future of trusts

A bright future for Trusts

To misquote Mark Twain, reports of the death of trusts are an exaggeration – in the sense of being downright wrong.

Trusts remain at the core of Jersey's offering as a financial centre.

When one travels to other parts of the world e.g. going to STEP or other conferences in Singapore or Dubai in the Caribbean or South America, it is clear that trusts are also central to worldwide wealth management and estate planning.

There is currently great interest – and rightly so – in alternative wealth management structures including family limited partnerships, cell companies, offshore bonds, and other insurance based solutions but arguably these are peripheral. Trusts remain right at the core.

Indeed, an institution that has survived for over 1,000 years has arguably never been in better shape with a global catchment area.

For many practitioners trusts will have been used primarily in a UK context, often for conventional succession planning and the orderly management of family wealth but also, especially in recent years, as part of an estate planning strategy. Anti-avoidance rules may have been tightened up and the particular UK tax advantages for non-domiciliaries may have been reduced but although this means that it has become much more difficult, if not impossible, to escape tax entirely through the use of trusts they can still be hugely effective in mitigating tax and in their primary purpose of providing a flexible means for the holding of family wealth, separating legal ownership from benefit.

Even in the context of UK tax planning, trusts still have a major role and for a non-domiciliary seeking to invest into the UK a trust is still almost certainly the best option.

Much of the focus on family limited partnerships has arisen simply because UK domiciled individuals find it harder to put assets into trust without incurring a charge to inheritance tax. However, in many cases a trust could be made without that liability by using business property relief or gifts out of surplus income – but with the great advantage that once assets are in trust, they will not be in the individual's own estate for inheritance tax purposes.

Foundations also have been around for hundreds of years although the concept of a private interest foundation was not developed until the 1920s in Liechtenstein. Some practitioners from an international

Hawksford International 15 Esplanade St Helier Jersey JE1 1RB Channel Islands

Hawksford
International

background find almost equal levels of interest from clients in trusts and foundations when selecting the appropriate structure for the management of their wealth. Often the choice comes down to a matter of cultural preference – what the client is used to, or whether they come from a civil law or an Anglo Saxon background. Nevertheless many civil law clients still take the trust route.

Let's assume that all available structures will now be transparent for tax purposes.

Confidentiality and privacy both remain key issues and quite properly so – but on the basis that due reporting takes place.

For a well-planned tax-transparent structure where precision and certainty of outcome is required, a trust is likely to be the ideal vehicle.

A well-drafted trust is an extremely sophisticated, flexible instrument capable of being adapted to changing needs and circumstances, complex taxation issues, generational changes and cross–jurisdictional issues.

It is the sophistication, flexibility and adaptability of trusts in the right hands with the right advice that sets them apart from other structures. The very fact that trusts have been in use for so long means that in most jurisdictions, including Jersey, a wealth of legal knowledge and case law has been built up which provides practitioners with a substantial resource on which to draw when dealing with structures under their administration.

Some clients are concerned that making a trust inevitably involves giving up all control. Certainly trustees should not slavishly follow the direction of their settlor, but in even the simplest case the trustees can and should take guidance from their settlor just as they must take account of the interests of their beneficiaries and give proper thought to the exercise of their discretionary powers. It has always been possible for certain powers to be reserved to the settlor either by law or by careful drafting and through arrangements such as protectorships or private trust companies, it is possible to create frameworks within which a settlor or his or her advisers can retain an involvement or influence. The growing use of private trust companies perhaps reflects the development of trusts over the years such that often they no longer simply hold conventional investments for a narrow class of beneficiaries. Increasingly trustees are asked to hold investments of every kind including trading businesses and family companies alongside "vanilla" investments. They do so for entrepreneurial clients whose interests and families spread across the world. A structure is needed which can cater for individuals who one day will pass over control of their companies to future generations and who wish their wealth to be passed down through generations. Such

Hawksford International 15 Esplanade St Helier Jersey JE1 1RB Channel Islands

structures should be based on good family governance rather than tax planning on the basis that intra-family dispute or divorce is likely to be far more damaging to family wealth than taxation.

In short, trusts survive and thrive but they need to be well drafted and well administered with expert trustees who really know their clients and understand their changing needs and circumstances, provide excellent levels of service, are proactive, anticipate change and plan ahead accordingly.

Hawksford International 15 Esplanade St Helier Jersey JE1 1RB Channel Islands