Baker McKenzie.

Private Wealth Newsletter 2024

Second Edition

TAX FROM EVERY ANGLE

Editors' note

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Dear clients, friends, colleagues and readers across the world, on behalf of Baker McKenzie's Global Wealth Management Practice Group, we are pleased to publish our Q2 2024 edition of the Private Wealth Newsletter.

While much of the talk in the private client world is focused on residency planning and changing personal tax regimes, our lead feature article from Marnin Michael asks whether this sort of discussion and the resulting planning may be coming to an end sooner than we might think. With much of the world voting in general elections this year and increased global and local pressure on laws that appear to favor the more well-off, we think it wise to consider what a world with a "Pillar Two for individuals" could look like.

We also feature two pieces from our colleagues, Gillian Lam in Hong Kong and Anna Hwang in Taipei, covering important cases coming out of the offshore trust jurisdictions and the ramifications for settlors, beneficiaries, and practitioners. Keeping with the disputes theme, George Rix of our London office recaps a recent debate during London International Disputes Week where our own Anthony Poulton argued in favor of the premise that private arbitration will not be a successful tool in resolving trust disputes. Read on to find out why.

If you are looking to stay current on relevant and important cases and legislative developments, please have a look at our Around the World section compiling these updates with easy to access links to the full summary or alert.

As always, we hope you find something interesting, informative or thought-provoking in this edition. Our editors, Elliott Murray and Phyllis Townsend, or any of the authors listed throughout the newsletter, can be contacted with any feedback or questions.

Contents

PWN meets...

In the latest installment of our series of interviews, Julie Permeke talks to us about her experience of working at the Firm and involvement with Wealth Management.

Julie Permeke
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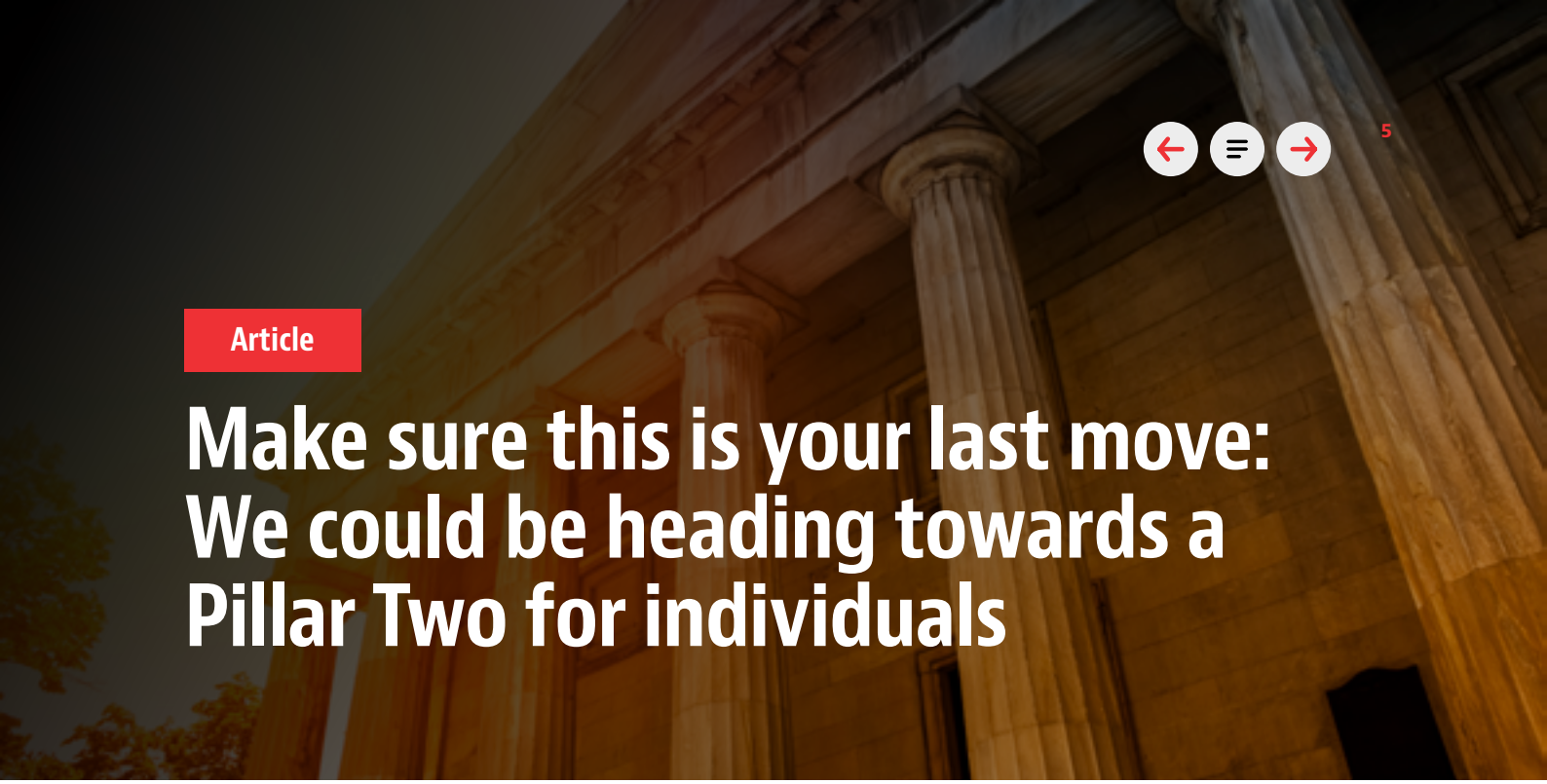
Baker McKenzie



Article

Make sure this is your last move: We could be heading towards a Pillar Two for individuals

Summary:

For years, much of tax planning for global families has been about moving individuals or an entire family from a less preferential tax jurisdiction to a more attractive tax jurisdiction. This type of planning has become a significant industry, where both countries and providers offer the service of migrating families from one jurisdiction to another. Over the last decade, we have seen a plethora of jurisdictions offer "temporary" options for tax residency. These options came at almost the exact same time as the use of the UK-resident non-dom regime became limited.

In March 2024, we saw the UK further limit what remains of this regime to a four-year opportunity. Portugal abolished their program. Israel, while not eliminating their 10-year tax holiday regime for new immigrants, significantly restricted its benefits by increasing the reporting obligations of people during this 10-year holiday. At the same time, Switzerland is discussing a federal inheritance tax. While many of the options being discussed may be absurd, some of the proposals, such as a 10% inheritance tax for assets over CHF 5 million, coupled with an exit tax to circumvent such attempts to avoid the inheritance tax, could gain traction.

At the same time, the increased social burdens of governments, coupled with the need to provide long-term defense spending, is causing greater restrictions on economic growth and leading to a need for governments to find revenue wherever they can. We are also seeing the OECD's approach on corporates, following automatic information exchange, for a mandatory minimum taxation on corporates going forward. It is not implausible that the OECD, after Pillars One and Two are implemented, will turn its sight towards a minimum taxation for individuals with the purpose being to prevent the migration of people solely for tax purposes and to stop these preferential, albeit limited, regimes from continuing.

Since the UK started discussing its abolition of the resident non-dom regime in its current form, people have been actively discussing the movement of their families out of the UK to other jurisdictions. People wish to discuss Switzerland, but once proposals for a federal inheritance are mentioned, Switzerland becomes less attractive. Then, you hear people discussing places like Cyprus, Malta and Greece. Additionally, no discussion on this topic would be complete without people also discussing the UAE and Monaco.

Some of this is like reading tea leaves. It is also based a lot on speculation. However, governments trying to address domestic political concerns by blocking these types of regimes is a trend.

Look at Switzerland for example: the discussion of an inheritance tax now is a direct consequence of a referendum allowing people to have an extra social security payment each year. The revenue to pay for this referendum needs to be located. While it has been a while since the lump sum tax regimes in certain cantons were abolished, and moreover, that there is even some discussion that some cantons want to bring it back, it ultimately becomes a political issue. As a political issue, the people that vote matter.

Post Pillars One and Two, I believe that the OECD will focus on one of two items: value-added taxes or personal residency taxation. I believe the likelihood that value-added tax is the next priority is probably low, as there are many people who view value-added

taxation as punishing lower-income individuals. In contrast, more people believe that "leveling the playing field" and ensuring that there is effectively the same income tax levied on all individuals in all major jurisdictions is viewed as a method of being equitable and stopping the forum shopping of taxation.

Inheritance taxes in a world that is becoming more leftist is also something that is of a significant concern. Further, inheritance taxes are worthless unless they are coupled with inefficient exit tax rate.

An increasing number of countries are already imposing exit tax on highly appreciated assets to avoid a deemed gain. The Swiss concept of avoiding exit tax is unique, but we are starting to see the concept more, and some form of global proposal of a base-level income tax, coupled with an exit tax, is at least somewhat possible. Thus, when I discuss with people their next move or an opportunity to move for taxation purposes, one of the things I convey to them is to make sure that wherever they move to is a place they will be happy to live long term, because it may be their very last move, as it could have consequences.

For many, the exit opportunity for tax minimization has been the UAE, and the UAE has some very significant tax advantages. It also has a very expat-friendly lifestyle for those who want to take advantage of it. However, it is also a jurisdiction that does not have an as-strong attachment to your network as other countries have, and the heat can be extreme.

Many people have decided to take residency in the UAE, but plan to spend four or five months abroad. The challenge with this approach is that without a tax-treaty network to work effectively, this may not necessarily lead to the appropriate desires and protections from a tax perspective. Moreover, as a consequence of the Russian war in Ukraine, the additional influx of individuals from Russia has really stressed the system to a very significant level. The flooding shown as a consequence of the rain this spring also indicates that perhaps the infrastructure may not be able to handle things as well as people thought it could. Thus, it may just be a long-term unviable option for people when they realize they have to spend more time there. We also see the same issue in relation to some of the island jurisdictions in Europe, such as Cyprus and Malta. Both are very nice, have lots of culture and are very interesting, but they have limited economic opportunity, and the likelihood of getting your kids to stay in those jurisdictions to live long term is very low.

When you add items like Beckham to the mix, i.e., Spain, a relatively short-term option, and Italy, which is a 15-year maximum regime, and others, one could be looking at a possibility of a very negative consequence at the end of the "honeymoon period."

Thus, one could be based in a situation where long term, there is significant unhappiness of having to live in a particular jurisdiction. Thus, when moving for tax purposes, make sure that it makes sense for the long-term period.

One thing I have been discussing with families (although often negatively received), is not to move to a low-tax or remittance-based system, or a jurisdiction with a tax holiday. Instead, move to a jurisdiction where the taxes are high but not impossible in the long term. For example, certain Eastern European countries, with their effective tax rate in the 20% range, and many may with low or no tax on capital gains, may be a more advantageous option in the long term, as this is something that may be viable in the long term than some of the regimes with limited options. Certain cantons in Switzerland may be more viable in the long term, such as Zug or Schwyz, with their 22% effective tax rate. These may be a long-term better option than a preferential tax regime.

So where does all of this meandering lead? Ultimately, the likelihood that this article influences any decision that anyone takes is probably zero. However, if it does have any influence, I suggest that those people considering making a move in view of the UK changes really think about the effect on their long-term living and whether the place they move to is somewhere they would be willing to live long term if the ability to leave and go somewhere else become more difficult. Unfortunately, it appears that an increasing number of people are moving to places where they may not wish to remain long term, should the preferential taxes no longer be there.

A question that I have been struggling with is: is it appropriate to be advising people to move for tax purposes? I could make the argument that the migration of families for tax purposes is coming to an end. Looking at the confluence of OECD pressures on base minimum taxation, one should think very carefully about their next move, as it may be their last, or the next move may be very difficult.

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Article

Key takeaways from the trust litigation session at the AP Wealth Management Symposium

Reported by Gillian Lam, Senior Associate, Dispute Resolution Group, Hong Kong (June 2024)[1]

Introduction

On 16 and 18 April 2024, Baker McKenzie held its Asia Pacific Wealth Management Symposium ("Symposium") in Singapore and Hong Kong, respectively. In the fast-paced session, wealth management and trust litigation experts reviewed recent trust law and related cases in Singapore, Hong Kong and other jurisdictions that affect the wealth management industry. Experts delivered the cases' legal and practical implications and shared insights from their perspectives as litigators and wealth management practitioners with vast cross-border trust structuring experience.

Panellists

The panelists were as follows:

SINGAPORE SESSION	HONG KONG SESSION
Anna Hwang, Partner, Taipei office (as moderator and speaker)[2]	**Gillian Lam**, Senior Associate, Hong Kong (as moderator and speaker)[3]
Tjen Wee Wong, Partner, Dispute Resolution, Singapore[4]	**Peggy Chiu**, Partner, Taipei[5]
Lisa Ma, Special Counsel, Wealth Management team, Hong Kong[6]	**Tjen Wee Wong**, Partner, Dispute Resolution, Singapore
Enoch Wan, Senior Associate, Wealth Management team, Singapore[7]	**Lisa Ma**, Special Counsel, Wealth Management team, Hong Kong
	Enoch Wan Senior Associate, Wealth Management team, Singapore

1 With speakers' input.

2 Anna is the chair of the Dispute Resolution Group in Baker McKenzie's Taipei office. Anna is listed in The Legal 500 as a "Leading Individual" and recommended by Chambers & Partners. Anna advises individuals/families in wealth disputes across multiple jurisdictions, including Taiwan, Bermuda, BVI, London and the US.

3 Gillian's practice focuses on commercial litigation (including trusts and private wealth disputes) and arbitration in Hong Kong. She is a solicitor advocate, having higher rights of audience before the Hong Kong courts. She is mentioned as one of Baker McKenzie's key lawyers in The Legal 500 under "Dispute Resolution: Litigation."

4 Lisa Ma is a member of Baker McKenzie's Tax Practice Group. Lisa's practice focuses on private wealth management and estate planning for high-net-worth individuals. She works closely with different jurisdictions to formulate advice on cross-border issues.

5 Peggy is both a lawyer and a certified public accountant, providing solutions for high-net-worth clients, trustees and banks from both legal and tax perspectives.

6 Lisa Ma is a member of Baker McKenzie's Tax Practice Group. Lisa's practice focuses on private wealth management and estate planning for high-net-worth individuals. She works closely with different jurisdictions to formulate advice on cross-border issues.

7 Enoch's practice focuses on advising financial institutions and high-net-worth families on tax, trust and estate planning issues.

Key cases

The panelists reviewed and discussed, among others, the following cases:

- *Grand View Private Trust Company Ltd v. Wong and ors* [2022] UKPC 47 ("**Grand View**")
- *Zhang Lan v. La Dolce Vita* [2023] SGHC(A) 22 9 ("**Zhang Lan**")
- *DFS v. NUHS Fund Ltd* [2023] SGHC 336 ("**DFS**")
- *Mustaq Ahmad v. Providentia Wealth Management Ltd and others* [2023] SGHCF 52 ("**Mustaq Ahmad**")
- *Chan Laam & Ors v. King & Company (a firm)* [2024] HKCFI 543 ("**Chan Laam**")

Grand View

This case is separately reported in the "*Grand View trust litigations: Are those trusts castles in the air?*", please refer to the article at page 18 of this Newsletter for details of the case and lessons learnt.

Zhang Lan

In this case, Zhang Lan ("**Mdm Zhang**") sold her shares in the holding company of a restaurant chain ("**SBIC**") to La Dolce Vita Fine Dining Co Ltd ("**LDV**") for approximately USD 287 million ("**Assets**"). Mdm Zhang transferred the Assets to two bank accounts held by Success Elegant Trading Ltd ("**SETL**"), and then further transferred her share in SETL to a professional trustee company ("**Asiatrust**") as trustee of a trust in favour of her son and remoter issue. Subsequently, SBIC's performance declined significantly, leading LDV to believe that Mdm Zhang misrepresented the company's financials during the sale. LDV commenced arbitrations against Mdm Zhang in China and obtained awards on the basis that Mdm Zhang made negligent misrepresentations in the share sale. LDV obtained judgments in Hong Kong recognizing the arbitral awards and registered the Hong Kong judgments in Singapore. LDV applied for the appointment of receivers over the SETL accounts to enforce the Hong Kong judgment. The issue was whether Mdm Zhang retained beneficial ownership over the Assets. Under the trust documents with Asiatrust, Mdm Zhang had no residual power over the Assets, nor the trust. Yet in the actual operation, Mdm Zhang exercised a large extent of control over the Assets. In particular, she had directed various transfers of the Assets that appeared to be for her own benefit and that had not been directed by Asiatrust. She also directed transfers of funds out of SETL when her own assets were frozen in Hong Kong. The Appellate Division of the Singapore High Court dismissed the appeal and held that Mdm Zhang was the beneficial owner of the Assets.

Discussion/practical implications:

- For a trust to be effective and the integrity of the trust structure to be maintained, all forms and substances of the trust should align (including ongoing administration and operation of the trust), e.g.:
  - The nature of the trust and the scope of powers should be carefully set out in the trust documents.
  - The actions taken by the settlor ought to be consistent with the terms of the trust instruments.
  - Proper records of the transactions (both relating to the trust and the trust's underlying companies) should be prepared, accounted for and kept in safe custody.
  - Upon transferring accounts to the trustee, the bank documentation should be reviewed carefully (and updated as appropriate) to reflect the change in ownership.

DFS

In this case, a testator bequeathed in his will a specific property ("**Gift**") to the National University Hospital Endowment Fund ("**NUHEF**"). The gift clause of the will stated, "*Upon the demise of my said wife my Trustees shall vest the said property to the [NUHEF].*" However, later on, NUHEF was renamed as the NUH Patientcare Charity Fund and then replaced by Respondent NUHS Fund Ltd ("**NUHSF**") before the testator passed away.

Following the death of the testator's wife in 2020, the executor applied for a declaration that the Gift had lapsed as NUHEF had ceased to exist. NUHSF argued that the Gift did not lapse as it continued NUHEF's charitable purpose. The court dismissed the application, finding that the Gift should vest in NUHSF.

Discussion/practical implications:

- The panelists shared that when interpreting charitable gifts, the courts will generally apply a "benignant interpretation." Where a gift is capable of two constructions, one that would make it void and the other that would render it effectual, the latter will be adopted.

- A gift to a named charity that has ceased to exist will:
  - Lapse if it can only be construed as being intended for the particular named charitable institution, i.e., the continued existence of the named charitable institution is essential to the gift
  - Not lapse if it can be construed as being for the purpose of the named charity, provided that substantially the same purpose of that named charity was continued on, as a matter of fact, by what can properly and reasonably be regarded as a successor of that named charity
- Equity favours charity, although the court must not strain the will for the charity. The court will look at substance over form in determining whether a charitable trust continues to exist or whether there is a successor to the original charity.
- To avoid disputes or the court making findings on its own based on a benignant interpretation, a will should be clearly and precisely drafted and clearly express the testator's intention.

Mustaq Ahmad

This is an acrimonious case between the first family and the second family of the late Mr. Mustafa, who died intestate. The applicant, Mr. Ahmad, is the son of Mr. Mustafa and his first wife who died. The second to seventh respondents ("**Respondents**"), who are Mr. Mustafa's second wife and their children, commenced legal proceedings against the applicant, alleging minority oppression and breach of duties as the administrator of the estate of the late Mr. Mustafa ("**Estate**"). The court revoked the letters of administration granted to Mr. Ahmad and appointed a professional third-party administrator for the Estate, Providentia Wealth Management Ltd ("**Providentia**"). Mr. Ahmad's legal representative discovered that the Respondents and Providentia had, through their respective legal representatives, engaged in unilateral communications on several issues relating to the legal proceedings and the Estate in the absence of Mr. Ahmad's legal representative.

Thus, Mr. Ahmad applied to the Singapore High Court for (i) copies of all past unilateral communications between Providentia and the Respondents and/or their solicitors and (ii) an order that any future communications between Providentia and the Respondents (including communications through solicitors or agents) be copied to his solicitors.

The court dismissed the application, finding that a beneficiary must show that there is a basis for the court to exercise its discretion to order disclosure, which Mr. Ahmad had failed to do.

Discussion/practical implications:

- To discharge their duty and administrative functions, trustees are entitled to have unilateral communications with certain beneficiaries to the exclusion of other beneficiaries. This is because (1) communications between a trustee/administrator and a beneficiary may involve sensitive or confidential information, and transparency between beneficiaries and trustees should be promoted, and (2) the trustee/administrator should not be saddled with onerous obligations that will impede its ability to administer the trust or estate.
- Trustees can rest assured that a beneficiary has no entitlement as of right to disclose communications between the trustee/administrator and other beneficiaries. The applicant seeking disclosure must satisfy the court that there is basis to intervene and to exercise its discretion to order disclosure, e.g., by showing that past communications were made in bad faith or improperly.

Chan Laam

In this case, the first plaintiff was in a relationship with the deceased, who set up a PRC company, to hold a PRC property. The second and third plaintiffs are their sons. The PRC company was a wholly owned subsidiary of Kingsun, a BVI company. The plaintiffs were informed by the deceased that the plaintiffs would receive full beneficial ownership and control of the PRC company, Kingsun, and the PRC property, and that he had signed documents to that effect, which were left with the defendant (a firm of solicitors). After the deceased passed away, the plaintiffs' attempt to obtain the trust documents from the defendant were stonewalled. The plaintiff obtained from the Hong Kong court an order to disclose the identities of the trustees (if any) of any trusts set up by the deceased.

Discussion/practical implications:

- The court has wide and flexible jurisdiction to order disclosure of trust documents to beneficiaries as part of its jurisdiction to supervise and intervene in the proper administration of a trust.

- In exercising its equitable jurisdiction to protect beneficiaries, the court can order disclosure against third parties if the circumstances warrant that relief. Contrasting this case against the *Mustaq Ahmed* case, the circumstances warrant the relief.
- Potential beneficiaries have the substantive right to the disclosure of the trust documents.

The panelists wrapped up the session by drawing common themes from both the *Mustaq Ahmed* and *Chan Laam* cases, noting that the principles in the UK *Rosewood*[8] case that the Privy Council had established are adopted. Specifically, a beneficiary's right to trust documents does not depend on a proprietary right but rather the court's jurisdiction to oversee trusts' administration. If the circumstances warrant the relief, the court will grant it. The session concludes by having the moderator open the floor to questions, in which fruitful discussion and insights ensued between the audience and the panel.

Key takeaways/conclusion

By way of conclusion, here are some key takeaways from the Symposium:

1. It is always prudent for asset owners (especially ultra-high-net-worth individuals and families with multiple jurisdictional considerations) to engage legal experts at the early stage of their wealth planning/trusts setup. It would be preferable to pick full-service law firms with a well-established private wealth management practice, including transactional and disputes lawyers who could advise on potential pitfalls to avoid expensive litigation.
2. Trustees should promptly react to any red flags regarding the administration of the trust and, where appropriate, draw the relevant trust parties' attention to these (including where actions are purportedly taken on the settlor's instructions).
3. Trustees should understand clearly what the settlors/wealth owners want to achieve when structures are being established and/or reviewed.
4. Clarity and precision in drafting trust documents (including letters of wishes) and wills will help to reduce future disputes.
5. Actual practices or conduct of the settlor or trustees should be aligned in substance with the terms of the trust documents to minimize the risk of the trust being attacked.
6. Beneficiaries are not entitled to disclosure of communications between the trustee and other beneficiaries as of right. To determine whether information could be properly disclosed, to whom and to what extent typically involves analysis of the surrounding facts and circumstances. In cases of doubt, trustees (and relevant parties) should always consider seeking legal input where appropriate.

Overall, the session offered valuable takeaways on recent developments in the wealth management sector. The lessons and practical implications learned from the Symposium can offer guidance in navigating multijurisdictional issues and effectively handling complex situations that may arise. Complex family or commercial situations may require bespoke solutions, and seeking early legal input could always prevent costly proceedings or litigations in the future.

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8 *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709

Article

CTA Rollout and NY Considerations

Summary:

The Corporate Transparency Act (CTA) was passed in January 2021, and requires "Reporting Companies" to report to FinCEN information regarding the Reporting Company's "Beneficial Owners" and "Company Applicants." On 1 January 2024, the CTA became effective, and reporting began.

The CTA represents a significant step forward for the United States for increasing transparency and reducing the risk of anonymous entities being used for money laundering, tax evasion or the financing of terrorism. The United States, although belatedly, has joined the international community in creating a legal and regulatory framework for identifying the individuals behind a broad class of legal entities. The world community will be watching to see whether and how well the CTA achieves the policy goal of making money laundering and terrorist financing more difficult in the United States' financial system. According to FinCEN, the effective date of 1 January 2024 allows for a substantial outreach effort to notify businesses about the CTA reporting requirement, and gives existing Reporting Companies time to understand the requirement prior to the one-year timeline.

I. Reporting company

Reporting companies are broken down into two categories: Domestic Reporting Company and Foreign Reporting Company.

A Domestic Reporting Company is a corporation, LLC or an entity that is "created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian Tribe." Most common law trusts formed by agreements would not qualify under this definition, as their creation does not involve the filing of a document with a state.

A Foreign Reporting Company is a corporation, LLC or other entity formed under the law of a foreign country and registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe. This definition more clearly captures each entity that is registered to do business in the US and leaves open less room for interpretive differences. However, it raises the question for foreign companies of whether their activities in a certain state rise to the level of being required to register in that state.

For a discussion of companies that are exempt from reporting please see United States: Beneficial Ownership Reporting, Part III - Baker McKenzie InsightPlus.

Beneficial Owner and Company Applicant

A "Beneficial Owner" is any individual who, directly or indirectly, either (i) exercises substantial control over the Reporting Company, or (ii) owns or controls at least 25% of the ownership interests of the Reporting Company.

FinCEN has explained that an individual can exercise substantial control over a reporting company in four different ways: (1) the individual is a senior officer, such as president, CFO, GC, CEO, COO, etc., and those of a different title, who performs a similar function as these officers; (2) the individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company; (3) the individual is an important decision maker for the reporting company; and (4) the individual has any

other form of substantial control over the reporting company. An individual is an important decision maker if they can direct, determine or have substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's business, finances or structure.

A "Company Applicant" is an individual who directly files a document to create (with respect to a domestic Reporting Company) or first register (with respect to a foreign Reporting Company) a Reporting Company with a secretary of state or similar office of a state, and also includes the individual who is primarily responsible for directing or controlling the individual who files the document. There may be no more than two Company Applicants.

For a discussion of exceptions, please see United States: Beneficial Ownership Reporting, Part III - Baker McKenzie InsightPlus.

II. BOI Report

The CTA imposes a series of deadlines for submitting a Beneficial Owner Information Report ("**BOI Report**") to FinCEN. Reporting Companies in existence prior to 1 January 2024 must file their initial reports by 1 January 2025. Reporting Companies formed (for domestic) or registered (for foreign) on or after 1 January 2024 but before 1 January 2025 must file their initial reports within 90 days after formation or registration. Reporting Companies formed (for domestic) or registered (for foreign) on or after 1 January 2025, must file their initial reports within 30 days of formation or registration. If there is a change in the beneficial ownership information, the entity will have to file an updated report within 30 days of the change. However, a reporting company is not required to file an updated report for any changes to previously reported information about a company applicant.

The CTA and the final regulations require the Reporting Company to disclose specific information about itself, its Beneficial Owners and its Company Applicant. For each Reporting Company, the Reporting Company must report its (i) name (including d/b/a), (ii) business address, (iii) jurisdiction of formation and (iv) unique identification number.

For each Beneficial Owner and Company Applicant, the following information is required to be submitted to FinCEN: (i) legal name, (ii) date of birth, (iii) residential address for Beneficial Owners, (iv) business address for professional Company Applicants and residential address for other Company Applicants, and (v) unique identifying number from an acceptable identification document or FinCEN identifier.

The BOI Reports are able to be filed directly on the FinCEN website. The FinCEN webpage also allows

Reporting Companies and Beneficial Owners to create their unique identifying number on the website. Reporting Companies and Beneficial Owners have the option to submit an online PDF or directly input their information on the website if they prefer to do so.

The CTA imposes criminal and civil penalties for willfully providing false or fraudulent beneficial ownership information, or willfully failing to report complete or updated beneficial ownership information. A violation may result in a civil penalty of USD 500 per day for each day that the violation continues or is not remedied, a criminal fine of up to USD 10,000, imprisonment or up to two years, or both.

III. Access to BOI Report information

FinCEN may disclose CTA information upon receipt of a request from federal agencies, state, local, or tribal law enforcement agencies, or foreign governments if certain requirements are met.

IV. Is the CTA constitutional?

On 1 March 2024, in the case of *National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.)*, a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the CTA exceeds the constitution's limits on congress's power and enjoining treasury, and FinCEN, from enforcing the CTA against the specific plaintiffs. FinCEN has stated that it will comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the CTA against the plaintiffs in that action (Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant; the National Small Business Association; and members of the National Small Business Association (as of 1 March 2024)). Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time. As for all other Reporting Companies, they can wait to see if a court determines that the CTA is unconstitutional for them as well, and have until the above-referenced applicable due date to either report their beneficial ownership information or risk facing criminal and civil penalties.

V. New York LLC Transparency Act

On 22 December 2023, the governor of New York State signed into law the New York LLC Transparency Act, which will impose its own set of disclosure requirements when it takes effect on 21 December 2024. This law is broadly patterned after the CTA and incorporates many of its provisions by reference, but only applies to limited liability companies formed or authorized to do business in New York. It will be interesting to see if a lawsuit is brought in New York to contest this legislation. Look for more details on the New York LLC Transparency Act in later editions of the Private Wealth Newsletter.

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Article

This House believes that Trust Arbitration is not going to succeed in resolving trusts disputes debate

Summary

This debate occurred as part of London International Disputes Week and was chaired by Stella Mitchell-Voisin, CEO of Summit Trust International. Anthony Poulton and Richard Molesworth of Baker McKenzie argued in favour of the motion (the "**House**"), while Dakis Hagen KC and Stephanie Thompson, both of Serle Court Chambers, argued against (the "**Opposition**"). It should be noted that the views expressed by the speakers were not necessarily their own.

The theme of the motion – trust arbitration – has been brought further into the spotlight since the Volpi decision in The Bahamas.[9] Here the Supreme Court of The Bahamas dismissed challenges to two arbitral awards regarding distributions made from numerous discretionary Bahamian trusts, brought (in the words of Mr Justice Klein) on "*every conceivable ground of challenge available*" under the jurisdiction's Arbitration Act. Different jurisdictions are increasingly recognising arbitration as an appropriate forum for trust disputes and legislation has been passed to provide for it, most notably in The Bahamas, Guernsey, New Zealand, the DIFC and US States such as Arizona, Florida, Idaho and Washington; nonetheless other jurisdictions have been slow to follow suit, so it seems timely to have held this debate, on the heels of the Volpi decision, as there is renewed interest in the topic at present.

Before beginning the debate, Ms. Mitchell-Voisin presented a few key priorities from the trustee perspective on trust disputes; namely – if a trustee is forced into litigation – how to achieve discretion, speed and finality. Those factors are commonly seen as potential advantages of arbitration, giving rise to the increasing interest in the market as to whether and how arbitration can succeed in resolving trusts disputes.

For the motion

The creation of a trust involves a unilateral disposition, a gift, whilst arbitration requires a contract. The beneficiaries of this gift, in the context of a family trust, are likely to include children and as yet unascertained beneficiaries such as future generations who are not yet born. The central problem for trust arbitration is that in trust litigation, representatives will generally be appointed for these beneficiaries by the relevant court, but there is no effective mechanism for binding them into an arbitration agreement in the absence of express legislation which deems arbitration clauses in trusts to be binding on all of the beneficiaries.

Trust litigation is a broad label which covers, to name just a few examples, breach of trust claims; validity challenges; trustee removal applications; the court's equitable jurisdiction to set aside trustee decisions under the appropriate circumstances (i.e., the Hastings-Bass principle); and, most prominently and commonly, applications made to the court for specific directions, and / or the 'blessing' of a particular trustee decision.

Central to trust litigation are three characteristics: (i) it tends to be long-running, multi-generational and multi-jurisdictional; (ii) most trust litigation is conducted outside England & Wales (as trusts have migrated away from the onshore jurisdictions, the

9 *Gabrielle Volpi v Delanson Services Ltd & Others/Delanson Services v Gabrielle Volpi & Others Consolidated Appeals,* 2020/APP/sts/00013, 2020/APP/sts/00018

litigation has moved with them); and (iii) the courts have a wide supervisory jurisdiction, which tends to result in a multiplicity of applications coming before the courts when litigation rears its head. Most obviously, trustees routinely take advantage of the "Re Beddoe" jurisdiction to seek approval for spending trust funds on legal fees, at a stage when the outcome of the litigation is unknown. The question that arises therefore is whether it is possible to submit such applications to separate arbitral proceedings, or whether the conventional courts will be required to exercise their supervisory jurisdiction in any event.

Arbitration has many advantages when compared to litigation, but as with any decision there are pros and cons that need to be weighed up: it is not necessarily a practical alternative for trust disputes. Advantages of speed, confidentiality, the freedom to choose the tribunal and the ease of cross border enforcement are typical factors in favour of arbitration, but it is not always certain that these advantages will be obtainable in a trusts context, where arbitration is largely untested.

The supposed advantages of speed and confidentiality may be illusory in practice as arbitration does not guarantee straightforward solutions to these disputes. What is likely to be contentious and time consuming in conventional courts, is just as likely to be problematic in arbitral proceedings. Confidentiality – which is certainly a feature of arbitral proceedings – is not always certain if the award is challenged – as soon as the arbitral tribunal loses direct control of the process, publicity may follow – as the Volpi case shows. Moreover, in offshore jurisdictions it is common for the Courts to make confidentiality orders in the context of administrative issues, and to anonymise the names of individual family members where the circumstances justify making such an order (such as for the protection of the interests of children). Equally, the premium trust jurisdictions offshore have experienced judges and advocates who can manage the dispute under tried and tested procedural rules, with reasonable expedition. In relation to sensitive issues, which family trust disputes often throw up, the emphasis should be on justice rather than speed.

The freedom to select arbitrators may also be difficult to achieve in circumstances where there are minors or unascertained beneficiaries. The tribunal would need to be constituted in order to appoint representatives for these parties, and therefore it would be too late at that stage for those parties to have any say in the appointment of tribunal members. In order for all parties to be treated fairly, it may therefore be preferable for none of the parties to choose arbitrators, to avoid the risk of only some of the parties having the right to do so and therefore a perceived procedural advantage. In those circumstances, one of the key advantages of arbitration – the choice of tribunal members - would be lost.

As regards enforcement, there are also questions as to whether a trusts arbitration award would be enforceable outside the jurisdiction of the trust under the arrangements provided for in the New York Convention. This would be a real issue in a case like Volpi, where the trust assets had been distributed out and were no longer in the jurisdiction of the trustee. The New York Convention provides that each Contracting State will recognise arbitration agreements where they are agreements in writing under which the parties undertake to submit their disputes to arbitration. It also provides that arbitral awards issued in one Contracting State will be recognised and enforced in other Contracting States, save where certain limited exceptions apply. The issue with trusts disputes is that the arbitration agreement would likely be included in the trust deed, to which the beneficiaries are not party. Such a clause relies upon local legislation for its efficacy – such legislation being required to "deem" the beneficiaries to be bound. As such, there is a real risk that the arbitration agreement would not be an arbitration agreement within the meaning of the New York Convention. If so, this would give rise to two potential risks: (i) first, beneficiaries could commence proceedings in another jurisdiction on the basis that they are not bound by the arbitration agreement, leading to parallel proceedings; and (ii) second, any arbitral award may not be enforceable in other jurisdictions under the New York Convention.

In addition, there is a practical issue around lawyers advising clients to include arbitration agreements in trust deeds. Typically, this advice is being given by private client lawyers, few of whom will have practical experience of the impact of the difference between litigation and arbitration on trust disputes and the issues that may arise. This requires specialist advice, to ensure that settlors are making informed decisions and understand the potential advantages and disadvantages of their decision.

Against the motion

The case presented by the Opposition rested on four key points:

1. Confidentiality

Confidentiality cannot necessarily be maintained in trusts litigation and in fact the norm is for breach of trust claims to take place in public. The notorious *Wong, Crociani and Thyssen* family trust disputes (and many others) have often featured in major newspapers with salacious reportage. It is not in the interests of trustees or family members to have their names in the press. Arbitration can provide a confidential avenue to have these disputes heard. In the Bahamian legislation, confidentiality in arbitration is enforced by way of liability in damages for any breach of confidentiality.

Concerns may arise on this point when enforcement of an award is resisted or the award is challenged, as this involves going to court. However, in England the presumption is that these proceedings will be heard in private, and the court will generally only publish a judgment where it is possible to do so without disclosing confidential information. While (somewhat unusually) the opposite presumption applies in The Bahamas and New Zealand, it may be that their legislatures consider amending the default position to increase confidentiality and encourage further arbitration.

2. Neutrality

Neutrality arises through the ability of parties to choose (i) the forum / jurisdiction of their dispute and (ii) the specific arbitrators of their dispute. These arbitrators are neutral parties who are generally selected based on their experience of the type of dispute in question.

3. Choice of representative

From a practical perspective, while local lawyers in offshore jurisdictions have much experience in litigation, clients often want UK barristers to represent them, especially in those jurisdictions where the judges and local advocates may have less familiarity with trust related cases. However, these barristers may not be able to practice or appear in some offshore jurisdictions and / or certain requirements may need to be met. This is not an issue in arbitration where the parties are free to choose who represents them.

4. Speed

Arbitration is commonly viewed as a faster alternative to litigation. The *Volpi* arbitration was conducted in five days within a year of it being commenced. The Bahamian judiciary may have taken three and a half years to decide the challenge, but this was due to delays with the local court system rather than the format of arbitration itself. When choosing a seat in the arbitration clause, if speed is the priority then certain jurisdictions can be chosen – it is no secret which jurisdictions deliver judgments faster. Speed and finality is important to clients. Any settlor, when creating the trust, would hate to see their family in a protracted dispute over many years, causing irreconcilable rifts. Through arbitration, family disputes can be solved more swiftly, and with greater finality, allowing the family to 'move on'. Speed and justice are not mutually exclusive.

Unborn / unascertained beneficiaries

In response to the concern raised around the issue of unascertained and unborn beneficiaries by the House, the Opposition explained that when drafting a trust deed, a settlor could insert either a condition precedent or a forfeiture clause that would have the practical effect of binding beneficiaries to an arbitration agreement. For example, it could be a condition of benefiting under the trust that the potential beneficiary submits any dispute to arbitration, and the trustee would be obliged to agree under the terms of the trust. Alternatively, a forfeiture clause may provide that any beneficiary would forfeit their interest in the trust if they were to bring a dispute via any medium other than arbitration. Alternatively, even if a trust deed did not include an arbitration agreement, the parties could agree to an ad hoc arbitration agreement after a dispute arises if it is in all parties' interests to do so.

Further, there are statutory provisions already in effect – for example in England and Wales - that may arguably bind the beneficiaries in relation to a trust arbitration. The agreement submitting the dispute to arbitration could be conditional on the incumbent trustee obtaining the blessing of the court to exercise its power to submit the matter to arbitration under section 15 of the Trustee Act. If a "compromise" under s. 15 of the Trustee Act is understood to bind all beneficiaries (a fortiori when blessed by a court with all relevant parties joined), then the same can apply to the submission of a dispute to arbitration.

In addition, it is arguable that any arbitral award in England at least would be binding on beneficiaries: s. 58(1) of the England and Wales Arbitration Act provides that the final award would be binding on the parties and *any persons claiming through or under them*. If, say, a successor trustee brought a breach of trust claim against a former trustee, the beneficiaries as persons "claiming through" the trustee may be bound by the award.

Conclusion

On the one hand, arbitration remains relatively untested as a method for trust dispute resolution and its processes may be inapt for the particular characteristics of trust disputes. The existing system works, with courts that have hundreds of years of precedent and procedural experience available to them. Time would be better spent reforming the system from within rather than looking to other forms of dispute resolution which themselves do not provide certain solutions.

On the other hand, arbitration can provide speed, finality and confidentiality to many disputes, including trust cases in the right circumstances. Arbitration should not be overlooked solely on the basis that it has not often been done before. While not many private client lawyers may have in-depth knowledge of its procedural processes, given they have the ability and flexibility to learn about the nuances of various jurisdictional processes, they can apply the same skills to master the differences between arbitration and litigation procedure, for the benefit of the whole industry and the families it serves.

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Article

Grand View trust litigations: Are those trusts castles in the air?

Introduction

Welcome to this special edition of our wealth management newsletter, where we delve into one of the most intricate and high-stakes trust disputes in recent history: the Grand View Private Trust Company ("**Grand View**") trust litigations. These cases have garnered attention due to their complex legal arguments in both Bermuda and the Commonwealth, significant asset values, the involvement of prominent legal teams, and the two brother settlors' prominent status in Taiwan's industrial history while their assets were being settled into Bermuda more than 20 years ago. Anna Hwang of Baker McKenzie Taipei, who is representing one of the complainants, i.e., Ven Jiao Wang/Wong (aka Tony Wang) on behalf of the late Yung-Tsai Wang's Bermuda and the British Virgin Islands (BVI) estates,[10] will provide an overview of the cases, including legal issues and broader implications of these landmark cases.

Setting the stage

The Grand View litigations involve the assets of two Taiwanese people, the late Yung-Tsai Wang (YT Wang王永在) and Yung-Ching Wang (YC Wang王永慶), co-founders of Formosa Plastics Group (FPG), a multinational conglomerate. At the heart of this dispute are two major cases: (1) *Grand View Private Trust Company Ltd v. Wong and others* [2022] UKPC 47 ("Grand View GRT Case") and (2) *Wong and others v. Grand View Private Trust Company Ltd and others* [2022] SC (Bda) 44 Com (22 June 2022) ("**Grand View Main Case**"). The judgments can be accessed here: https://www.jcpc.uk/cases/docs/jcpc-2020-0064-0065-judgment.pdf and here: https://www.gov.bm/sites/default/files/FINAL_Judgment_2018_No_44_civ_Wong_Wen_Young_v_Grand_View_PTC_Limited_et_al_with_citation.pdf.

Key facts[11]

Tony's late father, YT Wang, together with his elder brother, YC Wang, built the FPG in the 1950s. Under their leadership, the FPG became one of the largest business conglomerates in Taiwan.

In 2001, the two brothers established the Global Resource Trust (GRT) and the Wang Family Trust (WFT) in Bermuda. Grand View was the trustee of the WFT. Being a discretionary trust, the GRT included individual

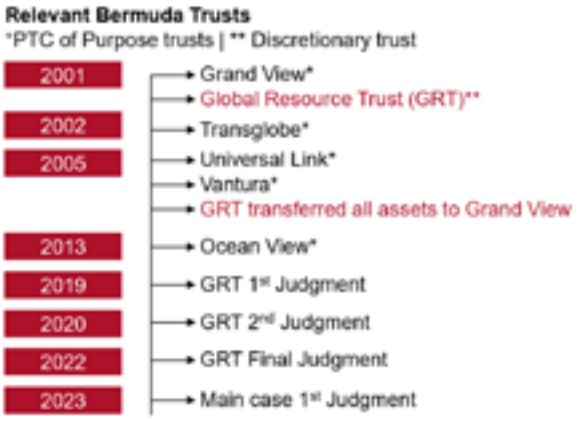
10 Tony Wang's legal team includes the following:
- Baker McKenzie Taipei, led by Anna Hwang acting as global counsel (Key members include Chien-Hung Lai and Robert Lee.)
- Serle Court, led by Richard Wilson KC (Key members include Prof. Jonathan Harris KC (Hon.), James Weale and Charlotte Beynon.)
- MJM in Bermuda, led by Fozeia Rana-Fahy (Key members include Hil de Frias, Michael Goulborn and Nathalie Ashworth.)
- Stewarts in London, led by James Price (Key members include Geoff Kertesz and Jemma Goddard.)
- Baker McKenzie Washington DC and New York, led by Jennifer Semko and Cyrus Vance (Key members include Graham Cronogue, Aleesha Fowler, Laura Zimmerman and Sydney Hunemuller.)

Tony Wang's co- plaintiff in the Grand View cases is Winston Wong. Winston Wong's legal team, has been led by Anthony Poulton of Baker McKenzie London (Key members include Luke Richardson, Rachael Cederwall, Gareth Roberts, George Berry, Rudolph Benade and George Bullock. [other counsel team members omitted].)

11 The facts have been largely reported by the Firm's press release: "Baker McKenzie Taipei secures victory in Privy Council UK for Formosa Plastics Group's founder's heir Tony Wang (王文堯)," 9 December 2022.

members of the two brothers' respective families (the Wang family) as beneficiaries. On the other hand, the WFT was a purpose trust conferring no benefit on members of the Wang family or any other persons.

Between 2001 and 2013, similar to WFT, a series of purpose trusts were settled with Transglobe, Universal Link, Vantura and Ocean View as private trust companies (PTCs) to manage those. A brief overview of the timeline of the trusts and PTCs can be seen below.



In 2005, the GRT trustee resolved to exercise the powers to add and exclude discretionary objects and to appoint the entire fund to the trustee of the WFT, effectively depriving all the Wang family members of any possibility of benefitting under the GRT. This decision and its implementation were challenged in the Grand View GRT Case. YC Wang's heir, Winston Wong, challenged the GRT trustee's decision before the Supreme Court of Bermuda and filed a separate lawsuit challenging the validity of the WFT and other purpose trusts. Tony Wang was informed by his half-siblings about the existence of Winston Wong's cases and being requested to join the Grand View Main Case. Tony Wang then became aware of the relevance of those cases with YT Wang's Bermudian estate after his counsel obtained the case information in 2019. He then obtained a limited grant to act on behalf of YT Wang's estate and joined the two cases.

The litigation encompasses assets worth billions of dollars. The Grand View GRT Case alone was valued at around USD 560 million in the Judgment of Privy Council, UK (JCPC),[12] while the total disputed assets in the Grand View Main Case were approximately USD 280 billion as of 2022.[13] This makes the Grand View disputes one of the largest involving Taiwanese settlors and significant cases within the Commonwealth.

The trusts under scrutiny in the Commonwealth include a discretionary trust and five Bermudian purpose trusts. The Bermudian purpose trusts cannot benefit any Wang family members, allegedly adhering to the specific requirements of purpose trusts. Notably, only four of YT and YC Wang's 17 children serve as directors of all the PTCs managing these trusts, leaving the remaining 13 without to be excluded, which in Tony Wang's case, is against YT Wang's intention and instruction.

Legal theories and proceedings

In the Grand View Main Case

The complainants sued for voiding the trusts in the Grand View Main Case, i.e., the purpose trusts, by introducing complex legal theories and reflecting the intricate nature of trust law, including uncertainty, statute of frauds (formalities), mixed charitable and noncharitable purposes, lack of authority, mistakes, mental incapacity, and others.

Despite Bermuda and the UK having a rich tradition in trust law, the Grand View cases reveal ambiguities that challenge even the most experienced legal minds. The 80-day trial and six-month deliberation for rendering a judgment made for the longest litigation that this author and most of the legal team had experienced. The ongoing nature of the Grand View Main Case means that comprehensive commentary remains reserved.

In the Grand View GRT Case

Chronology of the key events

The legal proceedings in the Grand View GRT Case have been extensive and multifaceted. Here is a brief chronology of the key events:

- 10 May 2001: The WFT, a purpose trust with Grand View as the trustee, and the GRT, a discretionary trust with YT and YC Wang's issues and remote issues as beneficiaries, were established.
- 9 May 2005: The trustee of the GRT added Grand View as a beneficiary, excluded the original beneficiary class, then appointed all the GRT assets to Grand View. The GRT was dissolved after this appointment.

12 §5 of the judgment.

13 Includes one in the US named New Mighty Trust.

- 5 June 2019: The Supreme Court of Bermuda granted summary judgment to the complainant, Winston Wong, stating that the trustee's actions altered the GRT's substratum.
- 20 April 2020: The Bermuda Court of Appeal allowed Grand View's appeal.
- 8 December 2022: The JCPC allowed Tony Wang and Winston Wong's appeal, citing improper purpose in the trustee's exercise of power.

Key findings

The GRT case has provided significant legal insights, particularly concerning the proper exercise of trustee powers and the application of the proper purpose rule.

Proper purpose rule

The key issue was whether the GRT trustee had acted within its powers and for a proper purpose. In particular, Clause 8 of the trust deed, which contained powers to add or exclude beneficiaries, was a core issue. Clause 8 of the trust deed is as follows:[14]

> 8.1 The Trustees may, at any time before the expiration of the Trust Period by deed revocable during the Trust Period or irrevocable, declare that:
>
> 8.1.1 any person or class or description of persons shall, as from either the date of such deed or such later date as is therein specified and permanently or for such period as is therein mentioned, be included as a Beneficiary for the purposes of this Declaration...
>
> 8.1.2 any person or class or description of persons then included as a Beneficiary shall, as from either the date of such deed or such later date as is therein specified and either permanently or for such period as is therein mentioned, cease to be a Beneficiary for the purposes of this Declaration...

Richard Wilson KC on behalf of Tony Wang's four propositions:[15]

The power of addition/exclusion was a fiduciary power.

A fiduciary power has to be exercised for a proper purpose.

The purpose for which the Clause 8 power had to be exercised was advancing the interests of one or more identified beneficiaries/objects.

The purpose for which the GRT trustee exercised the power was destroying rather than advancing the interests of the beneficiaries/objects.

14 §37 of the judgment.

15 §115-119 of the judgment. The four points were summarized by James Weale, Serle Court.

Key sections of the judgment

The judgment emphasized the need to consider the trust instrument's context and surrounding circumstances to define the intended purpose of the particular trust. The ruling underscores that fiduciary powers should further the beneficiaries' interests and adhere to the trust's foundational objectives.

- In the Board's view, it is generally the case that fiduciary powers conferred on a trustee of a trust with identified beneficiaries must be exercised to further the interests of the beneficiaries...The task is to discern the intended purpose of the particular power of addition and exclusion in the context of the particular trust. This requires the approach of considering the power in the context of the trust instrument, and of the circumstances surrounding it...In a case such as the present, where it appears to the Board that the GRT has a clear purpose, it has a decisive effect on identifying the purpose of the clause 8 powers.[16]
- In the Board's view, the natural reading of the GRT trust deed as a whole demonstrates that it established a family trust, for the benefit of the direct descendants of the Founders. This family character is emphasised by the terms of the trust deed, to a degree which may be unusual in the world of discretionary trusts... This is not a case in which the ultimate beneficiaries are, for example charities with no connection with the settlor (or Founders) or individuals who, it could confidently be said, the settlor (or Founders) had no intention of benefitting.[17]

The JCPC found that the GRT trustee's actions were not for the proper purpose, as they aimed to destroy rather than advance the beneficiaries' interests. "The Board concludes that the appeal succeeds, for the reasons given in this judgment, as regards the application of the proper purpose rule to the challenged decision."[18]

Practical implications and lessons

The Grand View GRT Case offers many practical lessons for trustees and wealth planners:

1. Restoration of rights for trust beneficiaries: Ensuring beneficiaries' rights are protected is paramount. Trustees must act in the best interests of beneficiaries and adhere to the trust's terms.

Clarity on fiduciary duties: Trustees must have a clear understanding of their duties and exercise their powers within the scope defined by the trust deed.

Proper purpose rule: Trustees' actions must align with the trust's intended purpose. Deviating from this purpose can result in legal challenges and invalidate trustees' actions.

Certainty in trust administration: Clear guidelines and practices are essential for effective trust administration. For wealth planners and trustees, the importance of meticulous trust drafting to avoid ambiguities cannot be overstated.

Legal interpretation in trust disputes: Detailed examination of trust documents and intentions is crucial. Courts will consider the broader context and surrounding circumstances as a whole, e.g., trustees should keep in mind not to utterly rely on the literal meaning of the trust documents.

As a catch-all implication and lesson learned, engaging outside counsel for jurisdictional considerations and legal clarity is crucial. Trustees must ensure that the settlor has received adequate and proper legal advice for structuring and planning, drafting, or reviewing trust-related documents, such as trust deeds, letters of wishes, etc. Given that comprehensive legal advice necessitates input from experts in various fields (such as litigation, tax, wealth management, corporate law, etc.) and often spans multiple jurisdictions, clients are encouraged to consider engaging an international law firm specializing in a sufficient range of practices for integrated advice. This is especially critical for complex family trusts that involve significant assets and international elements and applies not only at the structuring stage, but at any subsequent trustee's decision-making stages.

The intricate legal and strategic considerations involved in such high-stakes trust disputes

1. Clients' participation: The active involvement of the clients, particularly Tony Wang and his siblings, in the legal process is emphasized as a key factor in managing the case effectively and efficiently. Their detailed knowledge on the bulk of the original Chinese evidence and of family dynamics provided invaluable context for the legal teams. With the clients' solid and credible factual background and the evidence, Tony Wang's case is not "a castle in the air."

Jurisdictional considerations: The cases (facts and laws) span multiple jurisdictions, including Bermuda, BVI, the UK, the US and Taiwan, each with its own legal traditions and precedents. This cross-jurisdictional nature adds layers of complexity to the legal arguments and outcomes.

16 §120 and 121 of the judgment. This clear purpose was provided in § 80 of the judgment.

17 §80 of the judgment.

18 §128 of the judgment.

Strategic joint forces: In these cases, Tony Wang and Winston Wong approached Baker McKenzie Taipei and London separately and independently and the firm was able to represent both parties because of their common legal interest in the outcome. The collaboration between various legal teams, despite differing advocacy strategies, highlights one of the strengths of our firm and our ability to form a strategic alliance to present a unified front in the case. This collective effort underscores the importance of coordinated legal strategies in complex trust disputes.

Conclusion

The Grand View cases serve as landmarks in trust litigation, highlighting the complexities and the importance of clear and sound legal frameworks. The GRT case has been finalized by the JCPC with a clear rule of proper purpose to be followed by the industry. As we await further developments on the Grand View Main Case, we encourage trustees and legal professionals to draw lessons from these cases to ensure compliance with fiduciary duties.

Further, it is commonplace to evaluate the outcome of litigation through the lens of "victory" or "defeat." However, in the Grand View cases, we may consider adopting a different perspective, one that prioritizes the sustainable development of both the family and the business. The establishment of the trust over 20 years ago likely encountered unforeseen issues (defects), and since then, the trust laws, business environment and global tax systems have undergone significant changes. Therefore, "trust restructuring" might be the most beneficial outcome for all parties involved in the litigation, as well as for society at large.[19]

As always, we are here to provide guidance and support. For further information or personalized advice, please do not hesitate to contact us.

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19 Mr. Stan Shih, the founder of Acer Inc., recently had his experience published in CommonWealth Magazine. He has observed from his experience that companies typically need to undergo a transformation every decade. "It's not because the management lacks awareness or the desire to change, but because it's difficult to make drastic decisions without sufficient pressure," he noted (CommonWealth Magazine, Issue 800, 11 June 2024). This viewpoint is particularly relevant to the parties involved in this litigation.

Around the world

France - Update of the French tax authorities' official guidelines relating to the rental of furnished accommodation: The government grants a tolerance allowing the application of the prior rules for 2023 income (BOI-BIC-CHAMP-40-20-14/02/2024, No. 55)

As announced by the government following its mistake in maintaining the Senate amendment providing that the rebate applicable to the rental of unclassified tourism accommodation would be reduced from 50% to 30% and applicable if the income does not exceed the threshold of EUR 15,000 instead of the previous EUR 77,700 threshold, the French tax authorities' official guidelines (BOFIP) have been updated to allow taxpayers, as a tolerance, to benefit from the previous tax rules for 2023 income.

READ MORE

Authors:

Agnes Charpenet | Philippe Fernandes | Pauline Thiault

Spain - Spanish personal income tax: The Government of the Community of Madrid will introduce a personal income tax deduction for new taxpayers coming from abroad (Mbappé Act)

In fiscal year 2023, the Government of the Community of Madrid (GCM) published a draft law, effective as of FY 2024, allowing nonresident individuals who move to Madrid and invest in some financial assets to obtain a personal income tax (PIT) deduction of 20% of the value of those investments. This is a significant change. However, the draft is still undergoing parliamentary proceedings, but it is expected to be effective retroactively from 1 January 2024.

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Argentina - Personal Assets Tax — Benefits for repatriating financial assets

On 2 May 2024, Decree No. 378/2024 ("Decree") was published in the Official Gazette, extending the deadline for repatriating financial assets of at least 5% of the total value of the assets located abroad until and including 31 May 2024.

As a reminder, the applicable Personal Assets Tax (PAT) rates for assets located abroad will be the same as those applicable to assets located in Argentina if taxpayers repatriate financial assets of at least 5% of the total value of the assets located abroad before 31 March of each year and if certain additional requirements are met.

READ MORE

Authors:

Martín Barreiro | Juan Pablo Menna

Canada - Revenue Agency's guidance on the new trust reporting rules

The Canada Revenue Agency (CRA) has recently published an FAQ page regarding the new trust reporting rules applicable to trust taxation years ending after 30 December 2023.

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Authors:

Andrew Morreale | Josephine Chuk

United States - FinCEN issues notice of proposed rulemaking to curb money laundering in the transfers of residential real estate

On 16 February 2024, the Financial Crimes Enforcement Network ("FinCEN") of the Department of Treasury issued a notice of proposed rulemaking titled "Anti-Money Laundering Regulations for Residential Real Estate Transfers" (NPRM).

READ MORE

Authors:

Glenn Fox | Lyubomir Georgiev | Martin Barillas

United States - IRS has the authority to assess and collect IRS Form 5471 penalties

On April 3, 2023, the United States Tax Court's ("Tax Court") decision in Farhy v. Commissioner prevented the Internal Revenue Service (IRS) from assessing and collecting penalties from taxpayers for failure to file Form 5471.

On May 3, 2024, the United States Court of Appeals for the District of Columbia Circuit ("DC Circuit") held that the IRS has the authority to assess penalties under Section 6038(b) and may collect the penalties levied against the taxpayer in Farhy v. Commissioner, reversing the decision of the United States Tax Court ("Tax Court").

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Authors:

Lyubomir Georgiev | Christiana Desrosiers | George Clarke

United States - Supreme Court Preserves the fisc in Moore

On 20 June 2024, the US Supreme Court ruled, in a 7-to-2 decision in favor of the government, to uphold the constitutionality of the section 965 transition tax in Moore v. United States. This case has been closely watched because it informs a potential future dispute concerning the legality of a wealth tax and significant longstanding portions of the US tax regime.

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