NEW GLOBAL RESEARCH
Seeking the meaning of wealth in the 21st Century

THE HEIGHT OF LUXURY
The rise and rise of MaxMara

LONDON PROPERTY
Number one magnet for new investors

ROCK WITH YOUR IDOL
So you want to meet a rock ‘n’ roll star?
Welcome to the second edition of “With...us” magazine. We have been delighted by the response to our inaugural issue, and I very much hope you will find these articles equally interesting and informative.

One of the main themes to emerge from this issue is the increasing flow of people and capital around the world and the resulting need to think about life and living in a global context. These changes offer unprecedented freedom of choice, but also make planning for current and future generations more complex.

The rate of change shows little sign of slowing and continues to have major implications for successful people and their business and personal interests. Living as we do in a world that is getting ever more regulated and interconnected presents our clients and their advisors with constant challenges and opportunities.

As well as asking people from across our international network to contribute their knowledge and experience we have invited clients and contacts to share their fascinating stories with us.

For example we hear from the family of young racing driver Nicholas Latifi, who has thrown himself whole-heartedly into the pursuit of Formula One success, as well as the almost accidental way in which Bengt Mortstedt built a hotel resort in the Caribbean. Both stories demonstrate the power of thinking big and being bold.

Happy reading

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In July 2013 Withers appointed its first ever US-based Chairman. Ivan Sacks, tax and wealth planning partner in the New York office, took up the mantle from Anthony Indaimo, who has served two very successful terms in the role.

Ivan comments: “One of my most important roles as Chairman is to act as a conduit for client concerns and opinions. To this end, I look forward to meeting with clients to discover how Withers can better meet their needs, and to hear suggestions on ways in which our firm can evolve in future to be even more effective and supportive.”

With the Brazil World Cup taking place this year and the Rio Olympics two years ahead, the eyes of the world are focused on Latin America like never before. In attempting to comprehend a region of over 19 million km², containing nearly 600 million people and many countries with diverse histories, it is important not to rely on generalised views, but to seek out direct experience and knowledge.

Withers is a trusted advisor to a significant number of the richest families and individuals in Latin America, including over 10 of the continent’s prominent billionaire business people. We have a dedicated team of lawyers based across our offices who have spent years working on the ground with clients in the region, maintaining continual contact and a detailed understanding of their legal needs and concerns.

Partner Sandra Viana, who has been active in the Latin American practice for many years, comments: “Working with our Latin American clients is hugely rewarding. The richness of their cultures and the complexity of their international legal needs is a constant source of intellectual challenge and personal satisfaction. We are very proud of the body of knowledge we have built on working in the region, and anticipate some very exciting projects in this Year of Latin America!”

Corporate tax has been high on the news agenda ever since the financial crisis, and governments around the world are also paying closer attention to businesses’ tax structuring.

Withers’ International Corporate Tax Group has a comprehensive view of international tax structuring, and provides practical commercial advice. With many businesses operating under structures that do not provide optimal tax efficiency, the Group has launched the REACT optimisation review to identify Risks, improve Efficiency, and Assess your Corporate Tax structure.

REACT is particularly beneficial for a business operating in more than one country and looking to reduce its tax risk and political or financial risks. The review is also effective at helping businesses plan for changes such as ownership succession, preparations for sale or major investment opportunities and ahead of tax audits or investigations.

Our real estate team, which works on some of the biggest residential and commercial property transactions in London and beyond, made some transformative hires last year when it added construction law, property disputes and residential and commercial lawyers to the team’s capabilities.

Julie Teal advises on non-contentious construction law matters, and is the first dedicated construction lawyer to join the firm. Julie’s appointment as partner reflects the increasing demand from clients for advice in this area, and her arrival was rounded out by the hire of associate barrister Eloise Morgan, who advises on disputes in commercial, residential and agricultural contexts.

Peter Lamb is a special counsel in the team and assists clients on commercial property law matters. A great example of his work in the Caribbean can be found in our article on the Bequia Beach Hotel project. Associate David Holland is focused on the acquisition and disposal of rural property, as well as property management issues.

James Martell is an associate who brings a substantial amount of experience to the commercial side of the team, having advised developers, FTSE 100 companies, retail occupiers and private individuals on transactions.

Associate Jennifer Beales works with clients on residential matters, as well as landlord and tenant issues.

Ivan Sacks appointed as US-based Chairman

Eyes on Latin American Practice

Withers builds strengths in construction and commercial property law

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Putting the shoe on the other foot of fraudsters

Withers’ litigation team recently worked on a case which unearthed a hoard of designer products. The team advised a Kazakhstan LSE-listed company on a massive fraud perpetrated on the business by two ex-employees. The individuals made US$4.2 million in unauthorised bank transfers to the Cypriot bank accounts of two BVI front companies and in addition used corporate credit cards to make transactions of US$4.5 million.

With the benefit of the team’s many BVI-qualified lawyers and the firm’s BVI office (in fact Withers is the only ‘onshore’ firm with an office on the island), the team managed to retrieve the US$4.2 million of transferred funds just before they could be moved again and potentially lost altogether. At the same time, the team arranged for the seizure of containers of goods that were purchased during the fraudsters’ spending spree.

These containers were shipped to London and members of the team were only too glad to attend an inspection of the goods, which included boxes containing hundreds of pairs of designer shoes, handbags, Hermès scarves and a Christian Dior white mink coat. As tempting as it was to avail themselves of some Jimmy Choo shoes, the team arranged for the auction of the goods to obtain the maximum return for the client.

Hurun’s guide to the leading schools and universities in the UK, US and Switzerland

Hurun Report, Asia’s leading researcher into the region’s high-earners and wealth trends, has published the Hurun Schools Guide 2014. The guide provides essential information to help students and their parents with the selection of courses at schools and universities in the UK, US and Switzerland, as well as entry requirements. With detailed background discussion of a range of issues related to studying overseas, the guide is a comprehensive and essential handbook for those making this important decision. To order a free copy, email duncan.miller@withersworldwide.com with your address details.

Withers grows around the globe

Alongside our growth in UK real estate capabilities, we have welcomed a number of skilled new colleagues to a range of practice areas around our international office network.

US – Seth Cohen and David Moise joined the firm as tax controversy partners at the start of 2014. The practice was also boosted with the hire of corporate tax planning partner Patrick Cox. Louis Mezzullo’s hire was an important step in Withers’ expansion on the West Coast. Louis is well known and respected as one of California’s leading tax, estates and succession lawyers. Corrado Manuali joined to head our Italian desk in the US and focuses on cross-border commercial deals.

Italy – Sergio Anania’s arrival brings added corporate law skills to our Milan office.

Hong Kong – Denis Petkovic moved from London to our Hong Kong office to build on our corporate capabilities in the region. The team also grew this year with the relocation of wealth structuring associates Wei Zhang from New York and Karen Lai from London.

Singapore – Suzanne Johnston joined the team as a wealth planning associate qualified in England & Wales and Connie Yik Kong joined as a US-qualified wealth planning associate.

INVEST IN YOUR PASSION AND MAKE IT PAY

Last year, Francis Bacon’s triptych “Three Studies of Lucian Freud” sold for US$142,405,000. Besides breaking the record for the most expensive artwork ever auctioned, it also focused attention on the boom in international art sales.
Invest in your passion and make it pay

With prices continuing to rise (and outperform equities), we spoke to Philip Hoffman, Chief Executive and Founder of The Fine Art Fund Group, for some expert tips on investing in this area.

Founded in 2001 by Philip Hoffman, The Fine Art Fund Group was the first fund of its type to invest in the global art market, now estimated to be worth almost US$60 billion. It remains the largest art investment firm, with nearly a quarter of a billion dollars in assets under contract and various funds with multiple 10-year, five-year and shorter-term maturities devoted to major art periods: Old Masters, Impressionist, Modern, Post-War and Contemporary. Minimum investment in these funds is set between US$500,000 and US$1 million.

Since the start of the financial crisis, art has been increasingly hailed as a unique and important investment asset. Art has proven to be broadly immune to the lurching values experienced by traditional debt and equity investments.

Art funds, which build and manage collections, have grown rapidly in popularity in recent years. In 2012, according to ArtTactic, a market research vehicle, for example, charge 2 percent and various funds with multiple 10-year, five-year and shorter-term maturities.

What are the most in-demand types of fine art at the moment? The Young Contemporary sector is popular, but it’s also very challenging. Opportunities for making money in the same way that Charles Saatchi did with Damien Hirst are far from straightforward. When you do hit the target, you can make a ton of money, however. While it’s true that the Old Masters and Modern and Impressionist artists are always popular, lesser-known Contemporary artists can sometimes spring to the forefront.

Very Contemporary works that do this can earn astronomical prices; however, they can be surrounded by many unknowns which can extinguish the value of a work completely. Across the entire market, many would consider Modern and Impressionist artists as amongst the most in-demand categories at the moment.

What factors drive the value of a piece or type of art form? Sales conditions, for example: when and where you’re selling; whether it’s privately or publicly; located in China, Geneva or London – all these factors affect the potential hammer price. The condition of the work, its medium (is it a giant bronze sculpture or a 10-foot canvas?) and the precedence are all similarly integral. Overall, you could say that the most important factor is desire. If you have two people sitting in an auction room trying to outbid one another, the sky is the limit, as I’ve seen on a few occasions.

What are the advantages of fine art as an investment class? There are many features of blue-chip art, as we call it, which make it a highly desirable investment. Provided you have top-rate pieces, art’s tangibility, low correlation with equities, and its increasing demand set against diminishing supply all contribute to making it a recognised investment class. Invaluable art works are also unique assets, further encouraging bank managers and investors to diversify their financial portfolios.

What are the potential risks that should be considered? As we have so frequently witnessed throughout our 10 years’ operating in the art market, many investors who believe they can navigate it themselves, get stung. This is not every case – some individuals seem to get lucky – but they are certainly not the majority. As with all investments, we advise our clients that there are innate risks to investing capital and consequently they can lose money, rather than make it. Mitigation is the way to play this field: ask the right people and don’t buy rashly. Trends can spring up and deflate in very short periods.

What kinds of artwork could be considered safer bets for investors, and what are the high-performing, more risky investments? Generally, we would consider very Contemporary works to be riskier investments than the more established Old Masters market. Great risk, however, can bring great returns. For some of our clients, the right way to structure their investments has been to combine a variety of art genres with a few risky works, some of which are a little safer and then a proportion where the artists have more solid sales track records. This combination, we have found, can lead to success.

What kind of investor might want to consider the MAPS (Managed Art Portfolio Service)? MAPS contracts cater to a variety of our clients. Rather than investing into a pooled investment scheme like a fund, these clients have greater control over what their money is being spent on. Some MAPS clients like to choose works that allow their passion for a particular artist or movement to develop and fill their homes.

The other end of the spectrum would be those clients who are simply investing in art to mitigate portfolio risk and, consequently, they are happy for our Art Team to make the purchase / sales decisions for them. The MAPS contracts still appeal to this latter group as they provide, some believe, a greater feeling of control over the allocation of the investment.

What are the key considerations for a seller with a high-value work? If you are selling a blue-chip artwork, firstly you should do your due diligence. Know the work you’re bringing to market. Is there a major exhibition about to occur? Does the work appeal to a small, specific group or would a large, well-publicised auction environment attain the best result? Is there a general rule, benefit from some time away from public view, whereas a Christoper Wool or a Peter Doig may well attain more through exposure.

The Fine Art Fund Group appears to have a significant international aspect to the business – roughly how many clients are based outside the UK? We have clients in 23 countries. This is highly representative of the way the market operates now, where a work is owned in one country, travels across the world on pre-sale exhibition and then ends up with its new owner in another country.

The major art centres used to be London and New York. In the past 10 years, the major dealers and auction houses have been expanding globally in Dubai and Hong Kong etc. Of the 23 countries, we estimate that in excess of 80 percent of our clients are based out of the United Kingdom.

In a perfect world, which one work of art would you most like to own, and why? I would have to say, if I could own anything, it would be a beautiful Caravaggio – maybe one of the views showing St Mark’s Square. These works are so evocative of the many happy memories I have of my time spent at Christies and travelling to Venice.

www.thefineartfund.com
Mind your own business...

Last year, Kroll’s Global Fraud Report reported that fraud cost businesses an average of from 0.9 percent to 1.4 percent of revenue, with one in ten businesses experiencing costs of more than 4 percent of revenue. This is estimated to total several trillion US$.

What's more, according to research carried out by the National Fraud Authority, almost 30 percent of large, medium and small businesses were victims of fraud during financial year 2012 – notwithstanding the fact that over 90 percent of respondents said they had procedures in place to prevent this crime. Large businesses were, overall, the most vulnerable group.

External threats cause the most damage to business, but over half the companies surveyed had suffered frauds committed internally. Although, by its very nature, fraud can be hard to pin down, particularly prevalent types include payment/banking fraud, accounting fraud and procurement fraud. Over one-third of respondents had experienced cyber fraud, a potent and fast-growing threat for all organisations.

Often hard to detect, fraud is a significant cost for organisations worldwide. However, companies that accurately assess these risks are in a far better position to counter them.

So what steps should businesses take to protect themselves from the pervasive and growing risk of fraud? Withers’ Stephen Ross recommends beginning with a tailored, risk-based analysis to identify exposures, before addressing these with customised policies, controls and training. Familiarity with legal obligations is essential, as well as knowing how to spot problems before they arise: There are five key questions that all business owners and directors should be able to answer.

First: who is in charge of preventing, detecting and investigating fraud in your organisation? The answer is clear-cut. The board and senior managers, line managers and everyone else in the business should play their part. Take out any one of these layers and your internal controls designed to prevent fraud will likely fail at some point.

Next, in percentage terms, how many of your staff members are completely honest? This is a difficult one to answer with any certainty. Research suggests that around 10 percent are totally honest, 10 percent are totally dishonest, and the remaining 80 percent are somewhere in between. Your controls need to stop the 10 percent of most concern and ensure you can spot when the 80 percent are likely to stray.

Third question: typically what percentage of annual turnover is estimated to be lost as a result of fraud? Around 2-5 percent is a usual range. Aside from the fact that this will come from net profits, the risk of reputational damage to the organisation is harder to quantify. In serious cases, frauds have brought down large companies, or devastated their reputations. Think Enron or Barings Bank.

Do you know the difference between bribery and fraud? Essentially ‘fraud’ is an intentional act to deceive another and obtain an advantage. ‘Bribery’ boils down to offering, promising, giving or receiving something of value in order to influence another. The UK Bribery Act 2010 is one of the most far-reaching anti-corruption statutes in the world and by now most organisations have detailed and complex anti-bribery policies in place. But bribery is really only a subset of fraud in general.

Do you have a fraud policy? Is it as detailed and well publicised as your bribery policy? If not, shouldn’t it be? Lastly, do you understand the following statement? “Investments in unconsolidated affiliates are accounted for by the equity method, except for certain investments resulting from our merchant investment activities which are included at market value in the balance sheet.” If you don’t, don’t worry. Neither do we. But neither did most of the Enron board. That’s why they never adequately questioned the US$27 billion of bad assets placed in special purpose vehicles to remove them from the balance sheets, or the obtuse ways these were explained in the accounts.

If you don’t understand something, you need to find an answer that makes sense to you. Fraud poses enormous risks. Ignorance of the law is no defence, and personal liability is a very real danger for those who fail to take steps to understand the risks faced by their organisations, and the legal obligations they have to mitigate these risks.

Stephen Ross
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Illustration: Neil Webb

Fraud poses enormous risks. Ignorance of the law is no defence, and personal liability is a very real danger for those who fail to take steps to understand the risks faced by their organisations, and the legal obligations they have to mitigate these risks.
Nicholas Latifi is a young man with his sights firmly set on reaching Formula One. Supported by his family, backed by family business Sofina Foods Inc., and advised by Withers, he’s well on his way, with a season in European FIA Formula 3 already completed.

Success in motor racing demands skill, courage and unstoppable determination. Behind the scenes, it also calls for meticulous strategic business planning – covering everything from rights management, sponsorship, public relations and reputation management to tax planning, immigration advice and due diligence on teams, managers and agents. Eighteen-year-old Nicholas Latifi’s rapid progress from competitive karting in Canada to European motor racing has been built on this winning combination.

The son of Michael Latifi, chairman and CEO of Sofina Foods Inc., a privately owned Canadian company, Nicholas has benefited from sound advice from the start. Withers’ partner Anthony Indaimo picks up the story:

“From the outset, the priority has been to protect Nicholas from the grittier side of the sport, while ensuring he makes the most of his potential,” Indaimo says. “When Michael sought us out, one of my first pieces of advice was to beware of the sharks. When he asked how he should recognise them, I told him it was our job to know who they were – and to make sure Nicholas avoided them at every turn.

“We have been acting as a trusted advisor to entrepreneurs, successful people and their families for over 100 years and it has been a great privilege to assist the Latifi family in giving Nicholas the opportunity to excel himself and to help him realise his dream.”

Driven by a love of competition, Nicholas is intent on reaching Formula One, as is his family. This commitment has meant making some tough decisions, as Michael Latifi explains: “We realised that, in order to further his career, Nicholas needed to move abroad. We have been acting as a trusted advisor to entrepreneurs, successful people and their families for over 100 years and it has been a great privilege to assist the Latifi family in giving Nicholas the opportunity to excel himself and to help him realise his dream.”

Nonetheless, Michael and his wife Marilena thought long and hard about the potential risks of Nicholas’s choice: “Until you have an athlete in your family with aspirations to become truly great, you will never be able to understand the toll it takes on your family. There are more lows than highs in motor racing and many successful racers lose more races than they win. It is a very demanding sport and not to be entered into lightly. I think a big part of Nicholas’s success has been the warmth of support from his family.”

Nicholas’ races and achievements have already featured widely in the press. But there is still a way to go before he becomes an established name, as his father says: “There’s still a lot of work to do. Nicholas is definitely on his way, but he’s still only been racing for a relatively short time and has limited racing experience. While he’s excelled in the races he has taken part in, he has to be compared to how his peers are doing.”

Eyes on the prize

And looking ahead? Nicholas is aware of where he stands. He has clear targets and expectations and has been working hard for the 2018 race season. At the start of the year, he took part in the Florida Winter Series, a great platform for helping him stay in shape and hone his skills, in preparation for the start of the 2018 Formula 3 European Championship in April. Exactly when he will be ready for Formula One is hard to say. There are so many unknowns in motorsport – the team, the equipment, the machine and the drivers. It’s really hard to make any predictions, but realistically he has to go through more formative racing in the junior Formula categories.

Michael Latifi and the rest of the family have supported Nicholas from the outset. His father explains why he has committed so much to help him realise his dream: “I believe that in order to succeed at anything, you have to be totally committed to being the best. I’ve applied all my business skills and principles to this project. From the outset, the priority has been to protect Nicholas from the grittier side of the sport...”

“...Nicholas is very talented... but we’re passionate about ensuring he has the support team he needs.”

Indaimo adds: “When one meets Nicholas, it is immediately clear that Michael and Marilena have instilled a traditional work ethic and strong core values in him. We have every confidence in his determination and ability to succeed and, as he pushes up through the echelons of the sport, we expect that those values will enable his personal brand to flourish. Together with his winning smile, this will make Nicholas an attractive brand ambassador for Sofina, our business is getting incredible global promotion at the same time.”

We were new to motor racing and didn’t know what to expect, so he’s been the source of an immense amount of sanity throughout. Withers helped secure Anthony’s services, and their professionalism and in-depth understanding of the motor racing industry has also proved invaluable. They’ve been massively instrumental in guiding us, and we continue to rely on them for corporate and legal advice in multiple areas.”

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Driving ambition
Making the move
Solving the relocation puzzle

Whether they are seeking to escape political uncertainty at home, ensure an élite education for their children or better protect their family’s assets, the wealthy are migrating like never before. With the United Kingdom and United States both strongly favoured destinations, Withers’ immigration lawyers in both countries can guide clients through the red tape.

Cross-border migration is a well-established phenomenon amongst the wealthy. Digital technologies allow businesses and investments to be run from anywhere in the world, and with easy transport links to and from financial centres, growing numbers of high net worth individuals are voting with their feet and emigrating abroad. Globalisation is another important driver. Multinationals increasingly expect key personnel to move abroad for a few years, if not entire careers.

According to a 2012 Hurun report, more than 16 percent of China’s millionaires have already emigrated (or submitted high net worth applications), while 44 percent are planning to do so in the near future. Wealthy Russians, meanwhile, have been moving to London for a number of years, and recent events in Ukraine are likely to increase this trend. Ten Russian billionaires, and over 1,000 Russian millionaires, now live in the UK, but there are increasing concerns that the government will take steps to make immigration harder for Russians, and appropriate advice should be sought.

With its residential and commercial real estate widely recognised as a safe haven for capital, London’s reputation rests on its stability, status as an international financial centre, relative safety, and cultural attractions, along with the UK’s excellent schools and universities – not to forget a favourable tax regime for non-domiciliaries,” says Withers’ Philip Barth.

The United States is also extremely popular (and for many of the same reasons), particularly amongst wealthy Chinese emigrants. According to China Daily’s US edition, in 2000, 22,000 visas were issued to Chinese nationals in the US; by 2012, that had jumped to 189,000.

For high net worth individuals, and their families, looking to make the move... meticulous forward planning is essential.

Case study: Entering the United Kingdom
Mr Chan has an export business headquartered in Shanghai, but with interests around the world. He would like to move to the UK to drive forward his business activity in Europe and to secure a private school education for his daughter. His wife is from Australia. Philip explains Mr Chan’s options:

“Mr Chan has a lot to consider. Will he open a branch, incorporate a subsidiary or establish a stand-alone company? Will he need an offshore structure for asset protection, privacy purposes or tax planning? These issues are intertwined with the selection of an appropriate visa category, one that does not conflict with and can support his other business planning considerations. Careful pre-immigration planning is essential.”

Economically driven migration to the UK is now almost exclusively governed by the Points Based System, which is divided into five tiers. All tiers other than Tier 1 require a UK-based sponsor to take responsibility for the migrant, while Tier 1 is for ‘high-value’ migrants who can sponsor themselves.

As a migrant with investment funds and international business interests, Mr Chan can consider applying under two Tier 1 visa categories: the investor visa or the entrepreneur visa.

To qualify for the investor visa, he needs to demonstrate that he has £1 million at his disposal. He will be required to bring it into the UK and invest at least £750,000 in qualifying investments. Most often these will be UK government bonds, but there is a wider choice. With careful planning, even an investment in his own business in the UK can qualify. Philip cautions: “The government is currently considering the redesign of the investor visa so Mr Chan should take action now if he wants to ‘lock in’ to this visa in its current form.”

“Mr Chan needs to show that he has £200,000 that he can invest in a new or existing business in the UK. He will need to show that the business has a need for the investment and the business will need to create two full-time jobs for resident workers.

Continued over >
Making the move: Solving the relocation puzzle

Given his plans and circumstances, this might be the better option for Mr Chan, who is already hoping to expand his business in the UK.

In preparing for his application, Mr Chan must work on his business plan to demonstrate that he is a ‘genuine’ entrepreneur. Philip warns: “Mr Chan needs to know his business plans inside out; he may have to attend an interview with UK Visas and Immigration at which he will need to satisfy them that his plans are thorough and realistic. We often conduct a detailed mock interview with clients to help prepare them for the level of detail and kind of questions that they will be covering.”

Philip adds: “Both of these visas can lead to indefinite leave to remain (ILR), usually after five years. There are ways to accelerate this by bringing more money to the UK, in the case of the investor, or, in the case of the entrepreneur, establishing a successful business that creates many more jobs or achieves a high level of turnover. Achieving ILR status leads to the possibility of naturalisation as a British citizen.”

Both require careful planning and monitoring as they have different and conflicting requirements as to the amount of time that needs to be spent in the UK. We have helped many clients manage their travel so that they can maintain eligibility for both ILR and naturalisation.

Case study

Entering the United States

Ms Husain is a Bahraini national, running a fashion design business with outlets in several Middle Eastern and European cities. She is hoping to relocate to the US, where her mother already lives, and to establish her business there. She already has contacts amongst a number of designers and retailers on the East Coast.

Reaz explains: “There are over 30 visa categories which can be used to move to the US. This breadth of options demands creative planning, tailored to each client’s wishes and situation. The key is to find the option that best suits the client’s needs and is most advantageous to their personal and business plans.”

“We routinely meet individuals with substantial international interests and assets who have been ill advised to invest in a US business and apply for a ‘green card’ under the EB5 program. They are told that the EB5 provides great flexibility and ease of travel in and out of the US. When I explain to people that a ‘green card’ subjects them to tax on worldwide income, regardless of where they live or earn their income, and exposes them to punitive US estate taxes, not surprisingly these clients rarely proceed with the EB5. I then explain that under our immigration laws there are many ways to achieve the objective of working, living and playing in the US without becoming a US taxpayer. In the case of Ms Husain, given her significant wealth, we would look to other visa options that will permit her to relocate to the US.”

“These options include the E-1 (‘Treaty Trader’) or E-2 (‘Treaty Investor’) temporary visa, which are in principle indefinite, so long as the individual’s US business activities continue. The E visa is only available to citizens of countries with which the US maintains a Friendship, Commerce & Navigation, Bilateral Investment Treaty. Another often-used option is the L-1 ‘Intracompany Transferee’ visa which is available to owners and employees of foreign companies that have a US affiliate. What all visas have in common is that they allow family members (spouse and children under 21) to secure derivative visas and accompany the client to the US.”

“As an award-winning designer in the Middle East, the best option for Ms Husain might be the O-1 visa, which is available to a person with ‘extraordinary ability in the sciences, arts, education, business or athletics, as demonstrated by national or international acclaim’. As with the E and L visas, the O-1 visa initially grants access for a defined duration but, with planning, the status can be extended indefinitely.”

Reaz adds: “It’s not that I have anything against green cards! It is just that for the super-rich, it is critical to undertake proper pre-immigration planning so the income, federal and state estate taxes are minimised.”

Visiting the Caribbean to hunt down a retirement property, Swedish developer Bengt Mortstedt, had second thoughts...and decided to build a boutique hotel instead.

After a successful career as a property developer in Sweden and the United Kingdom, Bengt Mortstedt and his wife had been looking forward to a leisurely Caribbean retirement. It hasn’t quite worked out that way, however.

“We’d been thinking about building a house for ourselves in Barbados, but when we went to take a look around, we found it was already rather over-developed. If it hadn’t been, none of what followed would have happened,” laughs Mortstedt.

That was eight years ago. The Mortstedts had extended their reconnaissance into the Grenadines. It was there they chanced upon Bequia, the ‘island of clouds’, a small and still little-known island, around 100 miles west of Barbados and just 20 minutes’ boat ride from Mustique.

Both require careful planning and monitoring as they have different and conflicting requirements as to the amount of time that needs to be spent in the UK. We have helped many clients manage their travel so that they can maintain eligibility for both ILR and naturalisation.

Case study

Entering the United States

Ms Husain is a Bahraini national, running a fashion design business with outlets in several Middle Eastern and European cities. She is hoping to relocate to the US, where her mother already lives, and to establish her business there. She already has contacts amongst a number of designers and retailers on the East Coast.

Reaz explains: “There are over 30 visa categories which can be used to move to the US. This breadth of options demands creative planning, tailored to each client’s wishes and situation. The key is to find the option that best suits the client’s needs and is most advantageous to their personal and business plans.”

“We routinely meet individuals with substantial international interests and assets who have been ill advised to invest in a US business and apply for a ‘green card’ under the EB5 program. They are told that the EB5 provides great flexibility and ease of travel in and out of the US. When I explain to people that a ‘green card’ subjects them to tax on worldwide income, regardless of where they live or earn their income, and exposes them to punitive US estate taxes, not surprisingly these clients rarely proceed with the EB5. I then explain that under our immigration laws there are many ways to achieve the objective of working, living and playing in the US without becoming a US taxpayer. In the case of Ms Husain, given her significant wealth, we would look to other visa options that will permit her to relocate to the US.”

“These options include the E-1 (‘Treaty Trader’) or E-2 (‘Treaty Investor’) temporary visa, which are in principle indefinite, so long as the individual’s US business activities continue. The E visa is only available to citizens of countries with which the US maintains a Friendship, Commerce & Navigation, Bilateral Investment Treaty. Another often-used option is the L-1 ‘Intracompany Transferee’ visa which is available to owners and employees of foreign companies that have a US affiliate. What all visas have in common is that they allow family members (spouse and children under 21) to secure derivative visas and accompany the client to the US.”

“As an award-winning designer in the Middle East, the best option for Ms Husain might be the O-1 visa, which is available to a person with ‘extraordinary ability in the sciences, arts, education, business or athletics, as demonstrated by national or international acclaim’. As with the E and L visas, the O-1 visa initially grants access for a defined duration but, with planning, the status can be extended indefinitely.”

Reaz adds: “It’s not that I have anything against green cards! It is just that for the super-rich, it is critical to undertake proper pre-immigration planning so the income, federal and state estate taxes are minimised.”

Visiting the Caribbean to hunt down a retirement property, Swedish developer Bengt Mortstedt, had second thoughts...and decided to build a boutique hotel instead.

After a successful career as a property developer in Sweden and the United Kingdom, Bengt Mortstedt and his wife had been looking forward to a leisurely Caribbean retirement. It hasn’t quite worked out that way, however.

“We’d been thinking about building a house for ourselves in Barbados, but when we went to take a look around, we found it was already rather over-developed. If it hadn’t been, none of what followed would have happened,” laughs Mortstedt.

That was eight years ago. The Mortstedts had extended their reconnaissance into the Grenadines. It was there they chanced upon Bequia, the ‘island of clouds’, a small and still little-known island, around 100 miles west of Barbados and just 20 minutes’ boat ride from Mustique.
Build it and they will come

Mortstedt’s original plan for a villa was soon replaced by a much more ambitious project. And so the Bequia Beach Hotel was born in Friendship Bay. The location is the ‘deserted long white beach flanked by a coconut grove’ which Clarissa Eden, Countess of Avon, once described as ‘paradise’.

In the years since opening, the hotel has seen business increase by 20 to 40 percent per year, and Mortstedt is continuing to expand the resort to meet demand. With beach front and ocean-view rooms and villas and cottages spread across an initial eight-acre site, Bequia Beach Hotel is the island’s largest hotel.

“Bequia has hung onto what makes it special – peace and quiet,” says Mortstedt. “The whole island is just seven square miles and the population is under 5,000. People come here to relax and get away from it all….there are some beautiful beaches, a very friendly atmosphere, some great bars and restaurants, and not too much else. Having said that, Mustique is just a short journey by boat, and makes a great lunch destination for those who want to island hop.”

Two years later, sailing the same area off-season with his brother, Mortstedt returned to Bequia for a closer look.

“When I realised an airport had been built connecting Bequia with Barbados, I knew we’d found the ideal spot,” he recalls, adding, “so did my wife!”

A more land as needed to accommodate 50 percent per year, and Mortstedt is proven them wrong.

“Actually, nothing could be further from the truth. Of course there have been some challenges along the way….sometimes the island’s electricity supply and internet go down for a few hours….but that’s all part of what makes it so perfect here. We just light the candles and carry on.”

“Bequia Beach Hotel is one of a number of developments we’ve advised on across the Caribbean and we are keen to continue building on our experience of international hotel developments and luxury residential resorts. I would urge any readers considering embarking on their own island paradise project to get in touch early, as the challenges and risks can be both diverse and substantial. For example, this project involved a Panamanian and Swedish company, various St Vincents and Grenadines companies and all four of those legal jurisdictions, so you might say we had our work cut out,” adds Peter.

“Bequia Beach Hotel is one of a number of luxury residential resorts. I would urge any readers considering embarking on their own island paradise project to get in touch early, as the challenges and risks can be both diverse and substantial.”

In a six-year project starting in 2006, Mortstedt created a trust to acquire the site and set about developing a 60-room resort, with the trust steadily buying more land as needed to accommodate the growing project. “People here thought I was mad to begin with,” he recalls, adding, “so did my wife!” But he has proved them wrong.

Opened on a small scale initially in 2010, and targeted primarily at US and UK visitors, the four-star boutique hotel and spa has quickly established itself as a niche retreat for honeymooners and couples who appreciate the laid-back atmosphere and dedication to top-quality service, as well as the contemporary take on Caribbean architecture.

The villas will be able to enjoy a full service from the hotel, just along the beach, and other plans for the new development include the creation of Bequia Beach Yacht Club, with a jetty for access by all sizes of boats, up to super yachts.

“People here thought I was mad to begin with,” he recalls, adding, “so did my wife!” But he has proved them wrong.

“In its prime and excitingly historic location, a development of exclusive luxury serviced villas will be sure to attract a wealth of discerning international buyers.”

The project continues to grow. Most recently Withers assisted with the strategic acquisition of a 10-acre beach front site (arguably the best beach on the island), on which Mortstedt plans to develop a limited number of high-end villas for sale next year.

Thomas van Straubenzee, founder and director of VanHan, which specialises in luxury property, comments: “In its prime and excitingly historic location, a development of exclusive luxury serviced villas will be sure to attract a wealth of discerning international buyers.”

The villas will be able to enjoy a full service from the hotel, just along the beach, and other plans for the new development include the creation of Bequia Beach Yacht Club, with a jetty for access by all sizes of boats, up to super yachts.

“Bequia Beach Hotel is one of a number of luxury residential resorts. I would urge any readers considering embarking on their own island paradise project to get in touch early, as the challenges and risks can be both diverse and substantial.”

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Seeking the meaning of wealth in the 21st Century

Withers recently commissioned a ground-breaking piece of research which examines the attitudes to wealth of successful families across Europe, Asia, and the US. The research also explores the similarities and differences in those attitudes and the way in which families interact with their wealth.

"Through our work with families around the globe, we have become conscious of a change in the way they view the use of their wealth and the role it plays in supporting their purposes," says Withers' Sarah Cormack.

We therefore commissioned a research study to explore these changes and what lessons can be learnt. Through quantitative analysis of the attitudes of 4,500 individuals, including 1,100 with more than USD10 million in personal wealth, and personal interviews with multi-millionaires and billionaires around the world, we wanted to get to the very heart of what it means to be wealthy in the 21st Century," says Withers' Sarah Cormack.

The interviews also put a different perspective on the transitional nature of family wealth. It is often said that good governance is the glue that ensures wealth preservation through the generations. The cliché that unsteadfast wealth dissipation over three generations is well worn in this debate. Yet, the interviews highlight that the nature of the family wealth cycle is changing. If the family focuses on crystallising the purpose of their wealth, then the transition from operational business owning family to an investment driven financial family can be a smooth one.

"Families across the globe are working through these transitions, but at different points in the cycle. In Asia many families are undergoing the first transition from family business ownership to becoming financial families. This is happening for a number of reasons, not least because younger generations are questioning whether they want to go into the family business, as was the norm in previous generations," says Catherine Tillotson of Scorpio Partnership.

The lesson families in Asia are keen to pass on is that knowledge, information and education exist to support families through this transition, and families must not see it as a loss of face to reach out for professional support.

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BUSINESS FAMILY
A business family profile reflects the family business. The leader has to be open-minded and accept that other people see something better than them. You cannot make good business decisions with just one discipline. An entrepreneurial family has to be fundamentally disciplined.

FINANCIAL FAMILY
Being a financial family requires a different skill set. You need to set up your financial business alongside your operating business so that your asset base is a background and not a focus.

A WEALTH CREATOR
As a wealth creator, you are the one who has the responsibility to create jobs, not governments. It is your responsibility. People talk about impact. What better impact can you have than to give someone a job?" Meanwhile, in Europe, many families are coping with the challenges of being a financial family. Once the decision has been taken to move on from common ownership of a business, it is easy for a family to lose sight of both the purpose of their wealth and their unity as a family. The focus turns to communication within the family so that the younger generations are empowered and senior family members continue to perform an integral role in the stewardship of the family’s wealth, with all the responsibility that brings.

"The lessons here relate to the importance of taking time to observe family dynamics, to bring in the right management skills from outside the family, focusing on values being prepared to lead from behind. There is also a significant focus among families that have gone through this transition to ensure the next generation is supported to find their own way in the world," says Jay.

Indeed, given the complexities of being a financial family, it is perhaps not surprising that a third transition is becoming more common, with some families making the return to engagement with operational businesses so as to rediscover that sense of excitement and hands-on involvement that was experienced when the family first built its wealth. This transition is perhaps most noticeable in the US, but also in Europe, where the transfer of wealth between generations has coincided with economic decline to re-awaken a sense of social purpose. As the head of one ultra high net worth family put it, “It is like being a concert pianist. You can’t take away the piano and expect to be happy listening to other people playing.”

As one interviewee observed, “Over the last few years, we have learnt that preserving wealth isn’t just important for families, it is important for whole economies. We are starting to realise that the long-term view that families have always had is the right view to grow businesses and economies. Everything that comes with that view is healthy for jobs, for well-being and for the economy. So, as a family we are rethinking and re-engaging with wealth creation.”

The lesson here relates to the importance of taking time to observe family dynamics; to bring in the right management skills from outside the family, focusing on values being prepared to lead from behind. There is also a significant focus among families that have gone through this transition to ensure the next generation is supported to find their own way in the world,” says Jay.

Indeed, given the complexities of being a financial family, it is perhaps not surprising that a third transition is becoming more common, with some families making the return to engagement with operational businesses so as to rediscover that sense of excitement and hands-on involvement that was experienced when the family first built its wealth. This transition is perhaps most noticeable in the US, but also in Europe, where the transfer of wealth between generations has coincided with economic decline to re-awaken a sense of social purpose. As the head of one ultra high net worth family put it, “It is like being a concert pianist. You can’t take away the piano and expect to be happy listening to other people playing.”

For those families where this transition has already taken place, progression on to new family-owned business ventures may be considered. When undertaken from a position of financial strength, the foray back into business often has a wider economic or social purpose: “Wealthy families are getting back into business, not just to create wealth for themselves, but to create jobs and economic security for a wider community. Having this clarity of purpose, it would seem, is empowering families to ensure that wealth grows from generation to generation,” says Catherine.

"Characterised as getting back to their roots, families going through this transition are seeking to make an economic or social impact with their wealth, either through business and job creation, or through philanthropic activity," Jay adds.

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"The lesson from those undergoing this transition is that active participation is more beneficial for the family and society than a passive approach to investing or giving. They argue the benefits of collaboration with other likeminded families and, above all, of leading by example within their family and community,” observes Sarah.

These findings were echoed in the quantitative analysis, which highlighted the energy and drive that motivate the wealthy, but also the concerns around children and transition, and a willingness to seek expert support to manage the complexities. By having clarity of purpose, wealthy families are working to harness their full economic potential for the benefit of their immediate and extended family and for the benefit of wider society too.

So, if we want to answer the question “What is the meaning of wealth in the 21st Century?”, perhaps it is that wealth does not confer a sense of privilege – it confers a sense of purpose.

Or as one wealthy patriarch succinctly puts it to his children, “You weren’t born with wisdom, you were born lucky, now it is your responsibility. People talk about impact. What better impact can you have than to give someone a job?”

To request a copy of the report, please email duncan.miller@withersworldwide.com
More and more women are becoming successful in their own right, and nowhere is this more apparent than in Asia.

Like their male counterparts, successful women need to be aware of the traditional threats to their wealth.

1. Lack of wealth structuring.
2. Inadequate protection of inheritance and succession plans (leading to trust disputes, for example).
3. Insufficient planning for marriage, pre-nups and divorce.
5. Failing to protect your reputation (both business and personal).

The Chinese tradition of family has meant that, in most families, the grandparents would care for small children while both parents went out to work. In city states such as Singapore and Hong Kong, the geographical size of the cities allowed for an ease of movement where family members could care for small children and of course in both of those cities there is a culture of foreign domestic help. In Singapore, the fact that there remains two years of national service for all of the men means that women in the workforce have two years’ head start on their male counterparts,” says Withers’ Rita Ku.

Statistics from a wealth report in The Sunday Times show that, while wealth globally still tends overwhelmingly to be controlled by men (88 percent of all UHNWIs) there is a shift towards gender equality. The statistics show that Hong Kong in particular has more equality of gender for HNWIs than most countries: there the male/female ratio is 78/22 respectively; whereas in China it is only 96/4, and in the US and the UK it is 90/10 (Germany has a better ratio at 83/17).

Rita goes on to say: “There is no question that these days in Asia, and particularly in Hong Kong, there is a rise in stay-at-home husbands making claims against career-oriented and high-wealth wives. This is because women in Asia are frequently now breadwinners, entrepreneurs and recipients of trust funds, and so greatly contribute to Asia’s wealth.”

As in most parts of the world, in China there is a disparity between the cities and rural areas. In the countryside the traditional role of women is stronger; but in the cities Horizon Research Consultancy Group has reported that more than 36 percent have a higher income than their husbands and in 40 percent of cases, the women manage the family money. In Shanghai, ibtimes.com reports that, for some time, many of China’s traditional gender roles have been reversed. All over China women are recognising that their main role is not necessarily to stay at home, and men are not the only people who can make and manage money.

The evidence is overwhelming. In addition to this general trend in Asia, the increase in breadwinners can be explained by a number of other factors:

1. There has been an increase in the number of women at the top of their profession. A recent report by McKinsey’s, ‘Women Matter’ concluded that “companies with the top-quartile representation of women in executive committees perform significantly better than companies with no women at the top”, both on their average return on equity and on average earnings before interest and tax: women are good for business.
2. A woman may also be a breadwinner through inheritance: women inherit as daughters and wives. In Hong Kong, The Sunday Times reports that there is nearly an equal balance between self-made and inherited wealth. Many of the most prominent HNWIs in Asia are women who have inherited their wealth and then gone on to be significant business women in their own right: Chinese billionaire Nina Wang being an obvious example.
3. “The increase in divorce has forced many women to become the sole breadwinners for their families, or at least forced them into having to manage their own finances for the first time. In recent years in Hong Kong particularly, the level of awards in ultra-rich families has provided some divorces with a windfall to invest,” says Rita.

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While it’s difficult to talk about average awards, in Hong Kong financial awards of some HK$100 million are no longer uncommon and, as a result, a new industry has emerged in which female investment consultants are advising women who have not before chosen to manage large sums of capital. In one of our most recent cases, where a woman received in excess of HK$200 million, our client was able to completely recreate herself – in her 50s – by embarking upon investments linked to education, the environment and businesses within and outside Hong Kong with funds that had hitherto been controlled entirely by her husband. Exit stage left male financial control!”

Some women go it alone: the relatively new career opportunities for women and an increase in their educational possibilities have caused a number of professionals and business women to concentrate on their careers, some have chosen not to marry, and for a small proportion of women, to have children with no male partner,” adds Withers’ Philippa Hewitt.

Women as breadwinners can only be a good thing for Asia: empowered women are proven catalysts for change and development to progress economies.

It is said that when a woman is empowered and lifted out of poverty, she positively impacts five others around her.

“Of course women as well as men are role models within the family. In respect of the wider economy, the World Economic Forum has found that in countries where the gender gap is smallest, there is greater productivity and economic competitiveness. It can take decades to change the perception of society, but in Asia, things happen fast and all the ingredients are there for radical social change,” says Philippa.

Rita concludes: “However, these changes mean that women are likely to become increasingly vulnerable with regard to claims being made against them by their spouse. It is therefore essential that women do not allow themselves to be sentimental in financial and romantic liaisons and women, like men, need to be reminded of the importance of pre and post-nuptial agreements. Also, trust provision needs to be put in place well before marriage. And for those with philanthropic interests, many opportunities are now available for tailor-made foundations to fund the objectives of one’s charitable aspirations – and women in Asia are certainly taking the lead in this endeavour.”

Withersworldwide
THE RISE AND RISE OF MAXMARA

Established by Achille Maramotti in 1951, MaxMara is an iconic Italian brand built on the notion of timelessness and utility luxe. Resolutely independent, it has eschewed a public listing, preferring to maintain family control over its operations. In 2012, the MaxMara Group operated in over 105 countries, underlining the success of this approach.

In its Winter 2013 collection, MaxMara launched a new handbag called the JBag with a campaign fronted by American actress Jennifer Garner. Ms Garner’s participation in the campaign underscores MaxMara’s global reputation for classically timeless, cutting-edge luxury goods.

Witers’s luxury brands team assisted MaxMara with the sponsorship agreements for the campaign. Here, Anthony Indaimo, lead Witers’ partner on the deal, talks to Nicola Maramotti, MaxMara’s Global Brand Ambassador and a member of the founding Maramotti family, about the factors behind the MaxMara Group’s success and how it has maintained ownership within the Maramotti family through over 60 years of international growth.

THE BEST OF OLD AND NEW

AI: “MaxMara is known and respected around the world as a leading fashion and luxury brand. How has it achieved this whilst simultaneously hanging onto its heritage and maintaining a family business structure?”

NM: “MaxMara has always been consistent about its tradition and I believe that our ageless style represents a symbol of Italian quality through the world. The brand embodies passion, commitment and tradition, all in the service of fashion interpreted with personality and rigour. From the outset, all MaxMara Group products have been imbued with a full and pragmatic sense of fashion. This has allowed the company to maintain strong values and priorities over time.

“It is these values and priorities that set the company apart today, both in Italy and throughout the world. Foundations of the highest quality, up to date fashion content, attention to price/quality ratios, research into wearability and careful tailoring down to the smallest details are followed up, on a larger scale, with major industrial production and a focus on study and research.

“We approach our products with both the well-established traditions of our brand and the newest trends in mind. This is exemplified by the fact that the iconic 101801 coat, first introduced in 1981, remains a fantastically popular item in the present day and is immediately identifiable as both a MaxMara product and a staple fashion item.”

AT THE FOREFRONT FOR OVER 60 YEARS

AI: “In the more than 30 years that Witers has been working with luxury brand clients, we’ve seen a lot of changes in industry leaders. But MaxMara has remained at the creative forefront of fashion and luxury for more than 60 years, how have you achieved this?”

NM: “MaxMara was founded in 1951 by Achille Maramotti with the intention of producing, through an industrial process, creative, reasonably priced fashion content that would be accessible to every woman. Since that time, the quality and style of our products have been the pillars of this company. Rather than promoting any one single designer, MaxMara has always been a product-oriented company, reliant on its brand and the team behind it. We believe that creativity is a process that involves many professional figures from designers, to fabric researchers, to communications and marketing experts. For us, creativity is all about team work, with one goal and one goal only – the product.”

“Nowadays the Group numbers more than 2,300 stores in over 105 countries. MaxMara’s brand is known, trusted and admired to around the globe. The business remains a family-run concern, with Luigi, Ignazio and Maria Ludovica Maramotti currently heading it up.”

FAMILY BUSINESS VALUES

AI: “How significant do you think your family business structure and culture is to the success and strategy of the business?”

NM: “It’s significant in a number of ways. Maintaining tradition, guarding the brand’s heritage, and driving the business forward in a consistent fashion. The MaxMara Group has always been open to bringing in the most talented individuals in the industry, whether on the creative or the business side of things. But operating through a family business ownership structure has helped us to maintain independence and control of the business in the face of a highly competitive industry.

“Having conquered the US market in the 1990s, MaxMara Group directed its attention to Asia, and has since opened over 380 stores in Greater China alone and a further 179 in Japan. We believe it’s a track record that underlines the power of family business values.”

INTERNATIONAL STYLE

AI: “MaxMara’s growth in Asia has been a marked success in the business’s recent history. The Asian market’s passion for luxury products is well known, but how have you positioned the brand so successfully in the region?”

NM: “International growth has been a central part of the Group’s business plan from the very beginning. Over the years, our vision has grown to encompass more markets and Asia has been a main focus of this strategy. Just as in western countries, MaxMara has managed to become a key part of the life of Asian women, allowing them to express their personality through our elegant and sophisticated products.

“In Mainland China this phenomenon has gone even deeper, with women’s increased power and influence in Chinese society translating into a growing appetite for our products, for use at work and in daily life.”

“Paloma Faith at a MaxMara event in Tokyo, 2013

Anthony Indaimo
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Our ageless style represents a symbol of Italian quality through the world. The brand embodies passion.
The last few years have been tough on charities. However, with fundraised income showing signs of growth, those responsible for running charities now face increasing scrutiny.

In the UK, Asia and the United States, those responsible for directing the affairs of charities must exercise their responsibilities in compliance with the law. Whether they are referred to as charity ‘trustees’, ‘directors’, ‘board members’, ‘governors’ or something else, these individuals, who serve on the governing bodies of their organisations, have ultimate legal responsibility for the governance of the charity.

With increasing public scrutiny of the activities of charities, it is vital that those who have a governance role should understand and comply with the legal rules that apply in their particular jurisdiction.

In this round-up, Withers’ charity & philanthropy team provides a brief summary of the roles and responsibilities of charity trustees/directors in the UK, United States and Hong Kong.

UK roles and responsibilities

Withers’ Chris Priestley outlines the UK position: “Trustees have ultimate responsibility for directing the affairs of the charity, and ensuring that it is solvent, well run, and delivers the charitable outcomes for which it was established.

There have been instances where charity trustees have found themselves to be personally liable for certain losses incurred by the charity. Being aware of the relevant rules and getting good advice and training can ensure that such an unfortunate situation does not arise.”

Trustees’ general legal duties can be summarised as following:

Compliance

Trustees must ensure that the charity:

• Complies with the law, and with the rules applicable to the relevant UK charity regulator, this includes preparing and filing (on time) annual regulatory returns and accounts.

• Does not breach the rules set out in its governing documents.

• Acts with integrity. More specifically, the trustees must act in the best interests of the charity, avoiding any personal conflicts of interest or misuse of charity funds or assets.

Duty of prudence

Trustees must:

• Ensure that the charity is and will remain solvent.

• Use charitable funds and assets reasonably, and only to further the charity’s purposes (and for public benefit).

• Avoid undertaking activities that might place the charity’s assets or reputation at undue risk.

It is a good idea to make yourself aware of good fundraising practices, such as the Institute of Fundraising’s Codes of Fundraising Practice.

Duty of care

Trustees must:

• Exercise reasonable care and skill in their work, using their personal skills and experience to ensure that the charity is well run.

• Consider getting external professional advice on all matters where there may be material risk to the charity.

Financial management

This is an important duty in any charity and could include making decisions about fundraising, service provision, and investments. Trustees should ensure that the charity’s finances are used appropriately, lawfully and in accordance with its objects.

Reputation and regulatory scrutiny

Over the past couple of years, UK charities and their trustees have been subject to heightened scrutiny by the media and the Charity Commission.

There are several reasons for this:

• Increased public concern that charities should provide value for money and are transparent in how they handle donations.

• There have been a series of high-profile scandals involving misuse of charitable funds, money laundering or tax evasion schemes.

• The English regulator for charities, the Charity Commission, has been criticised for its regulatory activity and is under pressure to be ‘tougher’.

Hong Kong roles and responsibilities

Unlike the UK’s Charity Commission, Hong Kong has no centralised regulatory authority for this sector. However, the Charity Sub-Commission of the Hong Kong Law Reform Commission has spent the last six years carefully looking into the reform of charities in Hong Kong. In a report, released in December 2013, the Sub-Commission stated that its long-term goal is to establish a charity commission which would promote greater compliance and monitor the legal obligations of charity trustees or directors.

Under the proposed reforms trustees and directors of Hong Kong charities would be required to keep and produce accounts, to provide an annual report and to make an annual return to the future charity commission. The Sub-Commission proposed that these accounts and annual reports should be made accessible to the public. According to statistics from the Hong Kong Inland Revenue Department, as at March 2013, 5,651 out of 7,592 tax-exempt charities are corporations which are required in any case to file their annual returns and accounts.

There’s no better time for charity trustees in Hong Kong to look at their internal procedures and governance to ensure good charity governance is in place.

In Hong Kong, there is an increased trend for individuals to establish their own charitable foundations, rather than supporting other organisations. These individuals typically also run an operating business that will be undertaking its own corporate social responsibility initiatives. The trustees of the charity should avoid duplicating those efforts and resources. To this end, the individual’s charity and business corporation should each have internal policies and procedures to ensure the coordination of their respective plans and budgets in this area.

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Under the microscope

Understanding the responsibilities of charity directors and trustees

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Illustration: Michel Stresh

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Under the microscope

committees or employees. making and consult with all relevant Directors should take care to follow information reasonably available to them.

Duty of care The duty of care is perhaps more accurately properly to protect the charity from illegal or improper actions."

Duty of obedience Withers’ Jim Carolan continues: “Where the duty of obedience is concerned, directors should keep the charity’s governing documents front and centre, along with the requirements these place on them. The duty of obedience also requires directors to mandate records and record-keeping, internal procedures, policies and compliance programs, and to ensure that these are carried out properly to protect the charity from illegal or improper actions.”

Duty of loyalty Directors should act solely in the best interests of the charity, rather than in their own interests. Considerations here include avoiding conflicts of interest and maintaining confidentiality. A conflict of interest may include any business the charity does with:

• A director, another entity in which a director of the charity is also a trustee, director, officer, employee, consultant, or agent; or another entity in which a director has a financial interest.

Financial management Directors are responsible for a charity’s financial management, and can be held accountable under:

• General mismanagement – actions or inactions that result in significant harm over a period of time.
• General neglect – the opposite of acting in ‘good faith’, it involves actively acting against a charity’s best interests.
• Bad business decisions – often characterised as a ‘waste of corporate assets’.
• Mismanagement of investments – directors are bound to protect the charity’s assets and must have a reasonable investment plan. A take advice from qualified experts and exercise reasonable oversight.

The Uniform Management of Institutional Funds Act (UPMIFA) Charities incorporated in almost every US state are governed by UPMIFA in relation to their investment activities. In overseeing the charity’s investments and investment strategy, directors must exercise ordinary business care and prudence. This means considering the long and short-term needs of the institution, its present and anticipated financial requirements, expected total return on investments, price-level trends, and general economic conditions.

Over the past year, Withers’ lawyers and support staff around the world have been doing their bit to help the communities where they live and work. A quick snapshot of these initiatives shows the breadth of activities in which our people were involved:

Making an impact in the UK Last year, in the UK, we raised money for Macmillan Cancer Support, achieving a grand total of £19,000 from a range of activities. The highlight saw us sending a team of nine people to undertake the ‘Three Peaks Challenge’. No mean feat, this entails climbing the highest mountains in England, Wales and Scotland, all within 24 hours. Despite three injuries (including a very unfortunate one getting into the minibus just outside the London office!), the team made it through their ordeal.

The London office also conducted a number of other fundraising events throughout the year. These included donations on dress-down days, participating in the World’s Biggest Coffee Morning (plenty of baking activity involved); carol singing, and a charity auction for tickets to Last Night of the Proms. The firm dispatched some of its more active individuals for the London Law Walk, which raises funds for Legal Advice Centres throughout the city, and we expect to participate in it again this year.

On a firm-wide basis, Withers raised over £10,000 on behalf of the charity Hope4Malawi. The money has helped to build a kitchen at Mpemba school, in the Blantyre region of Malawi, where 1,600 children are now fed daily.

A new initiative that we hope will give a major boost to our CSR activities is a programme enabling our non-legal staff to contribute their time and energy to helping unemployed people in London. Staff work with individuals to build their confidence and improve their professional and presentation skills to help them into the workplace. This scheme complements our work with City Action, which links Withers with local London enterprises who receive assistance and support for their business needs. Lawyers from our Family team volunteer at Citizens Advice Bureaux (CABs) across London.

US activities in focus In the US, the firm has set up a CSR committee to drive initiatives and co-ordinate monetary and in-kind donations (such as food, clothing, books, toiletries and kitchen supplies). Over the past year, we’ve made contributions to ‘Female Soldiers – Forgotten Heroes’, a program run by Homes for the Brave, a local organisation providing housing and vocational training for homeless veterans.

Other initiatives supported include a number of humane societies, organisations that provide housing, medical care, cruelty prevention and adoption services for homeless animals. In 2013, our US offices donated approximately US$18,000 to the American Red Cross (particularly for their Hurricane Sandy and Boston Marathon initiatives), The Sandy Hook Foundation, Homes for the Brave, the NY and CT Food Banks, March of Dimes and the Annual Home for Holidays Fundraiser.

Withers’ US offices have also developed and launched a formal pro bono program, underlining the firm’s commitment to supporting meaningful corporate social responsibility ventures. As a first step, the US team partnered with the Connecticut Veterans Legal Center and Volunteers of Legal Service in New York for the referral of estate planning, tax controversies and non-profit advice. Withers is also an active member of LawWorks, the solicitors’ pro bono group, and works on their ‘Free Law Direct’ online advice service. 2013 also saw us supporting Smart Works, a charity that aims to help unemployed women to prepare for job interviews.

A global commitment In Asia, our Hong Kong office has partnered with Po Leung Kuk, a local not-for-profit organisation, to gather donations for orphaned children in Hong Kong. In line with the expansion of our business in this region, our community involvement is growing all the time. The Hong Kong team was joined last year by consultant Michelle Chow, who is well known for her legal and volunteer work for local charities. Michelle won the Hong Kong Law Society’s Distinguished Community Service Award, presented in December 2013.

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So you want to meet a rock ‘n’ roll star?

Investments in wine, art, jewellery or yachts are relatively easy to value. But attaching a price tag to an unforgettable experience is quite another matter. By bringing individual clients together with major music stars, Los Angeles-based Rockitsessions is helping to create exclusive, one-of-a-kind memories that last a lifetime.

So you want to meet a rock ‘n’ roll star?

I t takes a rare level of inside knowledge to have 50 or 60 world-class rock stars, DJs and dance musicians on speed dial. As a well-established LA-based music producer, Marc Jordan is one of the few people to have those contacts. And his company, Rockitsessions, is in business to put ‘fans’, of whatever age, in touch with their favourite artists for an exclusive one-to-one meeting in the recording studio, onstage, backstage, at a private party, or on a private jet.

As Jordan says: “The sky’s literally the limit. The people who come to me are the rock stars of their industries, and my job is to give them one of the most high-end experiences imaginable.”

The unique concept behind Rockitsessions originated in 2010. Jordan was handling production for an artist who asked him to get Slash (formerly with Guns N’ Roses) to come into the studio and play guitar on one of his songs. “In effect,” recalls Jordan, “it was to assemble a roster of talent, and use that roster to legitimise approaching other rock stars and music artists until we had a whole range of people we could approach.

Out of everyone we asked, we had just one person decline to get involved.”

Building business by word of mouth, Jordan soon found that a certain demographic was more than happy to pay for the opportunity to meet their heroes. As Jordan says: “To take just one example, one particular client, who works in the hotel industry, was passed onto me by a friend. He was blown away by the concept of going to a studio with a guitar player that he admired (The Cult’s Billy Duffy), and he wanted to ask him all these questions, and hang out and jam the songs that he’d grown up listening to.”

So how much does it cost to buy these kinds of memories? “It’s hard to be precise,” says Jordan, “because the price varies depending on the artists and the experience the clients are after. But as a guideline, I guess you’re going to be spending the same amount you’d spend on a pretty nice watch.”

Clients come to Jordan because he’s still, first and foremost, a music producer so he knows artists will take his requests seriously. As a music industry player, his connections with management, musicians and record labels are impeccable. And he’s moving on fast from the early days of Rockitsessions. “I’ve got the business to a point where there’s no longer a fixed roster of stars. I can use my contacts to get access to pretty much anyone my clients want to meet. It’s a question of ‘OK, who do you want?’ and then I’ll go out and organise it. I’m just two phone calls away from musicians and DJs right across this industry, from rock and indie, to jazz, dance, hip hop and country.”

Wealthy individuals of a certain age, around 40 to 50 years old, were Jordan’s initial target market. But now that’s changing. Although many of the stars he’s worked with up to now are LA-based veterans, Jordan recognises that some clients want to invest in experiences for their children. Withers’ Todd Angkatavanich has introduced clients to Jordan, and says: “Successful people are looking for something unique that they thought their money couldn’t buy. Ultimately, Rockitsessions delivers.”

The success of Rockitsessions comes down to Jordan’s appreciation of a simple fact: “What we’re doing is bringing rock stars of their own industries together with rock stars from the music world. My clients have earned the right to create their own memories, and that’s what we’re helping them to do.”

For more information, contact: info@rockitsessions.com

As a variation on the service, we are now starting to offer VIP aftershow parties for fans to spend time with international touring artists in exclusive environments.

Like the range of artists and experiences that Jordan can arrange, the geographic scope of his business is expanding all the time: “I’m keeping the focus on what makes Rockit so special, its exclusivity. But I know some clients will find it easier to get to London for the day, rather than LA – and there’s certainly a huge array of talent based over in Europe. That’s going to be a whole new area for the business.”
London continues to be the number one safe haven for international real estate investors. Withers’ partner Henry Stuart confirms, “We expect to see continued high demand for properties across the capital, part of a well-established trend. Data from estate agent Savills shows that more than 500 homes sold for £5 million or more in London during 2013 – a 25 percent increase on 2012”.

However, Saïd Business School’s recent report highlighted the safe haven effect that has been increasingly shaping investments into London’s property market. This showed how prices in London’s most desirable neighbourhoods have risen in direct correlation with political unrest overseas. In areas with a higher proportion of residents from particular countries, house prices rose by almost half a percent in the months following an increase in those countries’ political risk levels.

The safe-haven effect was particularly evident across a number of southern European countries, China, the Middle East, Russia and South Asia. This is mirrored in local residential dynamics across London, with wealthy Middle Eastern buyers favouring Little Venice in West London, unrest in Pakistan pushing up prices in Wimbledon Park and political uncertainties in Russia driving investments in Mayfair and Chelsea.

**A SEGMENTED MARKET**

We are seeing a trend for private wealth to target new commercial and development opportunities, with trophy assets such as boutique hotels coming back into fashion. Recent developments include Holland Green, three new apartment buildings grouped around the proposed new home of the Design Museum at the south of Holland Park; and Alpha Place in Chelsea, a new building of approximately 100,000 sq ft providing 25 lateral apartments. South of the river, the site around Battersea Power Station, and Nine Elms, the new location for the US embassy, are both experiencing major redevelopment. Further east, Blackfriars, Southbank Tower, Sea Containers House and the Shell Building are all attracting substantial interest from international investors. Secondary market purchasers in some of these developments are an increasingly common feature.

“In the first two quarters of 2009, we saw what was effectively a 45 percent reduction in Mayfair property prices. It was a great time to invest there. But a comparison between UK property prices and values of other currencies at the peak of the market in 2007 shows real discrepancies in returns since then. US dollar purchasers are still unlikely to have recovered the shortfall. By contrast, for Singapore dollar purchasers, prime London properties are now 30 percent cheaper than they were three years ago,” says Henry.

**TAX-EFFICIENT INVESTMENTS**

The annual tax on ‘enveloped dwellings’ came into effect on 1 April 2013. Payable by corporate bodies that own high-value residential property occupied by beneficial owners, the tax is charged in four bands – from £15,000 to £140,000 per year – according to the property’s value (on 1 April 2012, or, if later, at acquisition). Capital Gains Tax will be payable on any gains at sale post March 2013. However, as Henry Stuart explains, “While this new tax undoubtedly had an impact on investments into the prime London and UK property market, Continued over >
this was most prominent in the run-up to its introduction. Once there was certainty over its scope and effect, the real effect could be factored into actual investment calculations.

“Overall, we still enjoy a very benign tax regime in the UK, particularly so for those looking to let residential property on a commercial basis. Advice is crucial – we have seen a number of foreign buyers paying far more tax than necessary. In his 2013 Autumn Statement, the Chancellor of the Exchequer announced that Capital Gains Tax would be levied on residential property owned by non-resident individuals. Consultation around this is ongoing. However, assuming investor reaction to the announcement follows previous patterns, its effect will be limited once uncertainty evaporates.”

MORE THAN JUST BRICKS AND MORTAR
There’s no out-of-the-box solution for residential property investment. Years ago, BVI-based companies were common vehicles. Now, it’s far more about understanding the needs of individual investors, and developing efficient ownership structures that match their particular objectives.

What about the wider aspects of client requirements? For international investors buying UK property, one major driver may be to park capital in a stable jurisdiction. But many acquisitions are linked to children’s education, particularly for investors from Russia, China and the Far East. In such cases, one needs to look at structuring the real estate acquisition, planning for the residents’ arrival in UK tax terms and also addressing the visa and immigration aspects that will arise. Student visas may not be the best option.

For children from wealthy backgrounds who will be seeking to remain in the UK when their education is over, investor visas can prove very effective. Provided £1 million or more is invested (and at least 75 percent of that sum is put into authorised investments, which can include loans to private companies), then at the end of three years the child will have the right to work in the UK. Instead of leaving university and working across the EU.

Privacy issues can also be significant. Information on property owners is publicly available through the Land Registry – however, where privacy is important, nominee structures can be put in place to prevent details of the families involved being made public.

Real estate is often a key asset in international divorce cases. The family courts in this country take a robust view of trusts and ownership structures, and always try to look at who is actually benefitting. For clients that are already married, or about to marry, careful consideration should be given to how ownership of the real estate asset will be treated under English law. Inheritance is another important consideration.

In countries where forced heirship is the norm (under Sharia law for example), English succession law can help to introduce more flexibility when passing on property and assets to the next generation.

LOOKING AHEAD
With an encouraging economic outlook, we’re seeing an increase in investment by foreign investors in commercial property. Until now this was focused on trophy and prime location opportunities. Now that’s widening to include broader economic opportunities. Illustrating this trend, a US hedge fund recently bought into the Leeds market – something that would have been almost unheard of a few years ago.

Common mistakes? “The most common issue we’re asked to deal with will be where investors have already committed themselves to structures that are inefficient from a tax perspective. These can be hard to reorganise. Also, arriving in the UK and becoming tax-resident before working out how to do so in the most tax-efficient way. Remittance issues are often overlooked, creating a risk that HMRC will be able to charge tax on non-UK income and capital gains.”

The important thing is to start talking to clients at the stage where they can still plan, and we can draw on our experience to help them organise their affairs.

Withers’ partner, Bertie Hoskyns-Abrahall, continues: “Even though we’ve seen the average value of prime arable land decrease by over 15 percent in the past year, our land is still not expensive compared to some of our near neighbours. Overseas investors are often able to see value in parts of the country that might not, for one reason or another, appeal to a domestic investor. Take the north of England, for example, a region that’s achieving some of the highest land prices in the UK at the moment. To a London-based purchaser, it may seem easier!”

With the stream and the opportunity to tap into rapid growth in farmland prices.

Comparatively tight supply and high demand for prime arable land has driven staggering growth in UK farmland prices over the past decade. Average price per acre for arable land in 2004 was £2,400. By late 2013, that had jumped to around £8,300. And with strong capital appreciation predicted to continue for at least the next two to three years, increasing numbers of overseas investors are looking beyond London to rural opportunities across the country.

Agricultural investments offer attractive returns on capital. Property structured, they can also prove to be extremely tax efficient. If agricultural land is rented out, it can become inheritance tax-free after seven years – and inward investors from, say, China or Russia, who are investing in the US, South Africa, Italy and the Netherlands. As Hoskyns-Abrahall says: “Overseas investors appreciate that in this country the ultimate trophy asset is a country house and it’s land. And as the latest wave of investors from China and Russia follow suit and become part of the establishment in the UK, we expect them to start viewing prime land assets in the same way.”

In this vein, there is significant activity from established inward investors coming from the US, South Africa, Italy and the Netherlands. As Hoskyns-Abrahall says: “Overseas investors appreciate that in this country the ultimate trophy asset is a country house and it’s land. And as the latest wave of investors from China and Russia follow suit and become part of the establishment in the UK, we expect them to start viewing prime land assets in the same way.”

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Life is what happens when you’re hard at work

For some successful people, sandwiched between the demands of their children and ageing parents, life can be difficult and a constant challenge. But help is at hand.

Dealing with elderly parents
The priority here is to do all you can – without wrapping your parents in cotton wool. As Withers’ partner Julia Abrey says: “Give them as much independence of life as possible, whilst ensuring that they’re receiving the care they need to keep them safe.”

There are many practical measures, as well as legal ones, that can be taken.

Financial affairs
With longer life expectancy, it’s essential to plan for old age care and for the financial issues that can arise:

- Lasting Power of Attorney (LPA) is the principal tool for dealing with parents’ finances if they are too frail, or don’t otherwise have mental capacity, to do it themselves. An LPA appoints one person – or more than one – who they can trust to do it for them.

- Estate planning with an eye to inheritance tax is a priority. When advising elderly people, time for efficient tax planning can be in short supply. It is important to consider all the possibilities to minimise the tax bills on parents’ estates and there are a number of options.

- Illness or other capacity-related illnesses are an issue; the Court of Protection can help in authorising tax planning on a parent’s behalf by making gifts of assets and reorganising wills.

- Assets overseas present added complications. UK Powers of Attorney may not be recognised abroad and tax issues can be complex. Specialist advice is vital.

A review of the older generation’s financial affairs may reveal that they are not claiming state support to which they’re entitled and which could help to pay care costs.

Most elderly people have a will, but has it been reviewed and updated to reflect any changes in circumstances? With the increase in house prices, is new planning required?

Care options
Find out what care options are available and how much they cost.

How will they be paid for? Is the parent entitled to any help from the state?

Are existing estate planning structures still the most suitable with care costs in mind?

Julia adds: “We work closely with organisations such as Grace Care in helping families with every step of their important care decisions.”

With longer life expectancy, it’s essential to plan for old age care.

Health decisions
An LPA for Health and Welfare can be the key tool to appoint a trusted person or persons to make this kind of decision on behalf of others who can no longer decide for themselves. Many elderly people also choose to make a Living Will: a minor’s online profile can be exploited to plan for old age care and for the financial issues that can arise.

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Abuse
Sadly, particularly when elderly people are in ill health, their vulnerability can expose them to theft, abuse or other forms of coercion. An application to the Court of Protection can be made to enable lawyers to pursue the perpetrators and resolve any issues arising.

Illustration: Michel Streich

““”

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““”

Protecting your children online
According to the Office of National Statistics, 93 percent of 16-24 year olds used social media in 2013. Young or old, social media can be a fantastic tool for business and social life. But if used recklessly, it can be incredibly harmful. In the digital age, information anywhere is information everywhere. Speculative and damaging comments can circle the world in seconds and, once established, can be hard to address or remove.

Children may be more likely than adults to use social media recklessly. They may not fully consider that one day their content will be reviewed by potential employers, academic institutions and other important contacts and could have a major impact on their future prospects. Consider 17-year-old Paris Brown’s short-lived appointment as UK Youth Police and Crime Commissioner, which came to an end after the press uncovered tweets she had posted some time before the appointment, expressing un-PC views on violence, drugs and sex.

A minor’s online profile can be exploited for identity theft and their personal security can be put at risk by posting private and sensitive information. Burglaries may be facilitated by unsuspecting people tweeting about being away from home at a given time: it may have been given the Hollywood spin in Sofia Coppola’s film, The Bling Ring, but the basic facts of the film were true.

Continued over >
Remember that the internet is not the Wild West.

In the digital age, information anywhere is information everywhere.

And is there any way for minors, or their parents, to know with whom they are really communicating when they chat online?

Amber Melville-Brown points out, social media carries legal risks too: legal liability can attach to what is posted or blogged online in the same way as it does to mainstream media publications.

Actions to take

It is unrealistic to think that our children will cut themselves off from cyberspace altogether. Common-sense and caution are the watchwords when seeking to manage their use of social media.

Educate your children: to exercise caution before making inflammatory or accusatory comments online. The law of defamation applies to online publications in the same way as it does to TV and the press, so they should think carefully before tweeting, re-tweeting, posting or blogging any damaging allegations.

Guard their privacy, and give careful consideration to any information they and you post about them online. Check their privacy settings to ensure they are not inadvertently exposing themselves to the world at large.

Be vigilant about any digital photos that are uploaded. You may need to ask people not to post private pictures of your children online – and be prepared to take action if they do so without consent.

Review their social media profile:

Regularity reviewing what others publish on social media empowers you to act if they do so without consent.

Regularly reviewing what others publish on social media empowers you to action if they do so without consent.

Guard against harassment:

Modern means of communication have made harassment even easier and children are particularly vulnerable. If any harassment occurs, you need to act fast to put down a marker, telling the perpetrator what is unacceptable and demand that they stop. If appropriate, gather and retain evidence of all relevant text messages and/or e-mails, and keep a chronology of the harassment to which they are being subjected.

A strongly worded letter is often enough to show the perpetrator the error of their ways. But if not, in serious cases harassment can amount to a criminal offence and can be reported to the police, while civil claims and harassment to which they are being subjected.

For a full list of contacts please visit www.withersworldwide.com