which was a fantastic experience. It’s a genuine privilege to see the passion that Bermudians have for the Cup itself. They have really embraced next year’s event. Talk to the locals, and you can see them getting excited.’

The Royal Naval Dockyard, set to host the America’s Cup 2017 Event Village, has been renovated to accommodate an influx of sponsors, spectators, journalists and VIPs. Many of the gorgeous historic dockyard buildings, dating back to the 1850s, have been fully restored and are being used for office, retail and administrative space by both teams and the America’s Cup Event Authority.

Minister Gibbons projects that an additional USD250 million is being spent on and around the island, to prepare for next year’s festivities. A number of hotels are refurbishing or expanding, while others, including the St Regis, are preparing to open their doors to the public for the first time.

Bermuda’s place on the map is an added advantage. Its time zone (four hours behind London and one hour ahead of New York) means it is ideally placed for spectators watching in the Middle East, Europe, the Americas and beyond. And the natural amphitheatre of the Great Sound, the sheltered expense of water that will host each race, offers ample vantage points for spectators.

Many spectators at next year’s event will, of course, come by commercial plane and cruise ship. They will revel in the island’s blend of British pomp, island soul and ideal sailing conditions; bask in the temperate climate; and marvel at Bermuda’s unmatched maritime legacy. (The isosceles triangle-shaped ‘Bermuda rig’, which revolutionised nautical trade in the 17th century, is still used by many sailboats today.) Others will arrive under their own steam, in private jets and, of course, in their own superyachts, docking at a newly built marina in St George’s, on the island’s northern tip. Bermuda is even planning a superyacht race in May 2017, an event that will entrench the island’s reputation as an ideal place in which to relax, do a little business, and splash about on the waves, whether competitively or just with a group of like-minded friends. And, after the America’s Cup is over, a fleet of more than 30 tall ships will pass through Bermuda on their way to a quincentennial event in Montreal.

‘The America’s Cup 2017 will have positive impacts for Bermuda that will last for years’
of banking and telecommunication services, as well as all the other infrastructure needs that businesses and individuals demand, Bermuda is a very special place.’

The authorities are also working hard to ensure that the benefits of the America’s Cup 2017 remain firmly in place for decades to come. Bermuda, notes Minister Gibbons, ‘has established a legacy committee to explore ideas ranging from a national sailing school to a superyacht facility’. The infrastructure that surrounds the race has been built for the long term, ensuring that structures will be commercially viable long after the spray has settled over the America’s Cup 2017. A classic example is the renovated Royal Naval Dockyard, now a major tourism destination in its own right. ‘Sustainability,’ Gibbons says, ‘is key.’

In short, no stone is being left unturned in the quest to prepare Bermuda for the biggest sporting gala in the island’s history. The World Series sailing regatta in October 2015, used as a dry run to showcase the island’s preparedness, was a huge success. ‘I have never experienced the energy in Bermuda that I felt that weekend,’ says Wight. ‘There were hundreds of boats, and we witnessed some terrific sailing. The hotels were full, as were the restaurants and bars. Taxi drivers had their best weekend on record.’

But the chief legacy will be in how the event is remembered. ‘It’s pretty special to be directly involved in such an amazing competition, especially one that means so much to me personally, and to my brother,’ says Bremont co-founder Nick English.

‘And to be able to tell people later in life that I was involved, and that my brand was involved, is the icing on the cake.’

Just as English values his memories of the great America’s Cup races of the 1980s, so a new generation of young sailors will recall, decades from now, the smells, sights and sounds of two yachts fighting it out for supremacy in Bermuda’s Great Sound.

‘We have seen a resurgence in our children learning to sail, so we anticipate that we will continue to reap the benefits for generations to come,’ notes Appleby’s Bell. In these young minds, ‘Bermuda’ will come to mean adventure, daring, brilliance, and the thrust and parry of the greatest and most elegant maritime competition of them all.

Moreover, the America’s Cup 2017 will have enormous and long-lasting benefits for the island itself, putting the spotlight on Bermuda ‘like no event ever has’, says BF&M’s Wight.

Elliot Wilson is a business journalist who has written for The Economist and The Spectator.
In 2012, Gurdeep Singh Chadha and his brother, Hardeep, each accompanied by their own entourage of armed guards, visited the family’s luxury farmhouse in India. The brothers were second-generation co-owners of Wave, a conglomerate with interests ranging from sugar mills to drinks and real estate. A shoot-out ensued over ownership of the farmhouse and the family business, and both brothers were killed.

This is, of course, a dramatic example of the familial dysfunction that can accompany succession, but courts around the world are littered with less headline-grabbing disputes over family estates and family businesses. Many lead to significant legal fees and considerable reputational damage.

Indeed, high-net-worth families and family-controlled businesses face many potential succession crises – for example, drastic changes to governments and economies, and the increased prevalence of dementia as people live longer. In fact, Professor Joseph Fan of the Chinese University of Hong Kong has noted that the share price of significant Chinese-owned family businesses falls on average by 60 per cent eight years after the founder’s death. He has concluded, as have many others, that family governance is key to ensuring successful continuation of family businesses.

**ARE FAMILY OFFICES THE ANSWER?**

Family offices may help to ensure smooth successions. A family office provides services to one or more families, coordinating and implementing family objectives in respect of investments, family businesses, tax and succession planning, accounting and reporting, insurance, education, philanthropy and lifestyle. Many family offices aim to establish an environment that, well before the settlor’s death or incapacity, facilitates the orderly transfer of wealth between generations, and promotes the growth and use of wealth in a manner that enriches the family and maintains constructive family relationships.

Much has been written about the different forms that family offices may take. The choice of location for a family office will be influenced by the family’s objectives and the whereabouts of family members, business operations, and key business and investment contacts. Families seeking investment opportunities may situate their core family offices in locations where trusted advisors and family members can network with other wealthy families and advisors. The availability of banks, custodians and expert service providers is also an important factor. For these reasons, New York, Miami, Singapore, London and Switzerland are popular places for family offices.

The location of ownership structures may also be motivated by tax and regulatory considerations. Many offshore financial centres offer tax neutrality, efficient regulatory environments and considerable experience in administering private wealth. So why pick Bermuda?

**BERMUDA’S APPEAL**

Bermuda, which benefits from easy access to New York, London, Miami and Toronto, is an attractive jurisdiction in which to establish family offices and investment structures. Its infrastructure has developed to support a strong financial-services industry, including a reinsurance sector on a scale that competes with those of New York and London. The quality of Bermuda’s infrastructure is reflected in the number of international financial-industry conferences that are held here.

Additionally, Bermuda’s residency requirements now permit persons...
‘Bermuda’s beauty, hospitality and infrastructure only bolster its desirability as a location for family offices’

over the age of 18 to obtain a residency certificate enabling them to reside (but not work) in Bermuda indefinitely, provided the criteria are satisfied.

Furthermore, Bermuda has long required disclosure of companies’ beneficial owners to relevant Bermuda authorities (on a confidential basis) in various scenarios, contributing to the jurisdiction’s exceedingly low incidences of money laundering and similar issues. This, along with implementation of international agreements, has enabled Bermuda to maintain a stellar reputation from a regulatory perspective.

Bermuda also has an efficient regime as regards private trust companies (PTCs), which are frequently used by family offices. Unlike in other jurisdictions:

• there are no government fees for a Bermuda PTC to obtain and maintain its exemption from the requirement to obtain a trustee licence;
• existing Bermuda companies may act as PTCs, avoiding the necessity of forming a new company for that purpose;
• a Bermuda PTC, and the trusts of which it is trustee, may be administered by the family office (even if not a licensed service provider); and
• Bermuda purpose trusts do not require an enforcer.

The modern, flexible nature of Bermuda’s trust law has been covered elsewhere in this supplement and its two predecessors, as well as in the STEP Journal. To take just one example, however, the Perpetuities and Accumulations Act 2009 abolished the rule against perpetuities and excessive accumulations, allowing the formation of truly dynastic trusts.

Insurance, meanwhile, can provide liquidity at crucial times to facilitate the transfer of illiquid interests in family businesses and avoid difficult, expensive and untimely disposal of business assets or investments. Captive insurance can provide cost-effective insurance for a range of non-traditional risks, including data breaches, reputational harm, damage to art collections, loss of key employees, employee benefits and political instability. Families may be unable to obtain suitable insurance for such risks in the commercial insurance market. However, Bermuda has long been a leader in captive insurance, having more captive insurers than anywhere else.

Bermuda also has efficient regimes for closed-ended, private and exempt funds, enabling wealthy families to quickly establish investment vehicles with minimal regulation.

Bermuda has considerable experience in establishing a range of investment structures too, including trusts, segregated accounts companies (traditionally used by insurers but increasingly used for funds), limited partnerships, and now limited liability companies.

ON SHOW TO THE WORLD

With Bermuda hosting the America’s Cup 2017, wealthy families and their advisors will have a fantastic opportunity to visit the jurisdiction and sample its beauty, hospitality and infrastructure. These attributes only bolster Bermuda’s desirability as a location for family offices.
‘You go to heaven if you want to – I’d rather stay right here in Bermuda’
MARK TWAIN

BERMUDA HAS ONE OF THE HIGHEST STANDARDS OF LIVING IN THE WORLD

30.4°C
HIGHEST AVERAGE TEMPERATURE IN BERMUDA (AUGUST)

15.6°C
LOWEST AVERAGE TEMPERATURE IN BERMUDA (FEBRUARY)

BERMUDA boasts a wealth of cultural and sporting attractions, including museums, galleries, spas, top-rated restaurants, water sports and golf courses. It is also home to the AMERICA’S CUP 2017

DESTINATIONS SERVED BY DAILY DIRECT FLIGHTS FROM BERMUDA, INCLUDING NEW YORK, MIAMI, TORONTO AND LONDON

ENVIIABLE LIFESTYLE

9
665 MILES FROM THE US

6.5
HOURS TO LONDON BY PLANE

1.5
HOURS TO NEW YORK BY PLANE

62 MILES OF COASTLINE

BUSINESS-FRIENDLY LOCATION
1 HOUR AHEAD OF NEW YORK
4 HOURS BEHIND LONDON
Bermuda's progressive approach to meeting the needs of high-net-worth families is exemplified by its innovative trust and company law.

**1975**
The Trustee Act 1975 by s47 provides the court with a broad jurisdiction to confer on trustees additional powers where 'expedient', providing the flexibility to modernise trusts, while ensuring careful judicial oversight.

**1989**
The Trusts (Special Provisions) Act 1989 contains provisions designed to protect trusts governed by Bermuda law from challenges under foreign laws or by foreign courts. The legislation also permits non-charitable purpose trusts.

**2002**
The Trusts (Regulation of Trust Business) Exemption Order 2002 exempts Bermudian private trust companies from the licensing requirements of the Trusts (Regulation of Trust Business) Act 2001 as long as they only offer trustee services to those trusts specified in their memorandum of association.

**2009**
The Perpetuities and Accumulations Act 2009 abolished the rule against perpetuities and excessive accumulations, allowing the formation of dynastic and perpetual trusts from 1 August 2009.

**2014**
The Trusts (Special Provisions) Amendment Act 2014 expressly lists extensive interests and powers that can be retained by a settlor or granted to a third party (e.g. a protector or beneficiary) without prejudicing the validity of a trust or leading to the third party being deemed a trustee.

**2014**
The Trustee Amendment Act 2014 puts the 'rule in Re Hastings-Bass' on a statutory footing, allowing the court to undo the exercise of fiduciary powers based on flawed or incomplete information.

**2016**
The Limited Liability Company Act 2016 creates limited liability companies (LLCs), offering local and international business owners more flexibility and financial protection. LLC members have limited personal liability for the LLC’s financial obligations, while the operation of the LLC itself is governed by contractual agreement between its members, with limited statutory formalities.

**$29.7 TRILLION**
Wealth held by the World’s 211,275 Ultra-high-net-worth Individuals (UHNWIs) in 2014

**$190 BILLION**
Wealth held by the 1,155 UHNWIs living in the Caribbean in 2014

**$31 BILLION**
Wealth held by the 102 UHNWIs living in Bermuda in 2014

**2 SQUARE MILES:** the area in the Bermudian capital of Hamilton in which a number of internationally recognised and award-winning legal, accountancy, banking, insurance, e-commerce and wealth-management professionals are concentrated.

**30 LAW FIRMS:** practice in Bermuda, including private-client leaders Appleby, Conyers Dill & Pearman, and Harneys.

**230 THE MEMBERSHIP of Step Bermuda, providing a deep pool of private-client expertise.

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**IN GOOD COMPANY**

**INNOVATIVE LAWS**

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We are honoured to be the Official Law Firm of the 35th America’s Cup.
n increasingly important factor in determining the choice of jurisdiction for philanthropic vehicles is the regulatory environment. In this respect, Bermuda, which benefits from well-developed legislation and regulation, while preserving flexibility and allowing for innovation, is an attractive alternative to many onshore jurisdictions.

THE IMPORTANCE OF CHOICE OF JURISDICTION
While some countries offer relatively favourable environments for philanthropy, others impose multiple legal, regulatory and tax hurdles, as well as cumbersome bureaucratic processes, that inhibit private social investment. Indeed, registration processes, permissible legal entities, government intervention, transparency requirements, and tax policies are the most pressing policy issues limiting philanthropy.

Generally speaking, tax incentives are unavailable and the regulatory environment for cross-border giving is unfavourable. However, in the global context, the availability of tax incentives related to charitable giving in individual nations varies greatly, and tax incentives range from attractive to negligible. Unsurprisingly, the jurisdictions that offer the most attractive tax incentives for charitable giving are the most highly regulated, for fiscal reasons. For philanthropists resident in jurisdictions that do not offer attractive fiscal incentives, a foreign jurisdiction that provides prudent oversight and flexibility may be a compelling proposition, as tax mitigation is not a priority.

WHAT BERMUDA OFFERS PHILANTHROPISTS
Bermuda is an appealing jurisdiction for the establishment of philanthropic structures. Available vehicles include charitable trusts, companies limited by guarantee or shares, companies established by way of a Private Act of the Bermuda legislature, and purpose trusts. These structures can provide the donor with a high degree of control over grants and investment-management decisions, as well as providing the opportunity for families to build legacies and work together across generations.

CHARITY LEGISLATION
Bermuda also has well-developed charity legislation. Based largely on the UK Charities Act 2011, the Charities Act 2014 (the 2014 Act) repealed and replaced its 1978 predecessor. The new legislation complements the legal framework for the establishment of charitable structures.

The 2014 Act gives the Registrar General and Charity Commissioners increased regulatory authority and

‘Bermudian structures can provide donors with a high degree of control over grants and investment decisions’
BERMUDA
A LEADING TRUST JURISDICTION

Visionary industry leaders. Sophisticated infrastructure. A hub of talent, experience and innovation. Bermuda is a blue-chip financial centre built on globally respected regulation. We’re a top domicile for trusts and private-client structures, serviced by world-recognised trustees and lawyers—just two hours from New York, with daily flights to Miami, Toronto and London. Learn more at bda.bm

Connecting Business

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Absolute Integrity

Bermuda, one of the first international trust jurisdictions, has become known as a premier jurisdiction for trusts and other private client structures. Bermuda has a superior regulatory framework, judicial system and internationally recognised trustees and lawyers that serve a broad spectrum of international businesses and high net worth clients.

Founded in 1994, the Bermuda Association of Licensed Trustees (BALT) acts as a representative body and forum for all companies licensed by the Bermuda Monetary Authority to carry on trust and related business in Bermuda.

We invite you to contact a BALT Member Trust Company:

- Abacus Trust Company Limited +1 (441) 299-7118
- Altree Trust Ltd +1 (441) 278-7610
- Estera Services (Bermuda) Limited +1 (441) 295-1443
- HSBC Bank Bermuda Limited +1 (441) 299-6471
- BCR Paragon Trust Limited +1 (441) 295-5678
- Bermuda Trust Company Limited +1 (441) 299-6471
- Butterfield Trust Bermuda Limited +1 (441) 299-1614
- Clarien Trust Limited +1 (441) 294-3151
- Church Bay Trust Co. Ltd +1 (441) 494-4050
- Codan Trust Company Limited +1 (441) 278-7931
- Continental Trust Corporation +1 (441) 405-8108
- Fiduciary Partners Trust Company Limited +1 (441) 294-3640
- Hamilton Trust Company Limited +1 (441) 295-6815
- Harbour International Trust Company Limited +1 (441) 295-3792
- HSBC Institutional Trust Services (Bermuda) Limited +1 (441) 299-5206
- HSBC International Trustee Limited +1 (441) 299-6471
- HTM Trust (Bermuda) Limited +1 (441) 295-1958
- Lombard Odier Trust (Bermuda) Limited +1 (441) 299-8754
- Meritus Trust Company Limited +1 (441) 405-9870
- MUFG Fund Services Limited (Bermuda) +1 (441) 295-1355
- R&H Trust Co. (Bermuda) Limited +1 (441) 299-1875
- St. George’s Trust Company Limited +1 (441) 295-1820
- State House Trust Company Ltd. +1 (441) 296-2799
- Sterling Trust Limited +1 (441) 542-0656
- Westport Trust Company Limited +1 (441) 279-1258
- Winchester Global Trust Company Limited +1 (441) 298-5027
- Zobee Trust Company Limited +1 (441) 295-1393

For more information, contact Leah K. Scott, BALT President, at lscott@harbourtrust.com
PHILANTHROPY AND FAMILY OFFICES

strengthen the reporting requirements for registered charities. However, charities that are established by non-residents of Bermuda may be exempt from registration and ongoing filing requirements, as long as they do not solicit funds from the Bermuda public and are administered by a Bermuda-regulated institution.

The 2014 Act also clarifies the meaning of ‘charity’ and introduces a broad statutory definition of ‘charitable purpose’, detailing the public-benefit test and accommodating philanthropic innovations. This is important because, historically, common-law jurisdictions have had not a statutory definition of ‘charity’, and reliance on the ‘four heads of charity’ was subject to judicial interpretation, resulting in inconsistency, and creating uncertainty for innovative and developing forms of philanthropy.

Additionally, the 2014 Act, coupled with anti-money laundering (AML) and counter-terrorist financing (CTF) regulations applicable to Bermuda’s financial institutions, implements the Financial Action Task Force’s AML and CTF recommendations. This is a welcome development because charities are susceptible to financial abuse, and cross-border giving increases the risk of misappropriation of funds for non-charitable purposes.

DISCLOSURE VERSUS PRIVACY

While donors often develop their legacy through philanthropy, not all philanthropists are interested in publicity. Some are intent on preserving their anonymity, but this is becoming more challenging in a world of increasing regulatory pressure towards transparency.

American philanthropist Charles Feeney, the man behind the duty-free shops in international airports, established grant-making vehicles in Bermuda: the Atlantic Philanthropies. The Bermuda legislative and regulatory environment enabled him to preserve his anonymity, a privilege that would not have been available from registration and annual reporting, and mandates minimal disclosure, which may address confidentiality concerns.

TAXATION AND DISBURSEMENT REQUIREMENTS

Private foundations are subject to tight regulatory controls in jurisdictions that offer attractive fiscal incentives, such as the US and Canada. Despite this, critics argue for greater stringency on the basis that private foundations diminish government revenue and can tie up capital in perpetuity. Controls include mandatory annual distribution requirements; excise taxes or taxation on maintained and incremental income, hindering accumulation of capital and impeding the growth and long-term giving potential of a foundation; investment regulations and restrictions; and checks on political activities and operating business activities. Free from such controls and requirements, Bermuda is ideal for maximising asset-accumulation potential.

CORPORATE HOLDING CONTROLS

Philanthropists may wish to transfer corporate shareholdings into a private foundation as a part of their overall wealth planning. Divestment obligations and excess corporate holding restrictions in the US and Canada impose limits on corporate ownership. A number of EU states permitting majority shareholding by foundations impose taxes on active involvement in operational management or the exercise of voting rights. Without excess holding restrictions, Bermuda may accommodate these planning needs, where exit taxes or capital gains taxes can be mitigated.

HOW FAMILY OFFICES CAN HELP

All of these advantages on offer in Bermuda can be maximised by the use of family offices. The intimate knowledge that family offices develop about client businesses, family dynamics, succession and estate plans, and the family’s overall wealth-management strategy naturally aids in the provision of family philanthropy services.

Indeed, there are a number of advantages in involving family offices in the management of a grant-making vehicle, including the integration of key functions of governance, investment management, administration and tax planning, next-generation education, efficiency, and economies of scale.

CONCLUSION

The wealth-planning objectives of families will not be dissimilar to the goals of family philanthropy itself: namely, to strengthen the family unit and empower the next generation to become independent and productive. Implemented with a view to sustainable investment, philanthropy creates a lasting legacy that honours the family and its philanthropic founders. Bermuda is an attractive jurisdiction in which to establish single- or multi-family offices, and charitable vehicles. Where flexibility is desired and income-tax-deductibility is not essential, establishing a charitable structure in Bermuda is an appealing and viable proposition, accommodating investment, growth and innovation.

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Section 3 of the Perpetuities and Accumulations Amendment Act 2015 (the PAA Act 2015) has replaced s4 of Bermuda’s Perpetuities and Accumulations Act 2009 (the PA Act 2009). As a result, Bermuda’s Supreme Court has acquired a valuable new power to declare that the rule against perpetuities will not apply to trust instruments made before 1 August 2009 (or, in specified circumstances, made after that day).

BACKGROUND TO THE PAA ACT 2015

Under Bermuda’s PA Act 2009, the rules against perpetuities and accumulations do not apply to instruments taking effect on or after 1 August 2009, save in relation to property consisting of land in Bermuda. Originally, s4 of the PA Act 2009 went on to state in relation to existing instruments:

‘Nothing in s3 is to be taken as limiting the power of the court to extend –
(a) the duration of a trust,
(b) the time within which an interest in property must vest or take effect, or
(c) the time within which certain powers are exercisable, under an instrument which takes effect before the commencement day [i.e. 1 August 2009].’

There was uncertainty about the scope of the court’s powers under this original version of s4 of the PA Act 2009.1 The PAA Act 2015 replaced s4 with a new provision.

THE REPLACEMENT S4 IN THE PA ACT 2009

The new power of the Supreme Court in Bermuda applies to an instrument governed by the law of Bermuda taking effect either (a) before 1 August 2009 or (b) on or after that date but to which s3 of the PA Act 2009 does not apply to limit the application of the rule against perpetuities.2 In practice, the court’s new power may be exercisable not only in relation to pre-August 2009 trusts but also trusts established under a foreign system of law on or after 1 August 2009 that later become subject to the law of Bermuda.

EXTENT OF COURT’S POWER IN SUBSTITUTED S4

Under the substituted s4 of the PA Act 2009, the trustee or trustees of the trust instrument may apply to the court by originating summons. On that application, the court may:

‘... make an order on such terms as it thinks fit declaring that –
(a) the rule against perpetuities; or
(b) any other similar rule of law that may restrict the time under which...

The court’s new power may be exercisable not only in relation to pre-August 2009 trusts but also trusts established under a foreign system of law on or after 1 August 2009 that later become subject to the law of Bermuda’
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property may be held in or subject to any trust, shall not apply to such instruments and the property held thereunder.’¹

Section 4(4) spells out a non-exhaustive list of terms that the court may include in an order under §4. Those terms include but are not limited to:

(a) extending the duration of a trust;
(b) extending the time within which an interest in property must vest or take effect;
(c) extending the time within which certain powers are exercisable;
(d) providing that anything done by any person before the order is made on the basis that the instrument was void by virtue of the application of the rule against perpetuities... shall have effect as if the order had not been made;
(e) protecting or preserving the interest of any person in trust property where such interest will or may be defeated or its vesting in possession deferred by virtue or in consequence of the terms of any order made under this section;
(f) varying or deleting any provision in the trust which restricts (to or by reference to the perpetuity period or limitation on duration applicable to the trust) the exercise of any power arising under or in consequence of the instrument;

(g) providing that the order shall be deemed always to have applied to the instrument.’

THE APPROACH OF THE BERMUDA COURT

In the Matter of the C Trust,’ the Chief Justice made an order extending the duration of a settlement under the new power in §4 of the amended PA Act 2009. His judgment contains helpful guidance on the court’s likely approach to applications under §4.

The Chief Justice said: ‘The legislative history of §4 showed that the main purpose of the provision was to create a more simplified means of extending trust periods than was available under the pre-existing law.’ He noted that the court should proceed in a more economical manner than that required in an application under the already very flexible jurisdiction in §47 of the Trustee Act 1975. When exercising its unfettered discretion under §4, the court, without acting as a ‘rubber stamp’, will have regard to the best interests of all interested parties, broadly defined and looked at as a whole. Ordinarily though, it will be an irrelevant consideration that extending the duration of the trust will dilute the economic interests of existing beneficiaries.

PRACTICAL IMPLICATIONS

Practitioners are likely to find this new statutory power highly valuable.

One example strikes an English practitioner. Where there are UK-resident beneficiaries of a settlement that is approaching the end of its perpetuity period, there are often important capital-gains-tax (CGT) reasons for postponing the occasion when the UK-resident beneficiaries become absolutely entitled to trust property. Nowadays, this is the most common reason for applying to court to vary trusts under the English and Welsh Variation of Trusts Act 1958, but the court procedure under that Act (or §48 of Bermuda’s Trustee Act 1975) is expensive and cumbersome, and it usually requires one to join all beneficiaries as parties. Where Bermuda law is the trust’s governing law, there is now a relatively simple alternative procedure to achieve the desired extension to the perpetuity period and the postponement of CGT charges.

RULE AGAINST PERPETUITIES

1 See the article by Randall Krebs in Trusts & Trustees, volume 15, number 9, page 722
2 Section 4(1) of the PA Act 2009, as amended. But the court’s power will not apply to the extent that the instrument applies to property that is land in Bermuda: sa(3)
3 Section 4(2) as amended. Sa(2)(b) will apply to restrictions on the duration of a trust to a period of years such as those found in the trust law of some jurisdictions where the rule against perpetuities has no application (e.g. older trusts created in Jersey and Guernsey).
4 [2016] SC (Bda) 53 Civ (16 May 2016)
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On 15 June 2016, the Supreme Court of Bermuda celebrated 400 continuous years of sitting. The experience and consistency that comes with longevity, coupled with the breadth, depth and quality of the judiciary and the legal profession in Bermuda, are among the factors that make Bermuda an attractive jurisdiction for private clients to do business with.

Unsurprisingly, given the jurisdiction’s long participation in the private-wealth industry, Bermuda’s courts are home to plenty of interesting cases. Set out below are several recent cases of interest.

**Variation of Trusts**

Bermuda’s commitment to modernising trust law is demonstrated by *In the Matter of the F Trust and In the Matter of the A Settlement*, the first judgment on the application of s47A of the Trustee Act 1975, inserted by the Trustee Amendment Act 2014. This provision established a statutory basis for ‘the rule in Re Hastings-Bass’ and enabled the Supreme Court in this case to set aside the appointment of a UK-resident trustee where the trustees had not obtained advice on the resultant UK tax consequences.

Bolstering the provisions of s47A, this judgment confirmed that the court has unfettered statutory jurisdiction to intervene. By enabling the court to set aside flawed exercises of fiduciary powers where fiduciaries take into account irrelevant considerations or fail to take into account relevant considerations and, but for this failure, they would not have exercised the power (or would have done so differently), this legislative advancement supplements Bermuda’s attractive regime for restructuring trusts. It provides a remedy for the negative effects of fiduciaries’ acts or omissions, and avoids hostile, costly and time-consuming claims for negligence or breach of trust against advisors or trustees.

Given restrictions placed on the rule in *Re Hastings-Bass* by English and Welsh case law (now requiring fiduciaries to have acted in breach of trust or duty for the remedy to apply), Bermuda’s statutory offering is appealing, as it has legislatively preserved the rule in its wider form. Also, the retrospective application of s47A makes Bermuda an attractive jurisdiction for trustees who are considering a change of governing law to rectify an error.

**Court Approval of Trustees’ Discretion**

In *In the Matter of ABC Trusts*, the Supreme Court considered its role in approving the proposed exercise of trustees’ discretion within the context of negotiations between the trust and onshore tax authorities. In doing so, it examined whether the trustees:

- had to consider the wider social effects of the proposed settlement; and
- had the power to negotiate on behalf of a beneficiary in respect of their personal tax position.

As there is usually no cross-border enforcement of tax, save where there is an express intergovernmental agreement or treaty, trustees may be nervous where the trust, beneficiaries or settlor are liable to tax in another jurisdiction. In this case, the trustees sought directions where one beneficiary objected to their decision to conclude negotiations on the terms of a proposed settlement with a local revenue authority.

The dissenting beneficiary argued that:

- The trustees’ application involved a surrender of discretion to the court. The court disagreed.
- The concept of acting in beneficiaries’ best interests should be broadened to encompass ‘notions of good citizenship’. The beneficiary was concerned about negative publicity if confidentiality was breached, and it could be argued that the trust paid an unfair amount of tax. The dispute was about whether the trust should pay a demonstrably fair amount of tax.

The court held that trustees should:

- administer a trust as prudent businessmen, who generally seek to minimise expenses, would conduct their businesses; and
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‘The court seeks to give effect to a testator or settlor’s wishes, while protecting access to justice for beneficiaries with a justifiable claim’

• be even more conservative, as they often have a duty not just to beneficiaries of full age but also children and the unborn.

In the absence of any ethical provisions modifying the trustees’ duties, there was no requirement for the trustees to pay more tax than was legally due.

Significantly, due to a concession made during the hearing, the court was not required to determine whether the trust was empowered to negotiate on the dissenting beneficiary’s behalf. It had been argued by the trustees that they should be able to discharge the beneficiary’s liabilities without consent if it was fairly believed to be in the beneficiary’s interest. This issue will fall to a future case for determination.

NO-CONTEST CLAUSES

In In the Matter of the Estate of PQR, Deceased,3 the court considered the legality of a forfeiture or no-contest clause after an application by a testator’s daughter to have the relevant clause in her father’s home-made will declared null and void.

Used in wills and trusts to discourage challenges by disappointed legatees and beneficiaries, these clauses aim to guard against the latent threat of disruption to the administration of an estate or trust.

The case is of interest as it considered a point of construction that had not yet been determined in Bermuda and, in doing so, highlighted a divergence that the court had to reconcile between Commonwealth and English and Welsh case law.

Commonwealth case law has generally been more hostile to the validity of no-contest clauses, holding that they unjustly restrict the ability of individuals to access the courts. By contrast, the English and Welsh courts have been more willing to give reasonable effect to such clauses.

The Supreme Court acknowledged that no-contest clauses come in two forms: (i) a condition subsequent that determines a beneficiary’s interest in the event of a contest; and (ii) a condition precedent that grants a determinable interest that survives only until any contest is made. In this case, the clause was a condition subsequent.

The court considered three grounds on which the clause could be declared invalid:

• being merely in terrorem (i.e. in effect just a legal threat);
• being uncertain; and/or
• being contrary to public policy.

On the first ground, the court declared the clause void on the basis that it did not contain a gift over in the event of forfeiture. Notwithstanding that there were only two beneficiaries to the will and the testator’s wife was granted the sole right to the residue, Chief Justice Kawaley held that a gift over to the testator’s wife could not be inferred. Furthermore, no concession could be granted for the reason that the will was not professionally drafted.

On the second ground, the court held that the clause was certain. The requirement not to ‘initiate any litigation of any type relating to this will’ or ‘to my wife in general’ was conceded to be widely drawn but held to be sufficiently certain under a purposive interpretation, following the Cayman judgment in AN v Barclays.4 The court interpreted the clause as prohibiting only unjustified claims, whether related or unrelated to the will.

On the third ground, the clause was held not to be contrary to public policy because it should be interpreted as not being triggered by justifiable claims.

The court’s view on the second and third grounds demonstrates a judicial attitude that seeks to give effect to a testator or settlor’s wishes, while protecting access to justice for beneficiaries with a justifiable claim.

CONFIDENDUALITY OF TRUST INFORMATION

The tension between preserving the confidentiality of trust information and ensuring trustees are held accountable is an ongoing challenge in trust administration.

TRUST CASES

In In the Matter of an Application for Information about a Trust,5 Bermuda has provided authority on how it will deal with express provisions in trust documents restricting disclosure in a post-Schmidt v Rosewood Trust Ltd6 context.

The English case of Re Londonderry’s Settlement7 established that beneficiaries have a proprietary interest in, and a prima facie right to inspect, trust documents and accounts, but that trustees are not required to disclose the reasons behind the exercise of their discretion. This was challenged by the Isle of Man case Rosewood v Schmidt, in which it was held that the need for confidentiality must be balanced against the need for beneficiaries to police trustees, without which the courts’ supervisory jurisdiction would be made redundant.

The requirement for disclosure was held to depend on the extent of the applicant’s expectations from the trust and the nature of the information requested.

In this case, the applicant beneficiary, who was potentially entitled to a fixed percentage of trust assets and possessed a right to income, sought disclosure of historic financial information. His mother, from whom he was estranged, was the principal beneficiary and protector of the trust, and had been granted a restrictive veto power to withhold information.

This power was held to be valid, as it did not constitute a blanket prohibition on access to information by beneficiaries, but the court determined that this neither eliminated trustee accountability nor ousted the court’s jurisdiction to oversee the proper administration of the trust.

Out of concern that the power was not being exercised in the interests of the trust and its beneficiaries, the need for accountability was held to outweigh the need for confidentiality, and disclosure was ordered.8

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1 [2015] SC (Bda) 77 Civ
2 [2015] SC (Bda) 29 Civ
3 [2014] SC Bda 95 Civ
4 [2006] CLR 367
5 [2015] SC (Bda) 16 Civ
6 [2003] UKPC 26
7 [1963] Ch 918
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The year so far has produced its fair share of shocks and challenges for the private-wealth sector. So how well placed is Bermuda to cope with the challenges posed by the ‘Panama Papers’, the Common Reporting Standard (CRS) and new disclosure regimes such as those relating to the exchange of beneficial-ownership information (EBOI)?

Well, for starters, Bermuda does not feature prominently as a jurisdiction in the Panama Papers. The long-standing practice of requiring beneficial-ownership information concerning those establishing Bermuda companies can only be seen as a positive, given the international initiatives launched in the wake of the Panama Papers to require full exchange of such information between competent authorities in due course.

Bermuda has also taken a positive stance on tax-information exchange in the context of the US Foreign Account Tax Compliance Act (FATCA) and the bilateral UK intergovernmental agreement (IGA). It is an early adopter of the CRS too, which came into force on 1 January 2016. In the short term, Bermuda's status as a Model 2 IGA jurisdiction for FATCA, with direct reporting of Bermuda’s ‘foreign financial institutions’ to the US Internal Revenue Service, rather than to a domestic tax authority, has meant it is somewhat behind some other jurisdictions in building capability to deal with the first wave of CRS reporting in 2017. However, it is understood that Bermuda recently put out to tender the project to implement a comprehensive reporting system in readiness for the first exchange of CRS data – a welcome development.

HOW BERMUDA CAN BENEFIT
A noticeable trend in the wake of the CRS is for families and their advisors to consolidate their trusts and underlying holding structures in a single jurisdiction, to reduce multiple compliance demands and the additional costs they can generate. Bermuda seems well positioned to benefit from this trend for migrating structures to jurisdictions with a reputation for high standards of compliance and integrity.

A parallel trend has been for families to consider protector arrangements. This has been prompted by the need to disclose protectors under the CRS in certain cases. Families are increasingly considering the merits of replacing protectors who are family members or friends with independent, professional protectors. This is a welcome development in enabling a more structured and considered model of governance arrangements for trusts.

EBOI looks to be the key emerging development post-Panama Papers. The OECD has been tasked with producing a report by October 2016 on how such a regime might be introduced. The key outcome for trusts seems to be a requirement for jurisdictions to create trust registers alongside their corporate registers; such registers are likely to require professional trustees in a jurisdiction to provide an annual update on any changes to the class of beneficiaries and persons who have powers in relation to a trust, such as protectors. EBOI is based on the idea of an annual exchange of such data with the home countries of persons whose data appears on the trust register. While pressure is building in the post-Brexit EU for public trust registers, the initial EBOI proposals envisage data being available to competent authorities only, but it seems certain there will be pressure from non-governmental organisations to make such registers public, as in France.

More generally, Bermuda continues to be well regarded as a trust jurisdiction for international wealth structuring. The unique features of s47 of the Trustee Act 1975 are valued by international practitioners where a trust instrument requires amendment and where it is preferable for the trustee, rather than beneficiaries, to take the lead. This is especially important where the alternative, more conventional variation-of-trusts route can have adverse tax consequences for beneficiaries in their home jurisdiction – notably, the risk of becoming a partial settlor of a varied trust via the provision of a formal consent to the variation.
good reasons to invest in Bermuda

Alexander and Andrew Green are third-generation Bermudians who have increased their investment in Bermuda over the past decade, with the development of the 100,000-square-foot Waterloo House office and residential building, and the purchase and USD150 million renovation of the Hamilton Princess hotel (pictured). Here they explain why Bermuda appeals to investors.

1. LOCATION, LOCATION, LOCATION
Only six hours or so from London, and a 90-minute flight from the US east coast, Bermuda is hard to beat in terms of location. Another advantage is that, when you fly to the US, you get to clear US immigration and customs in Bermuda, so, when you land, you are considered to have been on a domestic flight. If you have only hand luggage, you can zip through the airport in no time.

2. SAFE SHORES
Bermuda is one of the safest places in the world in which to live and work. You hear so much these days about terrorism, violence, crime, and natural and man-made disasters; these are not everyday concerns in Bermuda. It is home to a small but sophisticated community where people look out for one another, to the extent that many locals still do not lock their homes and cars at night.

3. BUSINESS-FRIENDLY GOVERNMENT
The island’s government is receptive to new ideas and is open for business. As the government says, Bermuda is all about ‘red carpet, not red tape’. The government changes from time to time, but we have always found different administrations to be helpful and cooperative. Their long-term plans have been to grow tourism and encourage new investment.

4. LITTLE BUT LARGE
Bermuda combines world-class infrastructure with small-town access. There are not many places in the world where you can nip out of the office to watch your child’s sports day and be back at your desk in an hour. From a family perspective, it is also reassuring that the local schools are world-class, as can be seen by their exam results.

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