

The Middle East:

Bespoke structuring on the rise

Putting the right structure in place for the right client is essential when advising wealthy clients from the Gulf

Jersey is seeing an increasing demand from Middle Eastern families and from those who advise them for more bespoke private wealth structuring designed to preserve and safeguard family wealth for the benefit of future generations. Often there is also a demand for Sharia compliance in whole or in part. In addition a desire for more control and participation to be vested in the family and second and third generation beneficiaries. This has led to an increase in the use of reserved powers in trusts notably with regard to investment and, for very wealthy families, the creation of private trust companies.

Bedell Cristin has advised and drafted the constitutional documents for three substantive private trust companies for Middle Eastern families in the past six months. These have had similarities but for the most part have been specifically drafted so as to meet the client's particular structuring requirements.

The purpose of this article is to consider: what factors are driving this push towards more bespoke structuring,



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the core strengths Jersey has to offer in terms of private wealth structuring, whether Jersey structures can fulfil Sharia law requirements and some of the structuring options and drafting issues which arise in connection with the creation and operation of private trust companies.

What factors are driving this structuring?

The drive to structure and restructure family assets is being driven by a number of factors not least concerns with regard to political instability and nation state sovereignty following the advent of the Arab Spring, the rise of ISIS and the continuing turmoil in



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Syria, Libya and Iraq. In short this has prompted clients from the region and surrounding regions to think very carefully about where and how they want to structure their assets.

Another factor which is prompting more sophisticated structuring is the simple fact that wealthy families from the region are becoming increasingly international both in terms of the location of individual family members and branches of the family (e.g. attendance at US or UK universities) and the location of family assets many of which have long been held outside of the Middle East. Coupled with this is the increasing sophistication of the Middle East client base both in terms



of investment and participation in family businesses all of which has led to a call and demand for structures that allow for more control and participation to be vested in the family and future generations of the family. It is now not unusual for second and third generation beneficiaries to have university degrees and business acumen and experience that may well be in contrast to the settlor's generation.

To add to the mix the introduction of FATCA and the implementation of the OECD's Common Reporting Standard (CRS) has and continues to call for a co-ordinated global strategy for international families from the region as regards compliance both now and in the future. It is an obvious point but it will be far simpler to co-ordinate this strategy if all relevant family members and assets have been properly considered and the assets structured accordingly.

Of course the continued growth of London both as a home for Middle East families or as a safe refuge or simply as a location for investment should not be underestimated noting Jersey's close links to London and its professional advisers.

From a Sharia law perspective wealthy Muslims who are required or choose to abide by Sharia law in whole or in part are able to create wealth preservation structures in Jersey that are Sharia compliant.

These factors have prompted wealthy families in the region to take stock and to take co-ordinated legal and tax advice. This in turn has led to an increase in instructions to Bedell Cristin for bespoke structuring using Jersey trusts and foundations and significantly an increase in demand for private trust companies.

Why Jersey?

For Middle Eastern clients wishing to establish private wealth structures, Jersey represents a very attractive



choice. A British Crown Dependency, but not part of the United Kingdom, the island has operated as an international finance centre for more than 50 years, administering trusts and providing private wealth management services for all of that time.

Some of the core strengths that Jersey has to offer are:

- ▶ stability (politically, economically and geographically);
- ▶ a democratically elected government and adherence to the rule of law;
- ▶ a robust and highly regarded regulatory regime;
- ▶ strong legal foundations and a well-respected judicial system;
- ▶ depth and breadth of experience amongst its professional advisers, with access to counterparts in the UK and other major centres in the world; and
- ▶ legislation which places a strong emphasis on the importance of flexibility notably in relation to trusts, companies and foundations, allowing for the creation of structures tailored to individual client requirements.

Added to this list is the fact that Jersey is readily accessible from the UK (with several daily flight connections and a flying time to London of under an hour) so that, for those Middle Eastern clients with business interests or family connections in London or elsewhere in the UK, choosing Jersey also makes logistical and practical sense.

Can a Jersey trust or foundation be Sharia compliant?

By way of background Sharia is a body of Islamic religious law derived from the teachings of the Qur'an (the Muslim holy book) and the Hadith (literature which consists of the narrations of the life of the Prophet Mohamed and the matters and things approved by him) as supplemented by Fatwas (rulings of Islamic scholars). Sharia is used to refer



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both to the Islamic system of law and the totality of the Islamic way of life. Broadly Sharia provides a framework and a set of principles and rules for a Muslim's day-to-day life.

In short a Jersey trust or foundation can be Sharia law compliant. The Jersey Laws that govern these structures are the Trusts (Jersey) Law 1984 and the Foundations (Jersey) Law 2009. Both laws are sufficiently flexible to enable the creation of trusts and foundations that are fully or partially compliant with Sharia law notably with regard to the Islamic rules of inheritance and restrictions on investment which will invariably be the two primary issues to address in the drafting.

Increasing use of private trust companies

We have in recent times seen a marked increase in the demand for private trust companies from Middle Eastern families. A private trust company (PTC) is a useful vehicle to consider in the planning and establishment of trust structures for high net worth and ultra high net worth families. Rather than transferring assets to a service

provider's professional trustee company, certain families may prefer to establish their own corporate trustee (a PTC) to be the trustee of the trusts that they plan to create. Insofar as regulation is concerned, a PTC is able to operate in Jersey pursuant to an exemption from the registration requirements that apply in relation to financial services business pursuant to the terms of the Financial Services (Jersey) Law 1998. In practice this means that a regulated trust company in Jersey can incorporate and administer a PTC structure without the requirement for a trust company licence for the PTC provided that the PTC does not solicit trustee services from the public.

Depending upon the circumstances of the individual client, a variety of factors may influence the decision to proceed with a PTC. These commonly include:

- ▶ A desire to retain a measure of control and participation in relation to the structure being created primarily by settlor and/or family representation on the board of the PTC;
- ▶ In-house specialist knowledge and expertise in relation to a family operating business;

- ▶ In-house specialist knowledge in terms of implementing FATCA and CRS policy;
- ▶ A wish to ensure that the trustee will have a working knowledge in relation to the assets held within the structure (such as a family business) and will be able to respond speedily whenever commercial decisions need to be taken;
- ▶ Continuity from one generation to the next;
- ▶ Flexibility to meet changing circumstances; and
- ▶ Confidentiality.

Family participation in the PTC

Control and family participation are now key drivers for many clients in terms of their structuring requirements. Experienced family members and/or trusted advisers with knowledge of the family and/or family business or other assets being transferred into trust can become board members of the PTC alongside professional service provider personnel. A PTC board comprised on this basis with in house knowledge and expertise will often be able to take key decisions swiftly where circumstances require. A PTC can further allow for the next generation to become familiar and experienced with the PTC's activities, assets and values before key decisions need to be made (e.g. through membership of an investment committee or simple attendance at board meetings perhaps before joining the board of the PTC itself).

However, this level of family control and participation only works with checks and balances incorporated into the detail of the constitutional documents. Therefore, the drafting of the constitutional documents that regulate the operation of each level of the PTC is fundamental. The provisions dealing with the constitution of the board of the PTC and specifically the mix of family directors and service provider directors always

require very careful consideration on a case by case basis. More specifically the provisions dealing with the appointment and removal of trustees and directors, quorums, the chairman, casting votes, dispute resolution and any reserved matters need to be drafted carefully. Invariably a balance needs to be struck between the control and participation requirements of the family and service provider requirements.

PTCs and foundations


A significant number of foundations have now been incorporated since their introduction in 2009 to act as an orphaned vehicle (i.e. a vehicle that has no members or shareholders) for specified purposes, whether to own certain assets, or to perform particular roles.

A foundation can be incorporated to hold the shares in a PTC company which acts as trustee of one or more family trusts or more recently to act as the trustee itself, in place of (or as) the PTC rather than use a limited company to act as the PTC the foundation acts as the PTC. This option simplifies the structuring as it involves just one vehicle (the foundation) rather than two (the PTC and the vehicle which owns the PTC). As a foundation is already orphaned (i.e. has no members or shareholders) this takes away the need for a purpose trust or a further foundation to hold the shares in the

PTC thereby removing one layer of the structure. Of course from a control perspective, who is vested with the power to appoint and remove council members of the foundation will be fundamental. In our experience of drafting the regulations for a foundation that is to act as a PTC it is relatively simple to mirror the language used in the articles of a PTC company on matters concerning the constitution of the council of the foundation (equivalent to a board of directors of a company) and other key issues ordinarily addressed in the articles of a PTC company.

From a regulatory perspective the private trust company business exemption is equally available to foundations.

The future

The ability to provide structuring which provides for both preservation of wealth from one generation to the next and Sharia law compliance in whole or in part whilst also providing for a high degree of control and participation in the family should mean that Jersey remains a very attractive proposition for wealthy Middle Eastern families looking to structure their family assets. For the reasons set out in this article we fully expect the demand for more bespoke structuring and specifically PTCs in Jersey to continue. 



- ▶ 382 active financial service firms
- ▶ 2.1 million people live in Dubai
- ▶ 100,000 people arrive each year

Source: Dubai International Finance Centre