

Trust & Estate
Planning
NEWS

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London –
the destination
of choice for
Hong Kong
HNWI migration
and further trends from the
Trust & Estate Planning sector

Editorial

Dear Reader

I am honored to be elected as the Global Chairperson of the GGI Trust & Estate Planning (TEP) Practice Group (PG). Thank you for your trust to all of you, who have voted for me.

With pleasure, I present you the eighth edition of the GGI TEP FYI Newsletter with a wide variety of topics around the field of trust and estate planning. I thank all the authors – from Jersey, Canada, Singapore, Australia, Germany and Mexico – for their contributions. This gives a glimpse of our truly international alliance. It is incumbent on all of us to publish current meaningful articles for both our fellow GGI members and our clients.

We have missed seeing fellow GGI members, family, friends and clients during the last 21 months. We look



forward to being able to collaborate hopefully in person in 2022.

In the meantime, I would like to hear from you with your ideas to help us increase the participation and engagement of fellow GGI members in TEP. To that end, I plan on hosting an idea workshop to meet you and solicit suggestions. Please share any ideas

you have in the interim by contacting me directly (hc@cendsel.com).

Part of my brief as the Global Chairperson is to make sure that we also have regional leaders in place. If you are interested in taking a more active role within your region – which may be in the form of finding and connecting directly with other GGI members in this area, running regional webinars or in-person meetings, helping to source regional experts/authors, etc – please let me know.

I'm very much looking forward to working with you.

Kind regards,

✉ **Harry Cendrowski**

Global Chairperson of the
Trust & Estate Planning
Practice Group

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London – the destination of choice for Hong Kong HNWI migration

By  **Simon Voisin**

Uncertainty continues to surround the introduction of Chinese national security law and unsurprisingly there has been considerable impact on Hong Kong's future as one of the Asia Pacific's leading financial centres. This is especially true of Hong Kong's traditional role symbolising a bridge between China and the rest of the world.

China's potential powers to freeze or confiscate assets has led an increasing number of Hong Kong-based HNWI, UHNWI and family offices to move assets (and themselves) outside the political and financial reach of the new laws.

Singapore is one highlighted destination, but there is an increasing trend of high-net-worth individuals moving to, and investing in property in, the UK and London specifically. In the first ten months of 2020 the Home Office issued over 200,000 BN(O) passport applications from Hong Kong, higher than any period stretching back to 1997. In addition, twenty tier-one investment visas were also granted – the highest number since 2008 – based on the investment criteria, which means that an estimated GBP 40 million was ploughed into London's blue chips during that period.

Members of Hong Kong's high-net-worth community have identified the

current political risk and unrest as a threat, so these moves are not just about showing support for protesters against change; they also highlight the realisation that they can still benefit from diversifying links with Hong Kong and continue to make money. London has become more than just an investment relocation, with entire family offices being transferred and the purchase of prime location property as an inherent part of that. One example of this is the Rutland Gate mega-mansion purchased for more than GBP 200 million in January 2020. The trend continues with high-net-worth individuals buying the best in class property, not just for investment purposes, but also for personal use while maintaining residency in Hong Kong which allows them to diversify their assets geographically.

Statistics show that the biggest winners of the global economy at this point are liberal western democracies while more authoritarian regimes lose out. Despite this, Hong Kong remains one of the wealthiest cities in Asia with over 140,000 HNWI.

HNWI migration continues to be a good marker of the current economic and political climate. High-net-worths tend to be the first to leave and identify lucrative future opportunities, so the question currently is how long will HNWI migration continue and how much more will the UK, and London especially, see the benefit?

As with any movement of assets across jurisdictions, fair tax planning

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Forward Group Limited is a regulated Trust and Company services business located in Jersey. Jersey is a top-tier, low-tax jurisdiction. Forward provides regulated



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corporate and trust services to a broad spectrum of clients, including listed companies and high-net-worth individuals.

 **Simon Voisin**, Director with Forward Group, has over 30 years' experience in providing professional fiduciary wealth management services to private and corporate clients. He has worked for both independent and institutional trust companies and was previously head of a single-family office.

opportunities exist, especially for the non-domiciled. Ahead of any relocation of a person, family or even just assets, it is worth giving consideration to structuring through a suitable international finance centre. Jersey is regarded as one of the pre-eminent finance centres globally, due to the standing of its judiciary, its approach

to financial regulation, and the depth and quality of its fiduciary service offering. These factors combined offer a level of security and peace of mind that is unsurpassed and available to clients and professional advisers with concerns. In particular, an irrevocable trust structure may offer a solution worth exploring – this

was an effective solution in protecting family wealth when the UAE faced a similar change of power dynamics within their regime. Those families that did not plan effectively lost out. As with many things, these strategies are best implemented when the threat is perceived rather than when it is realised, as otherwise it can be too late.

Canadian corporate law updates for trusts and estates practitioners

By  **Andreea Muth** (On Leave)

On 05 July 2021, two amendments to the Business Corporations Act (Ontario) (OBCA) came into effect that will significantly impact trust and estate planning for family businesses.

First, corporations incorporated under the OBCA are no longer required to maintain a minimum number of Canadian residents on their boards of directors. Previously, at least 25% of the board was required to be Canadian residents. This has benefits for cross-border estate planning.

Prior to the OBCA amendments, a family whose key decision-makers resided outside of Canada would have faced complications operating a business or using a holding corporation in Ontario. Available options to circumvent this would have added significant costs and administrative complications to the estate planning process.

However, cross-border families incorporating in Ontario will still have tax implications that need to be carefully analysed. An OBCA corporation is deemed to be a resident of Canada for income tax purposes, regardless of its directors' residencies. For directors exercising "central management and control" located outside of Canada, it could mean the corporation is also deemed a tax resident of another jurisdiction. Where multiple residences for tax purposes are undesirable, a director structure that maintains management and control in Canada may be preferred.


Second, the OBCA now makes written shareholder resolutions easier to

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Pallett Valo LLP is one of Ontario's Top 10 Regional Law Firms. The firm practices in the areas of business law, commercial litigation, commercial real estate, construction, insolvency and corporate restructuring, employment and labour, and wills, estates, and trusts.

 **Andreea Muth** is a member of the Business Law Practice. Andreea

has a general corporate/commercial law practice, representing start-ups and mature business owners. She also has a developing expertise in trust and estate planning for business owners.

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execute for private companies. Certain resolution types can now pass by simple majority, as opposed to requiring full approval. This allows shareholders to pass routine matters like financial statement approval with greater ease.

Both OBCA updates give much-needed flexibility to corporate governance planning and execution. Any existing OBCA corporation wishing to take advantage of these changes must first review and possibly amend its by-laws, articles of incorporation, and shareholders' agreement to match the OBCA amendments.

You can read the article in more detail [here](#).



Trust in trusts

By [Nikki Cheong](#)

Trusts have adapted to suit the ever-changing global financial and legal landscape, gaining popularity as family wealth becomes increasingly complex, with assets being held in multiple jurisdictions.

When assets are injected into a trust, legal ownership is transferred to the trustees who have the fiduciary duty to act in good faith for the benefit of the beneficiaries. Such an important role can be assumed by a person or a firm. An individual may find it hard not to yield to the emotional demands of family members, while a corporate trustee may be more objective and provide continuity across generations.

Relinquishing control of hard-earned money to an external party requires a leap of faith. It is therefore unsurprising that some settlors may wish to retain a degree of control. There are various ways to do so, such as having

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SingAlliance is an independent asset manager with a presence not only in Singapore, but also Hong Kong and Geneva, specialising in providing wealth management solutions to HNW individuals, families, and institutions. In Singapore, SingAlliance holds a capital market services licence for fund management issued by the MAS.
[Nikki Cheong](#) is a senior relationship manager at SingAlliance



Nikki Cheong

Singapore, with more than twelve years of private wealth management experience in Hong Kong, Geneva, and Singapore. She first joined SingAlliance as a portfolio manager specialising in equities, before switching roles in early 2020 to serve HNW clients in Asia.



a letter of wishes to guide the trust administration, setting up oneself as a beneficiary, appointing a protector

to serve as a check on the power of trustees, or in the case of ultra-high-
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net-worth families, establishing private trust companies. However, it is critical to note that if the trustees are rendered as mere nominees, the validity of the trust may be challenged, thus losing the many benefits of setting it up in the first place. When set up correctly, trusts can ensure a smooth transfer of assets, reduce family strife, ease business

succession, protect assets against creditors or certain family extensions, and optimise tax considerations as well as facilitate philanthropy.

It is crucial that the trust assets are put to work to cover ongoing costs and to serve the needs of future generations. The trustees can appoint an investment

manager and other service providers to help generate a stable income. Ultimately, everything boils down to one word – “trust”. It is as much a noun as it is a verb. At the end of one’s life, it is important to have the enduring assurance is that one has placed trust in the right people who will act in the best interest of one’s loved ones.

Anti-avoidance: overseas entities indirectly benefit from Australian trusts

By  **Tony Nunes and Jane Harris**

In Australia, the beneficiary of a trust must pay income tax on any

income received from the trust. If no beneficiary is entitled to the trust’s income at 30 June, the trustee is taxed on the income at the top tax

rate of 47%. Thus Australian trusts often prefer to distribute income to an Australian resident individual or company rather than to a non-resident

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Kelly + Partners Chartered Accountants is a specialist chartered accounting business which assists private businesses,

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Tony Nunes

private clients, and families to manage their business and personal financial affairs. The Kelly + Partners tax consulting practice is respected as one of the foremost tax advisory firms in Australia and offers a full range of direct, indirect, and international tax services.

 **Tony Nunes** has over 22 years’ experience in providing tax advice. He has extensive experience in advising clients on issues affecting cross-border transactions, acquisitions and restructures, and in all aspects of



Jane Harris

structuring the ownership and financing of corporations and their operations.

Jane Harris has over ten years of experience assisting high-net-wealth and SME clients with taxation matters. She provides clients with structuring, negotiation, and tax legal advice, predominantly in income tax. Jane also frequently advises on the opportunities and risks of operating personal and business affairs through a variety of structures, including trusts.



beneficiary, as these payments are taxed at a lower rate. If the Australian resident passes on the benefits of the trust distribution to a non-resident in a tax-free way (e.g., as a loan, gift, or fully franked dividend), the total Australian tax could be as low as 30%, instead of the 47% that would have been required had the non-resident individual received the distribution directly.

However, the Australian Taxation Office (ATO) is reviewing these arrangements and seeking to apply anti-avoidance provisions, specifically section 100A, which applies where:

- a) a beneficiary is presently entitled to a share of the income of the trust;
- b) there is an agreement, arrangement or understanding that someone other than the beneficiary will benefit from the distribution;
- c) as part of the arrangement, there is a payment or transfer of money or property or provision of services to a person other than the beneficiary presently entitled; and
- d) the purpose of the arrangement was to reduce the Australian tax payable.

These provisions are broad and can even apply to informal understandings that are not legally enforceable. Further, the ATO has an unlimited period within which to make an assessment under section 100A.

Where section 100A applies, the net income that would otherwise have been assessed to the beneficiary (or trustee on their behalf) is instead assessed to the trustee at the top marginal tax rate. Given this circumstance, care should be taken when non-residents indirectly benefit from Australian trust income.

Why every entrepreneur needs a succession plan

By  Brad Severin

It was raining the day that Jim passed away from a sudden heart attack. He was out for his morning run and he never came back. His son Brett called from the office of the family's construction company when Dad failed to arrive for a meeting with their tax advisor and lawyer and was given the awful news. Dad was gone. Now what? He knew everything – the history of

the company, who the most important suppliers and contractors were, the arrangements with the bankers through his personal relationships with them for over thirty years. All this knowledge died with him.

What was Brett going to do? He had left his teaching position to work with his father in hopes of taking over the company one day, but there was no clear path at the time of his

death. Their “right hand man” was nearing retirement and together with his father, drove the company forward. Brett knew that Dad's will left everything to his mother, including the shares of the company, but how would they be able to continue forward without him. Now what?

Unfortunately, this story plays itself out far too often with the ultimate

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result frequently being the dissolution or failure of the business to succeed to the next generation as intended. All for the lack of a comprehensive plan to deal with issues around death, succession, and financial risk management during the lifetime of the patriarch. As the adage goes – “Fail to plan and you plan to fail”.

When the pieces of the puzzle fit together to provide for a smooth transition, all of the objectives established by the founding generation of the business are met and the long-term financial health of the family will be preserved. That is where we can help. At Moodys we recognise the importance of a well-crafted and skilfully executed succession plan to help you and your family chart a path for your business to be successful today, tomorrow, and beyond.

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Moodys Private Client Accounting has one focus – tax. They provide tax advice and planning for individuals with personal and business interests on both sides of the Canada-US border, no matter where they live in the world.

✉ **Brad Severin** was once described as an “eminent tax accountant” by former federal Finance Minister and Prime Minister Paul Martin. That’s high praise indeed. With more than 25

years of experience as a tax professional, he specialises in consulting in the areas of Canadian and international taxation matters, including corporate reorganisations, mergers and acquisitions, and succession planning for family-owned businesses.



Gift tax trap for intra-family transactions in Germany

By ✉ **Martin Thieslauk**
 and ✉ **Zlata Velagic**

Beware of intra-family transactions! As the following example shows, foreseeable increases in value in the future may trigger gift tax even before profits are realised.

Initial situation:

G holds a 100% share in a German corporation. G also holds 51% and his son 49% of a German holding company. The corporation owns a property valued at EUR 2 million according to an expert opinion, which it initially acquired for EUR 500,000. G sells

his shares in the corporation to the holding company for EUR 2 million. However, shortly after, the corporation can sell the property to a third party for EUR 15 million. The corporation achieves a taxable profit of EUR 14.5 million. After the deduction of required taxes, a distributable amount of approximately EUR 12 million remains.

Tax risks in the sale of the corporation shares:

Contracts between relatives and related parties are only recognised

for tax purposes if they are “at arm’s length”. The property is the value-determining factor in the assets of the corporation and therefore decisive for the value of the shares. A third party would have had to pay EUR 15 million for shares in the corporation. However, the contract on the sale of the shares for EUR 2 million becomes effective under civil law.

The view of the tax office is that the EUR 2 million would probably not be recognised for tax purposes. With reference to the arm’s length principle, the EUR 15 million is assumed. This is confirmed by the sale of the property in temporal connection with the sale of the shareholding.



From a tax point of view, the holding company received shares in the corporation worth EUR 15 million for only EUR 2 million. The value of

the shares in the holding company thus increases by EUR 13 million. As the son holds 49% of the holding company, he has a gratuitous increase

in value of 49% of EUR 13 million. The son is thus “enriched”, and this leads to gift tax of over EUR 1 million.

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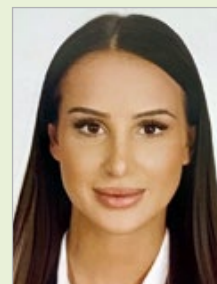
Benefitax GmbH is a tax consultancy and public auditing company located in Frankfurt, which is widely recognised as the financial centre of Germany. Benefitax predominantly serves German entities of foreign multinational groups, mid-sized German companies with cross-border activities, and wealthy private individuals.



Martin Thieslauk

✉ **Martin Thieslauk** is a certified German tax advisor and senior manager at Benefitax. He mainly advises international clients and their German branches on all questions of German tax law including payroll accounting issues, and assumes the tasks they have to perform in Germany to fulfil their tax and social security obligations. In addition, he advises private individuals from Germany and abroad.

✉ **Zlata Velagic** is a certified German assistant tax consultant and assistant advisor in international taxation at Benefitax. She is mainly responsible



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for the preparation of annual financial statements and the filing of tax returns for international clients and their German branches, and assumes the tasks they have to perform in Germany to fulfil their tax and social security obligations. In addition, she processes tax returns for private individuals from Germany and abroad.



10 things you need to know before establishing a trust in Mexico



By  Prof Sergio Guerrero Rosas

According to Mexican legislation, a trust is an act whereby the settlor transfers to a trust institution the ownership or title to one or more assets or rights, to be used for lawful and determined purposes, entrusting the realisation of such purposes to the trust institution itself (*Article 381 of the LGTOC, General Law of Credit Instruments and Operations*).

Parties involved:

Settlor: The person who conveys the fiduciary ownership of the assets.

Trustee: The person who receives the assets as fiduciary property and undertakes to carry out with them what is established in the trust contract.

Beneficiary: The person who receives the benefits stipulated in the trust.

1. **Define the purpose of the trust:** Must be legal and specific.
2. **Beneficiary selection:** The beneficiary may be appointed by the settlor in the constitutive act of the trust or in a subsequent act.
3. **Determination of the assets or rights that will be part of the trust:** All kinds of assets may be the object of a trust, except those which, in accordance with the law, are strictly personal to their owner.
4. **Choosing a financial institution:** Only institutions expressly authorised to do so by law may be trustees.

5. **Consideration of a trustee's management fee.**
6. **Define the period of duration.**
7. **Contract registration:** The trust whose object is immovable property must be registered in the property section of the public registry of the place where the property is located. In the case of movable property, the trust should be registered in the single section of the Sole Registry of Movable Guarantees of the Public Registry of Commerce.
8. **Request a written contract to be provided to the financial institution:** The constitution of the trust must always be in writing.
9. **Define the terms of the contract.**
10. **Process the transfer of assets or rights subject to the trust:** For an act to be registered in the public registry, it must be made in a public document.

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Guerrero y Santana S.C. provides its clients with a wide range of tax, legal, and consulting services. The firm helps clients, from individuals and small local businesses to major corporations and multinationals, to achieve their smallest aims and grandest ambitions. They are committed to providing specialised, personalised services to all those seeking reliable and up-to-date tax, legal, and business support.
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Santana, has over 25 years' experience advising companies from SMEs to multinationals, as well as individuals, on tax and estate planning. He is also Global Vice Chairperson of the Trust and Estate Planning Practice Group and Latin American Chairperson of the GGI International Taxation Practice Group (ITPG).



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It is important to note that trusts can be constituted for everything and by anyone; the only limitation is that the purpose of the trust is

lawful and possible, designing, case by case, a contract that fits exactly to meet the needs of each client.



Trust & Estate Planning NEWS

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