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Bermuda Fund Services 2017

Institutional framework for family offices

Bermuda: a one-stop shop for outsourcing

New LLC vehicle attractive to PE sector



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Foreword

By Ross Webber

Global regulatory burdens, cost pressures, fintech disruption, and political uncertainty on both sides of the Atlantic are shaping up to pose significant challenges to the asset-management industry in 2017 and beyond. Britain's sortie into extended Brexit negotiations and Trump's tax-reform ambitions seem to be holding investors and companies on tenterhooks. The only thing constant, as the old axiom goes, is change.

In Bermuda, we keep abreast of geopolitical developments that affect all our jurisdiction's industries. While perplexing issues will continue to run their course, choosing Bermuda as your domicile remains the intelligent choice. As internationally-focused companies weigh their options, Bermuda provides an attractive, serious and safe harbour from which to do sophisticated business worldwide. Bermuda is a business centre with longevity for those companies who appreciate a lasting, recognised and respected solution. Our message to decision-makers is this: amid global disruption, we offer a reliable, well-regulated, secure, blue-chip base.

That message has significant resonance in the asset-management sector, where Bermuda has witnessed impressive recent success. We're attracting increasing fund incorporations and more asset managers who are establishing a physical presence, as well as new service providers like fund administrators and law firms. Headcount at existing companies that provide critical support to funds is also rising, in tandem with total assets under management and administration. Our investment management ecosystem is committed to the facilitation of speed-to-market and innovative solutions.

We're delighted Bermuda is a destination for leading industry conferences, with the Regulatory Compliance Association (RCA) Symposium, Hedge Connection's Global Fund Forum, and the World Alternative Investment Summit (WAIS) now successful annual fixtures on the calendar. For decades, investment professionals from all over the



Ross Webber, CEO, Bermuda Business Development Agency (BDA)

world have associated our island with premier events and thought leadership in the funds space.

It's good news for a sector that has much to gain from Bermuda's advantageous one-stop-shop environment—a place where innovation thrives and cross-industry opportunities arise as the norm. A steady increase in family offices and investments in insurance-linked securities (ILS) are two good examples, attracting inward investment to the island from diverse sources.

With the lion's share of global ILS—Bermuda counts more than \$70 billion in listings, or 70 percent of the world's total—our market offers truly alternative investment strategies. Like private equity, ILS, hedge fund re, and fund-of-fund re, etc, provide those looking to diversify away from hedge funds a good play, and our 'convergence' market, tapping into decades of funds and risk-management talent, is driving the latest innovation in this sphere.

Similarly, we remain focused on the full suite of services and solutions our domicile can offer to family offices—vehicles such as life-insurance captives or segregated account companies (SACs), and a broad array of venture capital and private-equity opportunities that allow investors to leverage the deep multi-industry expertise available in Bermuda, including direct access to one of the world leading reinsurance markets. Uniquely, our market also offers a very collegial, collaborative, business-friendly environment, a place where government works closely with the regulator and industry across all sectors.

Ultimately it comes down to quality. As a brand, Bermuda has long been known for this attribute—whether we're talking about quality business, quality people, quality regulation... or quality rum! We're very proud the same reputation continues to set us apart from other jurisdictions today. Companies that select Bermuda do so for one reason beyond any other, and it's because they want to meet the highest standards. ■



Institutional framework for family offices

By James Williams

As family offices look for the best jurisdictions in which to establish trusts and wealth preservation vehicles, being able to benchmark the institutional quality of a specific jurisdiction and rely on high-quality outsourcing options, are increasingly important considerations. The following report provides an overview of how and why Bermuda is living up to these expectations.

It may only measure 21 square miles but Bermuda, with its close proximity to New York (less than a two-hour flight away), its well-established legal system, stable government and a lifestyle experience that is the envy of most other global jurisdictions, packs an awful lot of punch.

Boasting a sophisticated infrastructure, a highly regarded and pragmatic regulator in the form of the Bermuda Monetary Authority, and an attractive, tax-neutral regime, Bermuda is the ideal location for family offices that wish to attain an institutional standard.

“Since the 1950s, Bermuda has had a well-developed financial services industry to support wealthy individuals and families,” says Sean Moran, Head of Business Development at the Bermuda Business Development Agency (BDA), which aims to promote inward investment into Bermuda and enhance the island’s global reputation.

“The evolution of those services has resulted in a more institutionalised offering for family offices. As family offices have

grown and younger generations have moved into positions of influence, expanding the geographic reach of the family, the depth and breadth of services that they require have expanded.”

Bermuda has long offered a solid base of trust services and private wealth management services, and over the years it has worked hard to build on that base to support the needs of today’s HNW individuals and family offices. Bermuda has an excellent array of services and service providers ranging from trust companies, investment advisory firms and fund administrators to auditors, accountants and tax specialists: all the things that a family office needs to become an institutionalised entity.

“That is the value proposition we feel Bermuda offers today,” adds Moran.

At a time when incidents such as the high-profile Panama Papers data leak make global headlines, being able to rely on a discreet, secure jurisdiction to protect one’s family interests cannot be underestimated. For many decades, Bermuda’s regulatory authorities have enforced robust anti-money laundering standards and maintained a private (not public) beneficial ownership register in relation to company formations. That is highly advantageous when family offices are hearing about data breaches in other jurisdictions where sensitive information is being disclosed.

“The rest of the world is, in effect, catching up to what Bermuda has been doing from a regulatory oversight perspective,” comments Ashley Fife, Senior Associate, Appleby (Bermuda) Limited, a leading offshore law firm with an office in Bermuda.

This is consistent with Bermuda long having had a good quality infrastructure in place, and over time, says Moran, this has led patriarchs and matriarchs of wealthy families to come to appreciate the value of Bermuda as a safe harbour.

“They understand the level of experience and professionalism of doing business here,” says Moran.

Benchmarking the quality of a jurisdiction

The above points underscore the quality of Bermuda as a sophisticated financial services centre with a stable regulatory and political infrastructure, but there are other



“Since the 1950s, Bermuda has had a well-developed financial services industry to support wealthy individuals and families.”

Sean Moran, Bermuda Business Development Agency

considerations for family offices to take into consideration.

From a tax perspective, Bermuda has been at the forefront of a global initiative to encourage worldwide international tax transparency. “We were one of the early adopters of US FATCA and the Common Reporting Standards, and we are one of the only offshore jurisdictions to adopt Country by Country Reporting under BEPS,” confirms Bill Bailey, Partner, Financial Services Tax, EY Bermuda Ltd.

“From a family office or trust perspective, I would feel very safe knowing that Bermuda is doing everything necessary to stay off blacklists.”

This is helping place Bermuda at the vanguard of regulatory transparency.

Moran adds that a large number of family offices today look for a tax-beneficial jurisdiction. With its tax-neutral regime, Bermuda has no income, corporate or capital gains taxes. “Those are important considerations for investment-minded individuals in family offices,” says Moran, adding that what also makes Bermuda so appealing is the safety, security and stability of the jurisdiction: “A lot of family offices are being established by families from areas affected by social and civil unrest, such as Latin America, where there are real threats of violence, kidnapping and political corruption. They want a safe jurisdiction where they can preserve their wealth and maybe even gain residence.”

The legal framework that a jurisdiction operates is also important and in that regard, Bermuda has no rivals. Its legal system, which uses English Common Law, is more than 400 years old.

“Bermuda has a commercial court that is dedicated to handling business-to-business cases,” explains Kevin Gunther, President, St George’s Group Limited, which provides trust

A bespoke, risk-based approach to regulatory oversight

Interview with Melissa Morton & Ifor Hughes

Bermuda's financial regulator, the Bermuda Monetary Authority, takes a risk-based approach to regulating and supervising the entities for which it is responsible, including investment funds, investment providers, fund administrators, trust companies, insurers and banks.

The Authority's mission, says Melissa Morton, Assistant Director, Licensing & Authorisations Department, is to protect and enhance Bermuda's reputation "as a leading financial services jurisdiction, utilising a team of highly skilled people. Bermuda is a full member of the International Organisation of Securities Commissions (IOSCO) and as international standards evolve, we must align Bermuda's legislation accordingly. At the moment, the Authority is performing a review of the Investment Funds Act 2006 (IFA) and the Investment Business Act 2003 (IBA)."

One of the points the Authority likes to emphasise to those thinking of doing business in Bermuda is that, as a proactive regulator, it always looks to engage in a thorough consultation process with the market prior to amending any legislation. "We are reviewing the existing legislation with a view to proposing amendments that consider international standards, whilst ensuring the legislation remains fit for purpose for the Bermuda marketplace. We hope to move this forward in the latter part of 2017 following the completion of our consultation with the marketplace," adds Morton.

Recent evidence of this was in Q4-2013 when the Authority amended the IFA to introduce two new fund products to help give managers who are dealing only with qualified participants a quicker route to market: the



Melissa Morton, Assistant Director, Licensing & Authorisations Department, Bermuda Monetary Authority



Ifor Hughes, Assistant Director, Policy, Legal & Enforcement Department, Bermuda Monetary Authority

Class A and Class B Exempt Funds. The Class A Exempt Fund registration in particular is very streamlined. The Operator of the fund self-certifies that the various criteria for registration are met and the fund is registered on the same day. The Class B Exempt fund can be registered in six days or less. The filing requirements for the Class A and B Exempt Funds are reduced commensurately from those of authorised funds.

"This development was made in response to there being a need for a more user-friendly class of investment fund for qualified participants where speed to market is very important," explains Ifor Hughes, Assistant Director in the Authority's Policy, Legal & Enforcement Department. "We always have to ensure that our approach is aligned with international standards. We are open to the feedback we get from the marketplace regarding growth opportunities, but the necessary balances have to be in place."

One of the hallmarks of Bermuda as a jurisdiction is the diversity of players that operate on the island. More than merely a funds jurisdiction, Bermuda is the world's leading insurance-linked securities (ILS) centre, a leading re-insurance centre, and boasts an array of service providers, all of whom operate under the purview of English common law, which has existed in Bermuda for over 400 years.

"With that diversity there is a quality of infrastructure that has developed to support the efficient conduct of business, including law firms, auditors, fund administrators, etc, who service different sectors of the market. Overall, the Authority operates a risk-based framework. We apply the appropriate level of

supervision depending on the sophistication of the investors. It's a sensible, pragmatic approach," says Morton.

Such is the institutional character of Bermuda that Hughes is keen to stress: "We don't take a cookie-cutter approach. An overwhelming proportion of our business is institution to institution and that is reflected in our bespoke risk-based approach."

"In our discussions with any new fund sponsor, we will highlight our ability to offer speed to market. A Class A Exempt Fund sponsor would be considered a Non-Licensed Person (NLP) and while the registration is automatic, they would also have to register as an NLP for Anti-Money Laundering (AML) purposes. For all other fund classes, the fund can expect to be up and running within six business days from the time their submission is filed," confirms Morton.

"We would also highlight our requirements for registration: Excluded funds are private funds not marketed to the wider public and having no more than 20 investors. To qualify for a Class A Exempt Fund, the investment manager should already be subject to oversight by an equivalent regulator in the EU or at the federal level in the US; if not, the fund can qualify as a Class B Exempt Fund. All funds must appoint a Bermudian trustee or representative. Finally, we would highlight the ongoing reporting requirements for funds which reflect the nature of their class."

As well as interest in Bermudian investment funds, one clear trend has been for family offices to look at captives for insurance purposes as they make for an effective risk management solution.

Morton confirms the Authority is also seeing a lot of interest in ILS, indicative of a growing convergence between the capital and risk markets.

"We have the Segregated Account Companies Act 2000 in Bermuda. This legal structure, in addition to captives, is providing yet another opportunity for family offices. The segregated account company (SAC) allows them to participate in a cell structure within an incorporated entity. This can help them diversify their investment strategy by establishing multiple cells, each of which is legally ring-fenced to protect the assets and liabilities of each cell," says Morton.



Looking ahead, another opportunity which Bermuda is positioning itself to capitalise on is the potential for a recommendation by the European Securities and Markets Authority (ESMA) for Bermuda to operate as an Alternative Investment Fund Managers Directive (AIFMD)-equivalent jurisdiction, paving the way for Bermudian fund managers to opt in to the regime and avail of an AIFMD passport should the EU authorities extend this option to third countries.

Hughes says the Authority was encouraged that ESMA identified no particular obstacles to extending the passport to Bermuda in respect of three of the five assessment criteria. Work is ongoing to achieve full implementation of the Bermuda AIFM regime, thereby allowing ESMA to issue definitive advice with regard to the final two criteria.

"We are committed to completing that process and we remain in contact with ESMA. We will have an AIFM regime that is ready and available for managers to opt in to and be appropriately supervised to market their funds into the EU. The question remains as to if, and when, a passport will be made available. We think our AIFM regime will be a useful option for some, not all, fund managers and we remain committed to this. It will provide even more flexibility," concludes Hughes. ■



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Introducing the Bermuda LLC

By Sally Penrose

The Limited Liability Company Act 2016 (LLC Act) came into force on October 1, 2016 and introduced into Bermuda its first new corporate structure in 100 years. Appleby is pleased to have been able to work closely with the legislature to ensure that Bermuda's existing funds law is simultaneously amended so that LLCs are available immediately for use in investment fund structures. Appleby are ideally placed to advise with respect to LLCs.



Sally Penrose, Senior Associate Corporate, Appleby (Bermuda)

What is an LLC?

A limited liability company, or "LLC", is a hybrid legal structure allowing the contractual and operational flexibility of a partnership to be housed within a corporate entity. Like a Bermuda exempted company, an LLC has separate legal personality and the liability of its members is limited. While members of a Bermuda company receive shares, members of a Bermuda LLC will each have an interest in a capital account in a similar way to partners in a partnership.

Under the Bermuda LLC Act, parties can create bespoke vehicles having the contractual freedom to set out in the LLC agreement the terms of operation and management of the LLC as well as expressly agreeing the allocation of profits and timing of distributions among its members. A Bermuda LLC may be managed by one or more members (a "managing member") or a manager may be appointed who may or may not be entitled to share in the profits of the LLC.

Key features of an LLC

- An LLC is a separate legal entity, the existence of which as a separate legal entity will continue until the LLC is dissolved.
- An LLC is governed by an operating agreement (LLC Agreement), which

must be governed by Bermuda law but otherwise allows for maximum contractual flexibility among the members, particularly with respect to the allocation of profits, losses and distributions among its members. LLC interests can be denominated in any currency with the LLC chooses. The LLC Agreement can also provide for the voting and consent rights of different classes or groups of members.

- Subject to the LLC Agreement, an LLC has the capacity, rights, powers and privileges of a natural person.
- Any one or more persons may form an LLC for any lawful business, purpose or activity.

The process of forming an LLC is simple and requires the filing of a certificate of formation with the Registrar of Companies and payment of the appropriate fee. The Registrar will maintain a register of LLCs in Bermuda.

Structural flexibility of LLCs

A Bermuda LLC is an attractive structuring option for operators of investment funds and in particular closed ended private equity funds as the flexible corporate governance structure allows "managing members" to manage the fund (in a similar way to a general partner) but without unlimited liability for such members in respect of the fund's losses. LLCs are flexible when it comes to structuring the economics of the fund as well as capital call and default mechanisms.

The Bermuda LLC Act is modelled on the Delaware legislation and includes similar concepts to those found in the Delaware Act. Such similarities will allow for structural and administrative efficiencies when creating and managing onshore and offshore investment fund vehicles, allowing for principal legal documents of the onshore and offshore feeders to be harmonised. ■

6 ► and accounting services to family offices. “Having a specialist commercial court gives a certainty of confidence that your business dealings in Bermuda will be properly handled.”

One other consideration for family offices when choosing the best jurisdiction is the quality of the talent pool. That Bermuda has been supporting trusts and family offices for decades has helped it to attract top talent from around the world.

“For example, the CFA Society in Bermuda has a few hundred members and probably has a higher number of CFAs, per capita, than anywhere else in the world,” says Nathan Kowalski, Chief Financial Officer, Anchor Investment Management Ltd. “We have a highly educated workforce and Bermuda boasts a level of service that is second to none across the board, from asset management to fund administration, legal counsel, accounting and actuaries.”

Recently, the Bermuda Government also passed new work permit rules, offering more opportunities for local firms to bring in new talent from overseas.

Overall, from an outsourcing perspective, Bermuda is able to provide an effective end-to-end solution for family offices, from investment management, wealth preservation, administrative support (both legal support and estate planning) as well as philanthropic support.

Tax & structuring options for family offices

Bermuda offers a wide range of structuring options for family offices. These include unit trusts, limited partnerships, private trust companies (PTCs), captives for self-insurance purposes, as well as segregated account companies (SACs).

Also, following its introduction last October, the Bermuda Limited Liability Company (LLC) is a structure family offices can now avail themselves of. This can best be thought of as a hybrid between a traditional company and a partnership.

With a limited partnership there are restrictions in terms of how far limited partners can get involved in the management of the partnership whilst still preserving limited liability, says Fife. With an LLC, however, members can participate in the management of the LLC and still benefit from limited liability.



“The rest of the world is, in effect, catching up to what Bermuda has been doing from a regulatory oversight perspective.”

Ashley Fife, Appleby

There are also tax benefits. As Bailey explains: “From a US standpoint, capital gains, qualified dividends and things of that nature would be able to flow through directly to the investor.”

Commenting more broadly on tax considerations, Bailey observes that at EY Bermuda it will look at factors such as where the family is based, what types of businesses they have, which will determine how the family office should best be structured from a tax perspective.

“What we are seeing globally, generally speaking, is a lot of family offices employing a compliance specialist. I think the days of setting up family offices and not understanding what all the global tax issues are, are over. It is important to have the right controls in place for tax and compliance purposes and this can be a lot more economical if everything is handled by one individual,” says Bailey.

Private trust companies

A PTC is exempt from needing a licence to carry out trust business in Bermuda and has the ability to act as the trustee of one or more family trusts.

Other than the basic requirement under Bermuda law to have the Memorandum of Association to identify the trust company, there are no other prescriptive requirements for setting up a PTC, as is the case in other jurisdictions.

“For example, in many jurisdictions there is a requirement that a service provider performs certain functions for the trust company or trusts. This is not required in Bermuda. The family has the flexibility of involving licensed service providers to the extent they determine it is appropriate to do so.

“As a consequence of not having the same business risk considerations

► 15

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Further opportunities for PE growth

Interview with Mark Baumgartner

For managers who may already be using an onshore Delaware LLC, they now have the opportunity to use a Bermuda LLC as an offshore vehicle. This follows the formal introduction of the Limited Liability Company Act 2016 (LLC Act), which was passed in the Senate in July 2016 and became operative on October 1, 2016.

“There is already strong interest in this new legal vehicle,” confirms Mark Baumgartner, Partner at Deloitte and leader of its asset management practice.

The LLC is a hybrid entity, which merges characteristics of both a limited partnership and a company limited by shares, providing maximum flexibility. The timing of its introduction could be prescient, as Bermuda’s private equity business remains strong. The jurisdiction saw six exits worth a total value of USD19.68 billion in the first three quarters of 2015, making it the jurisdiction with the largest aggregate deal value for private-equity exits.

“In Bermuda there continues to be a lot of M&A activity in the reinsurance space and at Deloitte we are frequently speaking to our global asset management clients who are intending to launch or participate in private equity structures, in the both the ILS and traditional private equity space,” says Baumgartner.

He says that investment managers are showing more interest in the illiquid end of the spectrum and are looking to start new, dedicated vehicles to explore private equity opportunities to avoid having illiquid assets in their flagship fund, as a response to the 2007-2008 global financial crash.

“Direct lending strategies are also becoming more prevalent. As opposed to hedge fund managers simply picking up distressed debt assets from banks, they are looking to originate their own loans,” observes Baumgartner.



Mark Baumgartner, Partner at Deloitte

There are many private equity firms that have used Bermuda one way or the other in the past; this might have been in relation to ILS investments, backing reinsurance companies, or launching holding companies to further their global investment objectives. Indeed, one of the benefits that Bermuda has over other offshore jurisdictions is the number of operating entities in Bermuda in the reinsurance sector and the significant related capital that operates out of Bermuda.

There are a large number of reinsurers physically based on the island that are backed by private equity money. The fact that Bermuda has a proven legal system, based on English common law, a dedicated commercial court and recourse to the UK Judicial Committee of the Privy Council, gives confidence to private-equity groups, should they need to seek resolution on a deal complication.

“What we are trying to do is provide sensible regulation that covers the new reality of what it means to participate in today’s global economy,” stresses Baumgartner.

“The fact that we have more than 100 tax treaty partners around the world and have been on the OECD whitelist since 2009 puts us in a strong position.”

With positive noises coming out of the US regarding infrastructure investment, having access to an offshore LLC vehicle could prove useful to US private-equity groups as they explore M&A opportunities.

“Last year we saw significant global investors launch Bermuda fund products, with traditional investment strategies outside of ILS. That is a good validation for the jurisdiction but we need to continue to work hard to build on that success,” concludes Baumgartner. ■

ILS market could reach USD100 billion

Interview with Andre Perez

The Horseshoe Group was established in 2005 and is a leading provider of insurance management services to insurers, reinsurers, as well as insurance linked securities (ILS) structures such as sidecars and catastrophe bonds. In June 2016, Horseshoe acquired IKONIC Fund Services allowing it to expand into fund administration (referred to as Horseshoe Fund Services). This followed what had previously been a highly successful joint venture for four years between Horseshoe and IKONIC – called ILS Fund Services – which focused on providing fund administration to ILS funds, combining IKONIC’s expertise on the fund administration side with Horseshoe’s expertise on the insurance administration and actuarial valuation side.

Horseshoe Group has a total of USD22 billion of assets under administration and is widely regarded as Bermuda’s leading ILS fund administrator. Horseshoe has operational offices in Bermuda, Cayman Islands, Charlotte (North Carolina), and Gibraltar and is able to provide administration services in all those jurisdictions.

“We can help investors interested in establishing an ILS fund from the set-up phase to the ongoing administration and valuation work and also providing them with an infrastructure to invest into specific reinsurance structures as part of a true one-stop full-service offering,” explains CEO, Andre Perez.

ILS funds typically comprise catastrophe bonds with three-year durations as well as collateralised reinsurance. There are two main groups structuring and launching ILS funds, says Perez.

“Firstly there are independent ILS funds managed by dedicated investment advisors. Secondly, there are what I call ‘grafted ILS funds’ which are formed by established reinsurance companies. The latter group is capitalising on the reputation of their parent



**Andre Perez, CEO,
The Horseshoe Group**

company and looking to leverage their internal technology and industry expertise,” adds Perez.

Perez has over 25 years’ experience in the insurance, reinsurance and alternative risk-transfer business, noting that since 2005 there has been continued growth and interest in Bermuda’s ILS market. Back when Hurricanes Katrina, Rita and Wilma hit in 2005, the trail of devastation led to an estimated USD108 billion of property losses.

“At that time, reinsurance market rates skyrocketed and we saw a lot of reinsurance companies looking for additional capital. Hedge funds became involved as expected returns for ILS structures were in the mid-teens. Since then, the composition of investors has evolved with the addition of large pension plans and family offices who bought in to the low-correlation appeal of this asset class,” says Perez.

Total capital invested in ILS is now in the region of USD70 billion. Horseshoe has a strong accounting backbone and a comprehensive set of skills including legal, corporate services, actuarial, underwriting and claims. “On the ILS fund administration side, this wide range of insurance expertise allows us to provide a meaningful review of valuations prepared by the investment manager,” adds Perez.

Another area where Horseshoe can add value to ILS funds and their investors is in the area of portfolio allocation. Some investors may want assurance that if the manager has several funds that the allocation of deals between those funds is fair and in accordance with the offering document and will mandate the manager to contract with Horseshoe Fund Services.

“We are trying to help institutionalise this sector of the market,” concludes Perez. He estimates that by 2020, the total AUM in the ILS asset class should reach or exceed USD100 billion. ■

11 ► as licensed trustees, PTCs are generally prepared to take on riskier, illiquid investments and make quicker investment decisions than licensed trustees. A PTC can also use a mix of directors – there is no requirement that the directors be resident in Bermuda – and that can also benefit the investment-making process,” explains Fife.

The decision as to how the shares of the Bermuda PTC are held is usually dictated by the family office's tax considerations and the desire for confidentiality.

Segregated account company

A segregated account company (SAC), can be used for a variety of purposes, including captive insurance, life and annuity companies, transformer vehicles and investment funds.

Similar in concept to the Segregated Portfolio Company one finds in Cayman and the BVI, the SAC is a multi-cell structure where the assets and liabilities of each account (or cell) are legally ring-fenced from all other cells in the structure.

The advantage to this from a family office perspective, says Gunther, is that a family can launch multiple investment strategies, all within one structure, as opposed to launching numerous standalone funds.

Another advantage of SACs is potentially for different generations of the family to have different cells within the structure, such that the first generation might be in Cell 1, the second generation in Cell 2 and so on.

Kowalski says that because a family office might have different liquidity needs, an SAC could be a useful way to tailor its investment preferences.

“What makes the Bermuda SAC unique is that each cell has the opportunity to invest in other cells within the SAC. A Cayman SPC does not offer that flexibility,” explains Moran. “One could segregate different portfolios, different generations of the family, as well as within each of those generations segregate different asset classes and investment strategies.”

Both the PTC and SAC are part of the same structuring consideration for a family office. In that sense, one should view them as complementary, not mutually exclusive, structures.



“Having a flexible structure where you could put all US investors in one cell for tax purposes, all UK investors in another cell, and so on, could help bifurcate different tax risks and reporting.”

Bill Bailey, EY Bermuda

Tax benefits of using an SAC

One unique feature of the SAC structure is that each account can have its own ‘redemption account’ to collect the proceeds of share redemptions from an investment without having to repatriate the proceeds back to a home jurisdiction, which could lead to the family member incurring a taxable event.

“Today, family offices have multiple generations located in different geographic areas. Having a flexible structure where you could put all US investors in one cell for tax purposes, all UK investors in another cell, and so on, could help bifurcate different tax risks and reporting,” explains Bailey.

The fact that family members who choose to use an SAC can freely decide when to exit an investment strategy and redeem the shares means that they are able to enjoy a greater degree of flexibility than were they to use a trust structure.

The Bermuda captive

Bermuda is home to nearly 800 captive insurance companies, supporting primarily Fortune 500 corporations in the US, and generating more than USD48 billion in annual gross written premiums (www.royalgazette.com/business/article/20160811/bermuda-set-to-continue-as-captives-choice).

Even though the Cayman Islands is catching up in terms of the number of captives, Bermuda still dominates from an AUM perspective: USD161 billion compared to USD61 billion in captive AUM relative to Cayman. Often a family office or a company will incorporate a captive where they might have difficulty getting commercial insurance, or where the costs of insuring against particular risks are prohibitively expensive.

As mentioned earlier in this report, Latin ► 21

BSX leads the way for ILS listings

Interview with Greg Wojciechowski

Last year proved to be hugely successful for the Bermuda Stock Exchange (BSX). From a pure growth perspective, the BSX ended 2016 with a total market capitalisation of USD343.8 billion, up more than 41 per cent on the previous year. The same was true of trade volume. The RG/BSX Index closed out the year at 1,923.79, up 47.52 per cent on the calendar year 2015, with a reported 31.75 per cent increase in trading volume, which saw 8.2 million shares traded.

Commenting on the performance of BSX, its Chief Compliance Officer, James McKirdy, said that 2016 saw positive listing activity across most sectors, including international equities, debt, collective investment vehicles, and insurance-linked securities (ILS). He noted that international debt-listing activity was particularly strong, with the number of listed securities more than doubling from 55 to 125; this brought the total number of listed securities to 763 at the time of writing.

“There were also a record number of new ILS listings, 61 in total, with a capitalisation value of USD6.157 billion, including seven new Variable Rate Note Programmes and 19 new Notes under established Programmes,” confirmed McKirdy.

In total, the number of ILS listed vehicles grew from 151 to 175 (a 16-per-cent increase), while the overall value of these securities grew from USD19.21 billion to USD21.22 billion. Since it was established in 1971, the BSX has evolved to become the leading fully-deployed electronic offshore stock exchange.

Given its track record in deploying a market structure that meets the needs of the domestic market while adhering to international standards of market operation, the BSX has been able to target niche market opportunities; most notably, though by no means exclusively, the ILS market.

As BSX President and Chief Executive



Greg Wojciechowski, CEO,
Bermuda Stock Exchange

Officer Greg Wojciechowski is keen to emphasise, the BSX supports a variety of other products, including those emanating from the global asset management sector. As a result the BSX has over 300 collective investment fund structures listed (320 to be precise).

“Of the 763 listed issuers, 320 are collective investment vehicles and 178 are ILS. We also have 125 international fixed-income products. We have some collective investment vehicles that are focused on the Asian markets, some on emerging markets, and the same applies for ILS, providing risk coverage to a wide range of global markets. For example, we had the first China ILS created and listed on BSX.”

The stock exchange in any jurisdiction has a specific responsibility and that is to provide a foundation for the domestic economy for investors to be able to invest or raise capital. It's a very important platform for public financing. In order for exchanges to do that, and to expand their product base, they need to have a core platform and regulatory framework in place, which BSX has. “Overall, we are building the platform to support a range of innovative strategies,” confirms Wojciechowski.

As Bermuda is nestled between two of the deepest capital markets (North America and Europe) and two of the largest insurance markets (London and New York), Wojciechowski says that it made sense for Bermuda to become a centre of excellence for the convergence of the capital markets and the insurance industry.

“ILS, which is a financing vehicle for the transfer of risk, is a sweet spot for us because it is a capital market instrument,” adds Wojciechowski.

Another important milestone for BSX in 2016 was its appointment to the Board of Directors of the World Federation of Exchanges (WFE), the global association

that represents more than 200 market infrastructure providers, including exchanges and centralised clearing houses (CCPs). It is the only offshore exchange with full membership of the WFE. This is something that Wojciechowski is particularly proud of.

Whilst it has been a full member of the WFE since 1999, he believes this achievement is testament not only to the “hard work of the entire BSX team, but also to the developing domestic capital market that is evolving around the BSX. It is very encouraging that a smaller exchange such as the BSX can play an integral role in accelerating the development of its domestic market while providing a platform to support the global capital market mandate.”

There are several reasons as to why the BSX is so appealing to those looking for an offshore jurisdiction to launch listed products.

Firstly, from a technology perspective, the BSX’s trading and settlement platform is specifically designed to accommodate the listing and trading of sophisticated instruments, including medium-term and credit-linked notes; asset-backed securities, convertible and insurance securitised bonds, catastrophe bonds, Eurobonds and other special purpose debt securities.

Secondly, Bermuda has a sound regulatory environment. The BSX lists institutional structures, overseen by a commercially sensible regulatory environment that meets international standards. The Exchange does not impose minimum capital requirements or investment restrictions (with the exception in most instances of disallowing a fund to take control of its underlying investments, unless the fund restricts investment to qualified investors) and allows flexibility for hedge funds and the use of prime brokers.

Thirdly, BSX provides effective speed to market to fund sponsors. It aims to respond to listing enquiries within 48 hours and, on average, the entire approval process can often be completed within three weeks. As Wojciechowski points out, another key advantage is that fund sponsors can commence the BSX listing process whilst simultaneously seeking approval from the Bermuda Monetary Authority for incorporation in Bermuda.

With respect to continuing obligations,



those who choose to list ILS funds or collective investment vehicles on BSX are required to:

1. Provide prompt notification to BSX and shareholders of material events to allow them to evaluate the financial position of the fund and to avoid the creation of a false market;
2. Submit NAV calculations;
3. Provide audited annual reports and accounts, in addition to preliminary results;
4. Provide copies of shareholder notices or circulars.

“We are looking for information disclosure that clearly sets out risk parameters of the structure, to ensure there is full disclosure so that an investor can make an informed investment decision in respect of the investment merits of that security, and in relation to their risk tolerance,” explains Wojciechowski.

The BSX also makes sure that entrenched in the regulations material events must be fully disclosed to the market; anything that could affect trading volume, price, or the investability of a security. This is to ensure that the investor is made aware of something that can potentially impact the value of their investment.

Such has been the success of Bermuda’s ILS market that Wojciechowski uses the analogy of Silicon Valley whereby, with the help of BSX, Bermuda has become a global hub for risk transfer.

Wojciechowski confirms that it has been a good start to the year for BSX. “The ILS pipeline is strong and we are encouraged by the response of the London and New York market in respect of the BSX emerging as a platform for international debt issuers. We are getting a lot of global market interest in providing listing services for international debt structures; high-yield structures and so on.

“The Exchange’s efforts have been focused on providing a solid regulatory and operational backbone for Bermuda and her domestic capital market. With that solid backbone, the BSX will continue to provide support to the global capital markets. The BSX infrastructure, its regulatory framework, the affiliations and recognitions it has achieved have fortified the BSX brand internationally and clearly set it apart from its immediate competitors,” he concludes. ■



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KPMG in Bermuda are proud sponsors of Team Bermuda in the Red Bull Youth America's Cup. Two of the team are seen here getting a taste for foiling in preparation for the arrival of the full size Team Bermuda foiling catamaran.

KPMG survey reveals the impact of technology

Interview with Craig Bridgewater & Chris Eaton

To investigate the extent to which technology is disrupting the financial services sector, KPMG recently partnered with the Alternative Investment Management Association (AIMA) and the Managed Funds Association (MFA) to determine how managers are responding.

More than 100 hedge funds with approximately USD300 billion in AUM responded to the online survey and the findings of the report were clear: 94 per cent of managers, for example, feel that technology will have an impact on their business over the next five years. Some 90 per cent identified improved controls and compliance as a primary reason for investing in technology, with 78 per cent and 58 per cent expecting technology to deliver enhanced reporting and improved transparency, respectively.

Commenting on the findings, Craig Bridgewater, Head of Investment & Banking, KPMG (Bermuda) says: "There is now a huge volume of data that managers need to work with to comply with regulation and technology is able to introduce various efficiencies to manage that volume of data. More broadly, we see the rising influence of technology in relation to blockchain (USD1 billion was spent in 2016) and the rising popularity of robo-advisors as key trends coming through today."

Artificial intelligence and robo-investing have become prominent themes in the last few of years, signaling the rise of machine-based quantitative investing. KPMG's survey notes that 58 per cent of managers believe that these disruptive technologies will have a medium to high impact on the way funds are managed in the future.

"There are some interesting debates as



Craig Bridgewater, Head of Investment & Banking, KPMG (Bermuda)



Chris Eaton, Senior Manager with KPMG (Bermuda)

to where innovation should occur and what it might look like," comments Chris Eaton, Senior Manager with KPMG (Bermuda) and the KPMG Islands Group Cyber Security Lead. "2016 was quite a tough year for hedge funds so technology for efficiency gains is quite interesting but the application of innovation is really the acid test question: where should that innovation be made? Will people look to outsource or co-source with platforms? Will they look to innovate their analytical capabilities to find new ways to present fund information?"

With respect to outsourcing, smaller funds are more likely to go down this road because of the cost-efficiency gains on offer. According to KPMG's findings, some 50 per cent of large funds prefer to develop technology internally. As Eaton points out, this largely depends on what is being outsourced and for what purpose:

"If it's outsourcing transactional volume that makes sense because there is no differentiation gain. If it relates to how you are innovating on the front end then that is a different question. There is true differentiation occurring but in an informed manner; some is kept in-house, some is outsourced."

Larger asset management houses have unique needs to deliver their strategy and they have the ability - thanks to resources and level of AUM - to develop bespoke systems internally for investor reporting, "as well as internal reporting for the portfolio management teams," says Bridgewater. "I hear clients talk often about shortening redemption cycles as being a competitive advantage and I do think that's an area of value-add."



According to BI Intelligence, robo-advisors are expected to control USD8 trillion in AUM by 2020 and are set to make a significant impact over the next few years, shaking up the fund-management industry (<http://uk.businessinsider.com/4-reasons-robo-investing-growing-2017-1>).

“Robo-advising is opening up a new distribution channel. The younger generation sees less value in sitting down and talking to a fund manager, they want to access information themselves and I think that is why robo-advisors are becoming more of a necessity on the retail side. On the institutional side, there is still a reliance on human discretion. I think there will be a range of asset managers, some of whom will adopt robo-investing more than others,” suggests Bridgewater.

One other key aspect of technology is cybersecurity, with 60 per cent of managers thinking first and foremost about data security. Regulators such as the SEC are imposing financial penalties on registered investment advisors that fail to protect their investors’ data, and fail to introduce robust cyber controls and processes to mitigate the threat of data breaches.

This is set to become even more of a

priority, however, when the European Union introduces the General Data Protection Regulation in May 2018.

“The impact of GDPR could have tremendous financial implications. Those organisations who fall within the scope of GDPR (which will impact non-European institutions if they have EU clients) face a potential fine of four per cent of global revenue. Therefore, managers will need to treat personally identifiable information carefully and have proper policies and procedures in place to protect it. I think GDPR will broadly raise the benchmark of the quality of cybersecurity controls because of the impact that this regulation have on an organisation if they get it wrong,” explains Eaton.

In conclusion, Bridgewater says that privacy legislation has been introduced into Bermuda recently to reflect the changing regulatory environment.

“Bermuda is well served with its service provider community – many of which are parts of international groups – to answer any questions relating to GDPR and other cyber-related issues. Wherever the lead jurisdiction is from a regulatory perspective, that best practice tends to get picked up and shared with our clients here in Bermuda.” ■

15 ► American family offices might want to use a captive to insure their family's wealth against kidnapping and related risks. "Not only can these family offices use PTCs to establish their assets in a safe, secure jurisdiction, they can also use captives to insure those assets against a wide range of risks," says Fife.

Family offices can choose to establish their own captive or rent a captive and when it comes to deciding between the two, Fife suggests: "Clients might consider it's cost effective to form a pure captive if they were confident it would write annual premiums in excess of USD1 million, whereas using a separate account in an SAC that is used as a sponsored captive, might be justified if the account could write annual premiums of USD350,000 or more. Many clients start by insuring with a rent-a-captive, later forming a pure captive when it becomes cost effective to do so."

A family business may arrange for the trustee of a family trust or underlying company, to own the captive. If structured effectively, says Fife, this may:

- insulate the captive's assets from creditors of the insured parent group companies or family members;
- facilitate estate-planning and minimisation of estate and other taxes;
- mitigate the impact of civil law, forced heirship and community property regimes; and
- facilitate families' philanthropic objectives.

At St George's Group Limited, Gunther confirms that the way in which captives are utilised depends on the needs and the expertise of each individual family office.

"If the family is part of a manufacturing conglomerate, for example, with a significant number of shareholders, they will have a different kind of requirement to a family with a lot of liquidity and a wide portfolio of investments. An example of a family that might have a need for a captive is one with an art collection valued at USD300 million or higher, who decides it makes sense to access premiums in the market through a reinsurer as opposed to buying insurance from a primary retail insurer.

"All the people and services needed to run an efficient, transparent and responsible family office are based here in Bermuda and situated within 10 blocks of one another.



"All the people and services needed to run an efficient, transparent and responsible family office are based here in Bermuda and situated within 10 blocks of one another."

Kevin Gunther, St George's Group

There is so much expertise here that family offices can find the right solutions to their specific needs, which, in this case, might be deciding on whether or not to set up their own captive," explains Gunther.

Bermuda: A one-stop shop for outsourcing

Bermuda has a full complement of legal expertise, investment talent, trust services, administrators, tax advisors: basically everything needed to run an institutional quality family office.

This is not to suggest that families will necessarily outsource every aspect. After all, they will typically have long-standing existing relationships with asset managers in a variety of locations and as Gunther emphasises, "we would not look to interfere with that.

"However, we will monitor the performance of those relationships and be quite frank if expectations are being met or not. We work with managers from all over the world. Our clients' investment mandates range from European property markets to Asian commercial and tourist developments to resource exploration. Bermuda's administrators can support a full range of global investment styles and strategies."

It is important to note, however, that Bermuda has a growing community of local investment advisors. According to the BMA, there are currently some 60 licensed investment managers on the island, in addition to 25 companies who manage highly specialised insurance-linked securities (ILS) funds. This offers a good mixture of qualified, regulated investment talent for family offices to develop investment goals with.

"We have a full suite of fund managers and investment strategies ranging from traditional long-only funds to private equity and ILS funds," explains Kowalski. "There is ► 26



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Harbour offers market-leading funds support

Interview with Brian McDevitt

Harbour Financial Services Limited is an independent fund administrator that has earned a strong reputation in Bermuda for providing award-winning service to a range of alternative investment and private equity funds.

Brian McDevitt, a seasoned executive within the Bermuda industry, is Chief Operating Officer. Since joining Harbour he has implemented a market-leading accounting and technology platform and his presence has attracted the right talent to drive the business forward.

McDevitt reports: “The fund administration business tends to be quite fluid so far as human capital is concerned. We have a stable employee base and each of our staff members has experience from other funds jurisdictions. Our client relationships are not plagued by regular staff changes faced by many other funds service providers.”

Harbour is part of Wakefield Quin, a leading Bermuda law firm. Being associated with a law firm is a clear differentiator for Harbour compared to Bermuda’s other fund administrators.

“We generally sit down with the lawyers at the start of the discussion with a client. This gives us a clear idea of when they are planning to launch, what kind of structure they want, the investors they will be targeting, and where they are looking to invest. Even if we are not planning to act as administrator, we will give our perspective and if there is a need for directorship or trustee services, our affiliates can fill those roles as an additional service,” outlines McDevitt.

Harbour’s main bulk of business consists of working with established managers who are trying to do something a little different from the norm. McDevitt explains: “We can offer efficiencies that big shops can’t scale



Brian McDevitt, Chief Operating Officer, Harbour Financial Services

to so we are able to price our services a little bit better. We can also tailor our portfolio pricing and reporting technologies to work with new and smaller managers who tend to get priced out by other administrators.”

Recently, Harbour has onboarded clients looking to take advantage of segregated accounts companies, particularly for private equity deals or shipping finance structures.

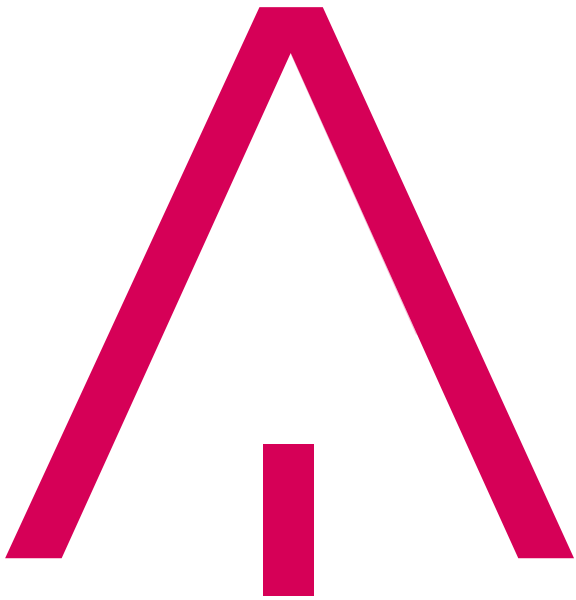
“The work we’ve done on the private equity side is unique – ventures such as oil and gas exploration, and we’ve also had a number of conversations regarding various green technologies,” says McDevitt.

Harbour can service funds domiciled in any jurisdiction, including the US, Cayman, and BVI but as McDevitt is keen to stress:

“In my view, the importance and benefits of establishing a real presence in Bermuda may not be fully apparent today. As onshore regulation and tax laws develop, it will become increasingly important to be able to show a track record of mind and management in Bermuda and establishing this now may prove to be of material importance to managers, their funds and their investors in the future as these laws develop and onshore regulators and tax authorities seek to bring offshore funds within their remit.”

Looking ahead, the one area that McDevitt thinks could and should be bigger in Bermuda is the provision of directorship services.

“If you go to Cayman, there are a good number of companies that provide these services in a formalised way. Our group can provide directors that offer diversity, gender balance and experience across a number of jurisdictions. That’s a huge opportunity for Bermuda and for us, as corporate governance becomes more of a focus industry wide,” notes McDevitt. ■



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Centaur opens for business

Interview with Eric Bertrand & Marc Weaver

When it comes to doing business in a new jurisdiction, someone who has just gone through the process of opening a new office can offer the best insights. In that context, Centaur Fund Services, which provides fund administration services to some of the world's largest institutions, is perfectly placed.

Centaur was established in Dublin in 2009 by three founding partners: Eric Bertrand, Ronan Daly and Karen Malone. All three had formerly worked in Bermuda and as senior managers within Hemisphere Management, Bisys Hedge Fund Services and Citi Hedge Fund Services between 1997 and 2009.

The recently opened Bermuda office, says Bertrand, arose out of a desire from some of its North American clients to establish a nearby offshore presence. Centaur now has companies in Bermuda, Cayman, London and New York.

"We felt Bermuda was a return home given our time spent and network of contacts on the island. It was the obvious choice. At that point we reached out to the Bermuda Business Development Agency (BDA) and they were very helpful in walking us through the process of setting up the office – recommending service providers and so on," explains Bertrand. That was in late 2015.

"We then liaised with the Bermuda Monetary Authority (BMA) to get our licence approved and again, that was a positive experience. We received approval at the end of June 2016," confirms Bertrand.

While going through the registration process with the BMA, Centaur started setting up the business operations, working with various IT providers, payroll providers and consultants to source talent. Indeed, the BDA provided a list of people for Centaur to contact, with Bertrand confirming that the Ministry of Economic Development proved



Eric Bertrand, Founding Partner, Centaur Fund Services

extremely helpful in providing guidance for employing staff and getting the appropriate work permits in place.

"Another factor in selecting Bermuda, besides our personal preference is its location. Having close proximity to the East Coast of North America was critical," says Bertrand.

Indeed, by only being four hours behind Ireland, Centaur's operations team in Dublin can finish on time in full knowledge that their colleagues in Bermuda will be able to pick up the baton to support Centaur's North American clients.

"When I returned to Bermuda in 2015 there was a big change compared to when I was last there in 2009," reflects Bertrand. "It was clearly open for business. There was not one meeting where I didn't feel upbeat and excited about getting things done. From the BDA, the BMA, and all the service providers I met, the whole experience felt very dynamic."

Marc Weaver, a veteran in the industry, with extensive experience in traditional hedge funds, private equity and insurance-linked securities (ILS), serves as the Chief Operating Officer in the Bermuda office.

"We built a group in Dublin to support Marc and we are now in the process of adding more resources to the office in Bermuda. We expect to add three to five people over the coming months," says Bertrand, who sees the Bermuda office as a potential growth driver for the group over the coming years.

"The ILS industry is also an interesting sector and an area of significant growth for Bermuda. We are currently recruiting additional expertise to support this asset class. We have experienced significant growth in private equity; something we will be pushing in 2017," says Bertrand. ■

21 ► also a full suite of private banking services, a large number of trust companies, and of course insurance companies.”

He further adds that with respect to reporting obligations, and keeping track of investment gains and tax obligations, it is important for family offices to select a back-office that has the right people in place: “One that has a combination of accountants and lawyers and trust officers who understand the various functions of a family office,” says Kowalski.



“There is a strong level of collaboration between the Bermuda Government, the BMA and the island’s service providers.”

Nathan Kowalski, Anchor Investment Management Ltd

greater transparency and accountability is that these are often multi-generational families. A member of a family’s younger generation in their mid-twenties might feel they ought to have access to a million+ USD, but the grandparent(s) who amassed considerably more, may not have wanted that to happen.

“They might then hire lawyers to try and break up this dynastic wealth structure,” observes Gunther. “Preparation of audited financial statements may provide a degree of protection that gives the professional trustee or private trust company greater assurance. It’s important that a family’s wealth is managed prudently. We find ourselves going through an education process with our clients because some of them, particularly the younger generation, grew up never having to worry about money.”

A regulatory compliance hub

To show just how seriously Bermuda takes compliance, the island is currently positioning itself to be a hub for regulatory compliance expertise.

“We have a partnership with the Regulatory Compliance Association. They hold an annual Symposium here, and we are the only jurisdiction, outside of the US, that is making the RCA’s curriculum available to industry participants,” confirms BDA’s Moran.

Bermuda’s commitment to compliance with international best practices will continue to set it apart from many other international financial centres. Back in August, at an event hosted by Oyster Consulting (Bermuda) Ltd, Henry Komansky, a consultant at Oyster, noted: “Over the past year, Bermuda has been updating its legislation to address gaps in the AML/ATF framework and bring Bermuda in line with recent FATF 40 recommendations, interpretive notes and updates. It appears that legislative change will continue as the Island prepares for its 2018 AML/ATF country evaluation.”

Outsourcing the audit function

As family offices broaden their investment horizons, they are becoming more complex in terms of trading activity. Consequently, another important outsourcing consideration is for the production of high-quality audit reports.

“Bermuda has multiple players in the audit space that can provide that function very effectively. In addition to increased trade complexity, family offices appreciate having a second set of eyes to make sure the asset value on paper is what it claims to be when making investments in private equity and other illiquid assets,” says Bailey.

Another reason that is driving demand for

Conclusion

A global reputation, expert talent, robust legal system, and enviable location and lifestyle opportunities: these are all key strengths that Bermuda is able to leverage to support the growing institutional ambitions of global family offices.

“It is also important to stress that there is a strong level of collaboration between the Bermuda Government, the BMA and the island’s service providers,” says Kowalski. “It is highly unlikely that any legislation will be introduced without having had widespread input from the professional community beforehand.”

For those that have worked hard, accumulated wealth and want to protect it for the future, Bermuda ticks all the boxes.

And with the America’s Cup drawing large crowds of affluent, international sailing enthusiasts to the island in 2017, there is a collective hope that the next wave of multi-generational family offices will choose to call Bermuda their home. ■