FINDING A SHELTERED COVE

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Bermuda remains a popular destination for the world’s high net worth and ultra high net worth individuals, families and institutions to domicile their wealth. The Island is one of the most established offshore trust and wealth management jurisdictions, due in part to its well-regulated legal system and stable economic and political environment.

The trust and wealth management sector in Bermuda has experienced significant growth in recent years, an increase of 50% over 20131. The Island will continue to advance in this sector through its reputation for quality, an innovative judicial and legal system and progressive approach to offshore trusts legislation, as well as an efficient and modern banking and corporate services industry.

A REPUTATION FOR QUALITY
Bermuda’s reputation for quality has supported the growth of the wealth management and trusts sector on the Island.

As Britain’s oldest Overseas Territory, Bermuda retains cultural and political ties to the United Kingdom and has an extensive history of

Photo: Courtesy Ann Spurling
international cooperation and adherence to the highest standards of compliance. Bermuda was also the first offshore jurisdiction to be included on the OECD’s white list of compliant, transparent countries.

Further, Bermuda boasts a deep pool of intellectual capital in law, accounting, risk and compliance, and trustee and family office services, which are designed to serve the needs of high net worth and ultra high net worth clientele. In addition, Bermuda is a highly collaborative jurisdiction with industry, Government and regulators working together to provide a business environment that facilitates speed to market and innovative services to clients.

JUDICIARY AND LEGAL SYSTEM
In 2016, Bermuda celebrated the 400th anniversary of the continuous sitting of the Supreme Court of Justice. Bermuda’s law generally follows the English common law and principles of equity but deviates, through its statute and case law, to reflect and facilitate modern offshore commercial and trust practices.

Bermuda caters to ultra high net worth client needs with some of the best quality legal minds in the international market. The judicial system is highly regarded for the reliability and efficiency of the Courts’ system and the quality and international experience of its high court judges, many of whom are drawn from the Bar and benches of England. It is common for English QCs to be instructed to advise and draft proceedings in Bermuda litigation and to appear before the higher Courts to argue cases of particular legal complexity or public interest. The ultimate court of appeal is the Privy Council in London.

The Chief Justice has repeatedly shown an acute awareness of the role Bermuda plays in international business, both in corporate and private wealth matters. His formal ruling that the hearings in Court of Trust matters in relation to wealthy families are to be heard in camera (in private and not public) established a presumption in favour of confidentiality in a private family wealth matter (where there is no public interest) that is unique to Bermuda.

BERMUDA’S TRUST AND WEALTH MANAGEMENT REGIME: NEW ASPECTS
Bermuda law-makers have developed various innovative and progressive legislative features, which attract international private wealth business.

RESERVED POWERS
The Trusts (Special Provisions) Amendment Act, 2014, provides uniquely clear statutory direction on the nature and extent of powers and interests that a settlor may retain for himself or grant to a third party (such as a protector, beneficiary or trusted family member) without calling into question the validity of the trust structure or risking the trust assets being considered part of the settlor’s own estate. The legislation helps provide an express (non-exhaustive) list of extensive powers and beneficial interests capable of being reserved or granted, bringing a high-level of certainty and clarity to Bermuda’s reserved powers regime. The ability to reserve and grant extensive powers and interests is particularly attractive to clients who hail from jurisdictions unfamiliar with trusts and who may be reluctant to release full control over their assets to trustees.

THE RULE IN HASTINGS BASS
Bermuda’s statutory enactment of the longstanding Rule of English law known as the ‘Rule in Hastings Bass’ provides an avenue, through the Bermuda Courts, to remedy negative effects or unintended consequences of an act or omission made by a fiduciary. In 2011, English Supreme Court decisions substantially
restricted the traditional rule, causing ripples throughout much of the common law world where it had long been applied.

Bermuda acted quickly to reinstate certainty in this jurisdiction by putting the rule on a statutory footing, with retrospective effect. The Bermuda legislation gives the Court an unfettered discretion, upon application, to set aside a flawed decision taken by a settlor, trustee, protector or other fiduciary, which has had adverse effects either for the trust or a beneficiary, for example, an unforeseen tax consequence. There is no necessity to establish that a breach of trust or breach of duty has occurred in order to invoke the Court’s jurisdiction, which makes Bermuda’s statutory rule an attractive alternative to costly, time consuming and uncertain litigation based on negligence or breach of duty claims.

RULE AGAINST PERPETUITIES
The Rule against Perpetuities, which restricts the possible duration of a trust, was disapproved for all Bermuda trusts from 1 August 2009, save for trusts holding real property situated in Bermuda. The Perpetuities and Accumulations Amendment Act, 2015 (the 2015 Act) bolsters the original legislation by providing an express route for trustees of pre-2009 trusts and for trustees of trusts established in other jurisdictions, which have since become governed by Bermuda law, to apply to court to amend or disapply the rule or any similar limitation on duration. The express provisions of the 2015 Act streamlines the procedure, making an application more simplified and cost-effective for trustees and their advisors than was previously possible.

SECTION 47
Over four decades after its introduction, Bermuda’s renowned “Section 47” of the Trustee Act, 1975 remains unique for the breadth and flexibility of the powers available to the Bermuda Court to reorganise trusts by varying beneficial interests and administrative powers “where it is expedient” for the beneficiaries to do so. Unlike standard trust variation provisions found in many offshore jurisdictions, there is no strict requirement for beneficiary involvement or consent, which avoids beneficiaries being put at risk of a deemed taxable transfer, in some other jurisdictions, by virtue of their formal involvement in a trust restructuring. Section 47 has been invoked for many varied purposes over the years, including to change the governing law of a trust.

PRIVATE TRUST COMPANIES (PTCs)
Bermuda was at the forefront of the international trust world in introducing modern PTC legislation. A PTC may be incorporated with the limited object of acting as trustee for a restricted class or group of trusts and is a popular alternative to individual trustees and licensed trust companies as it allows the settlor’s family members and trusted advisors to play an active role, on the board or through share ownership. Bermuda’s PTC regime has considerably less “red tape” regulatory requirements than some other jurisdictions. A Bermuda PTC does not require a minimum
level of capital, permits corporate and non-resident directors and secretaries, can be established in a couple of days and is capable of servicing non-Bermudian trusts.

CHARITABLE AND PHILANTHROPIC DONATIONS
The salient feature of Bermuda's current Charities Act is the expansive definition of charitable purposes, which encompasses varied philanthropic, benevolent and socially useful purposes, which do not attract the benefits of charitable status in other common law jurisdictions. This is supplemented by other Bermuda legislation that provides a statutory basis from which to benefit wider philanthropic purposes through the medium of a non-charitable purpose trust.

BANKING AND CORPORATE SERVICES
The banking industry in Bermuda is efficient and modern with a range of retail and commercial services available. Bermuda is well-known as an established, fiscally responsible jurisdiction and has four licensed banks. All bankers and banking activity are regulated by the Bermuda Monetary Authority (BMA), which imposes high prudential standards of operation that follow international standards.

The efficient and streamlined approach to the establishment of companies in Bermuda, which can generally take less than a week, highlights the quality of the corporate services available to ultra high net worth individuals for business and private client structuring purposes. A recent amendment to the Companies Act, 1981 provides that an exempted company may convert to an exempted limited partnership, which has separate legal personality and vice versa. This option may be useful to ultra high net worth individuals where they wish to change an entity's status for legal or tax reasons or to take advantage of certain benefits available to another form of entity.

As well as the incorporation of companies limited by, for example, shares or guarantee, Bermuda has also recently introduced the concept of limited liability companies (LLC). An LLC is a hybrid entity combining corporate and partnership characteristics which originated and are widely used in the US. LLCs are commonly used in asset-management structures, as well as trusts and private client vehicles.

A Bermuda partnership is also a popular vehicle for international wealth management ventures because it is regarded in most jurisdictions as fiscally transparent.

Bermuda is in essence the ideal base for the contemporary family office and high net worth individual. With a well-deserved reputation as both a “clean” and conservative jurisdiction, Bermuda successfully balances adherence to the highest international standards of transparency and compliance with respect and support for the privacy and confidentiality of clients engaged in conducting their legitimate personal and business affairs on its shores. Through vigilance and thoughtful responsiveness to change, Bermuda continues to demonstrate its commitment to solidifying its position as a leading and competitive jurisdiction for offshore trust and wealth management business.

Footnote:
^ 2013 represents the last year the sector was surveyed by the Bermuda Business Development Agency (BDA).