

The future for trust businesses in the Asia region

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Despite the apparent fevered focus on Asia and India as the next areas of real growth in financial services products, this region did not escape the global financial crisis. Indeed, East Asia's growth slowed in 2009 to 3.4 per cent, slipping from 3.9 per cent in 2008 (source: Pacific Economic Cooperation Council).

Nevertheless, China holds about half of Asia's estimated \$4 trillion in foreign reserves, and is not facing Europe and the US' mounting levels of government borrowing. Hong Kong and Singapore, as low tax financial powerhouses within Asia, are reaping the benefits of the global transitional flows from Europe and the US to Asia. This is a clear indication that the wealth in the region is going to grow, albeit perhaps not by the figures quoted in 2007/08.

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Additionally, the perceptions of some European jurisdictions as being safe havens is changing and many people are choosing Asia as the new preferred location for their family wealth.

Riding the new wave

Law and accountancy firms, trust businesses, banks and other associated finance sector companies have been keen to ride the new wave and there is constant flow of firms opening new offices in Hong Kong or Singapore or Mumbai.

The unkind view is that many are jumping on the newest, shiniest bandwagon hoping to scoop up a margin of the wealth in the region. There is also the suggestion that it may be too late and those with the real understanding have been established and working in Asia for many years.

For the trust sector in Asia, like the Middle East before it, newcomers to the region will need to educate their potential high net worth clients and wealthy families as to the benefits of trust structures and why they represent a sound way forward for wealth preservation and

succession planning. For many individuals and families in the region the idea of signing away one's assets to a third party (the trustee) is totally alien. If you marry this with the various cultural idiosyncrasies of nationals in Asia it can be a minefield which is difficult to charter for trust businesses unfamiliar with the region.

For the purposes of this article, let's look at Hong Kong and the business potential in this market.

Hong Kong is not just about Asia, China access or low tax - although they are very compelling arguments to consider; Hong Kong offers individuals or companies conducting business in the Asia region, and indeed globally, a number of advantages that they would be hard pressed to find elsewhere. By way of example, Hong Kong tax applies only to income and profits sourced in Hong Kong. Furthermore, with correct positioning through a Hong Kong company, investments into China will only be subject to withholding tax on dividends as low as 5 per cent, royalties 7 per cent and interest at 0 per cent.

What makes a Hong Kong "client"?

It would be difficult to culturally identify a Hong Kong "client" as businesses are evermore global as are families. Hong Kong deals with all manner of nationalities - UK, Chinese, Australian, American, Indian, Filipino, Swedish, Irish, German, Thai, Korean, Norwegian and Swiss to name the headliners. Nationality is an important factor in correct tax planning. However, just because one might be dealing with a wealthy company or family formed, or based, in the UK, Germany, Australia or the Philippines does not mean that this is the only factor. It is not uncommon for a trustee to administer a trust with family members subject to three or more different territorial taxation systems such as an expatriate based in Hong Kong with a foreign wife whose children studied, and now permanently reside, in both the US and UK.

A successful firm will combine local structuring work with being able to provide solutions elsewhere. There are circumstances when Hong Kong structures would not be appropriate, and trust companies with the ability to call on expertise in other jurisdictions will seize these opportunities.

One example is that British Virgin Island

VISTA trusts are very popular in Asia as they allow a patriarch, or matriarch, to settle their family assets into a trust but retain day-to-day control at a company level. The new Guernsey trust law is also very advantageous for clients and provides an excellent alternative to Hong Kong governing law.

That said, those that are looking to bring "vanilla", ready-made structures to the region will not last very long. It is those that are providing bespoke services and build a structure around a client to ensure that it meets each and everyone one of their requirements that will enjoy longevity.

Any person choosing a trust or corporate provider needs to be sure that they are capable of providing and administering the structures correctly and that they are protected by robust and effective legislation and regulation.

The need for change in Hong Kong trust law

Hong Kong has not substantially revised its trust law since 1937 and needs to evolve. In 2007 the Joint Committee on Trust Law Reform (JCTLR) was established by the Hong Kong Trustees' Association and the Society of Trust and Estate Practitioners with a view to urging the Hong Kong Special Administrative Region Government to reform trust law in Hong Kong.

On 22 June 2009, the Financial Services and the Treasury Bureau (FSTB) produced the Review of the Trustee Ordinance and Related Matters consultation paper which documented the need for change to many aspects of the existing trust law. The proposal made by the FSTB is to reform the Hong Kong trust law, which is due to be implemented by 2011.

One of the strengths of the Asia economies is a "can do" approach to business which needs to be allied to wealth management businesses adhering to the highest professional standards if client solutions are to achieve the objective of planning to protect future generations.

The ability to understand the languages and cultures of the region, appreciating a vastly different business attitude and being able to provide a broad range of bespoke solutions are critical in securing new business. Face is important when doing business within Asian countries and simply relying on a corporate image and attitude held in Europe or the US is not enough to impress Asian individuals and business. People and their skills are what matter in Asia. ■