

Global Trust Trends - Mini Series

2021 saw a boom in estate litigation and 2022 has shown little sign of slowing down. With a transfer of inter-generational wealth continuing, an increase in real estate values, the increase of blended families, and the heightened level of emotion when a loved one dies, estate litigation will continue to be a reality for many. Predicting trends in trust disputes is notoriously challenging as each will be triggered by a major and personal event. In this mini-series of Q&A format articles, Coriats will ask various global onshore and offshore advisors to share their response to questions about current trends in their jurisdiction.

We recently spoke to Richard Grasby, a Partner at Appleby law firm based in Hong Kong, about the latest trends in offshore trusts disputes and what he and his team are seeing in practice in the context of their Asian clients'.

What are the major trends you have seen in Trusts disputes over the past 12 months?

Trust disputes are usually triggered by a major event – a death, divorce, a sale of assets. Access to information (or lack thereof) is a key issue. Trustees are becoming more proactive in using court process to sanction major decisions (change of trust terms or distributions).

How do you expect these trends to play out in 2023 and beyond?

Many of the major trust structures have been set up by first generation patriarchs / matriarchs who are living longer and longer. We would expect more challenges based on lack of capacity or undue influence in the case of the exercise /non-exercise of powers. There would likely to be more challenges to Trustees' decisions on distributions/investment with the second/third generation beneficiaries becoming more knowledgeable with financial investments and asset management. When markets are down, people do tend to look for someone to blame and (bank-owned) trustees are seen to have deep pockets.

What are the main issues international families are dealing with and how should their professional trustees and advisors be helping them deal with these?

International families are dealing with legitimate privacy and having well-run, robust structures. This can involve multiple jurisdictions and multiple service providers. Professional trustees and advisors should make it clear that all structures are not the same and that proper structuring and governance (both now and in the future) is essential. Structures will be challenged.

What advice would you give to wealthy families when it comes to appointing a professional trustee? What do you look for when asked to recommend new or replacement trustees to your clients?

All trustees are not the same. Having an engaged trustee can be advantageous – a nominee is not actually beneficial. People are key – turnover of staff does cause disruption to asset management. Changing trustee can be very time consuming and does lead to wealthier clients considering private trust companies.

What are your top tips for avoiding trust disputes?

Flexible structures are essential. Structures that are too rigid can cause problems. Settlers who attempt to govern from beyond the grave are asking for trouble. Structures that are too complex are also liable to cause issues. Where possible other family members should be involved in the process – even if they are only informed. More critically lawyers should be involved at the early planning stage in order to identify and mitigate any litigation risks.

What is your sage advice when families have fallen out and a trust is in dispute?

It depends on who our client is and what their position is. Communications should be made in a civil manner through lawyers and emotions should be kept out of it. Common ground should be sought and also parties should be made aware of the potential costs – and the fact that the family could be spending its wealth via litigation.

How does your practice typically interface with offshore trust companies and their clients and what kind of legal advice do you offer in this field?

As a leading offshore law firm advising on the laws of 8 jurisdictions we advise trust companies on a whole range of issues. These include risk management, regulatory and compliance issues and also with regard to existing or potential structures. We also advise of the set-up and sale of trust companies themselves. We also interface with offshore trust companies where our clients are settlors and/or beneficiaries of trust structures. This relates to trust administration and matters relating to the underlying assets.