

INTRODUCING THE HERBERT SMITH FREEHILLS TRUST COMPANIES SURVEY: NAVIGATING TROUBLED WATERS

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In January 2020 we completed the research phase of our first survey of trust companies. We asked trust companies of different sizes, from a variety of onshore and offshore jurisdictions, with different ownership structures, questions about the most significant risk and compliance issues they face. The survey comprised 18 questions, with a randomised order of possible answers wherever this was feasible, to increase the integrity of the responses.

The one thing we did not ask people was the risks posed by major public health incidents. Coronavirus disease (COVID-19) subsequently became the biggest threat to countless businesses around the world. At the time of publication, different countries are at different stages in their fight against the virus. Some jurisdictions are slowly opening up following lockdown, others are not yet at that stage. Even if the possibility of a pandemic has been acknowledged for some time, the extent of the lockdowns around the world seems to have been unanticipated.

Does this all render our survey and its results irrelevant? Null and void? I don't think so. The ramifications of this will be felt for some time and may well change some of the ways that we work, but all through the crisis various businesses across the globe (by no means all of course) have managed to put in place their business continuity plans and found ways of carrying on.

I have contacted a number of people at trust companies during this time and the consistent message has been that things are busy. They may not have been able to travel the world, but their business life is adapting and going on. The themes of the survey remain as relevant as ever, as one commented: "Regulatory change has not stopped". Given the predicted length of the impact of the virus, some things have to continue to the extent they can - all aspects of life and business cannot simply go on hold.

So without in any way wishing to downplay the significance of current events and their devastating impact on so many, here is the introduction to our survey.

THE RESPONDENTS

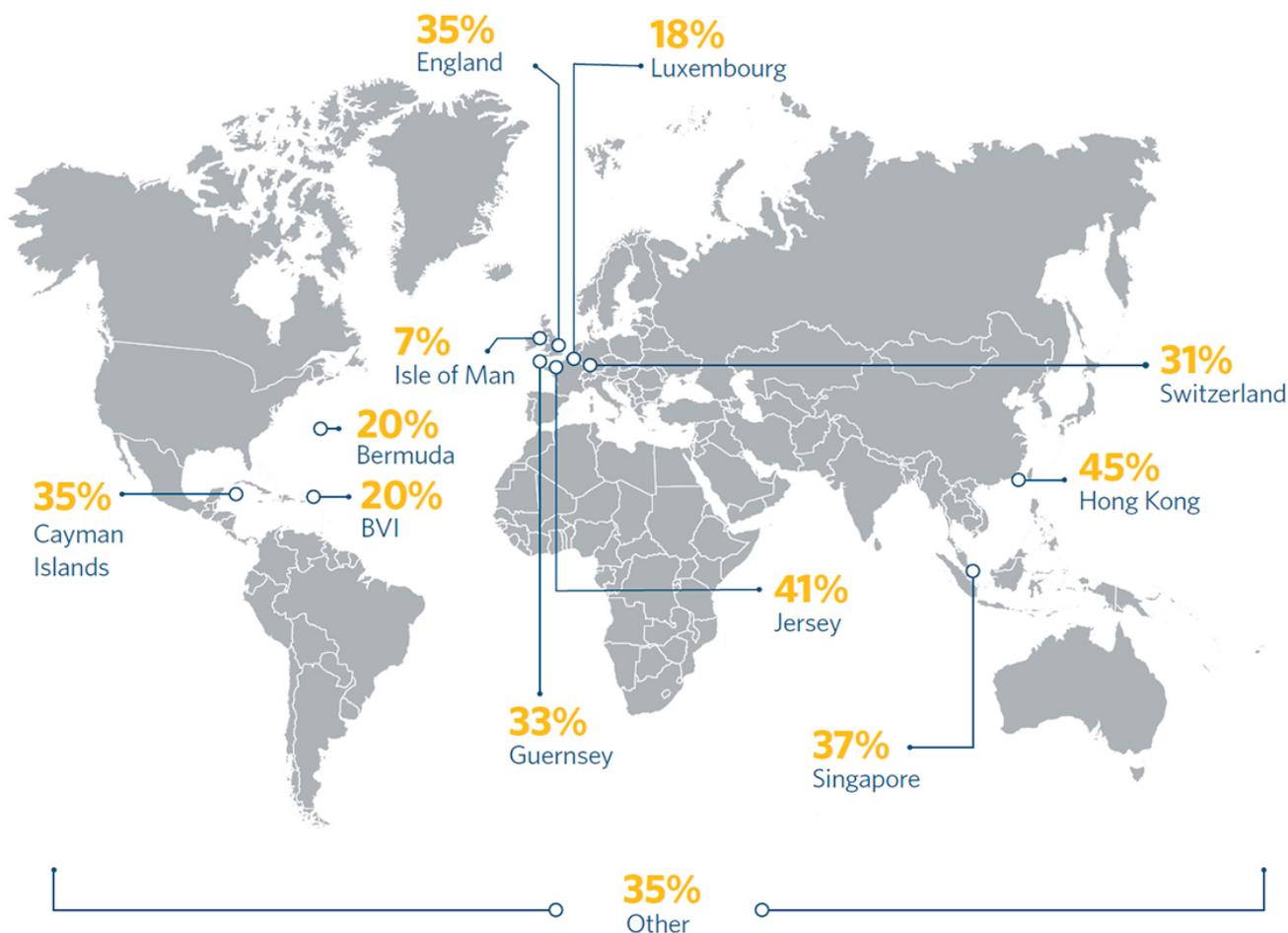
Around a quarter of the total number of responses we received were from smaller trust businesses (i.e. fewer than 25 employees), and a similar proportion from large entities (i.e. over 200 employees). The majority of respondents were medium-sized trust companies, with 25-200 employees.

HOW MANY EMPLOYEES DO YOU HAVE IN YOUR FIDUCIARY BUSINESS?



In terms of jurisdictional spread, the respondent entities operate in all major International Financial Centres, such as Bermuda, British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, and Jersey, as well as some of the major onshore trust jurisdictions, including England and Wales, Hong Kong, Singapore, Switzerland, and Luxembourg.

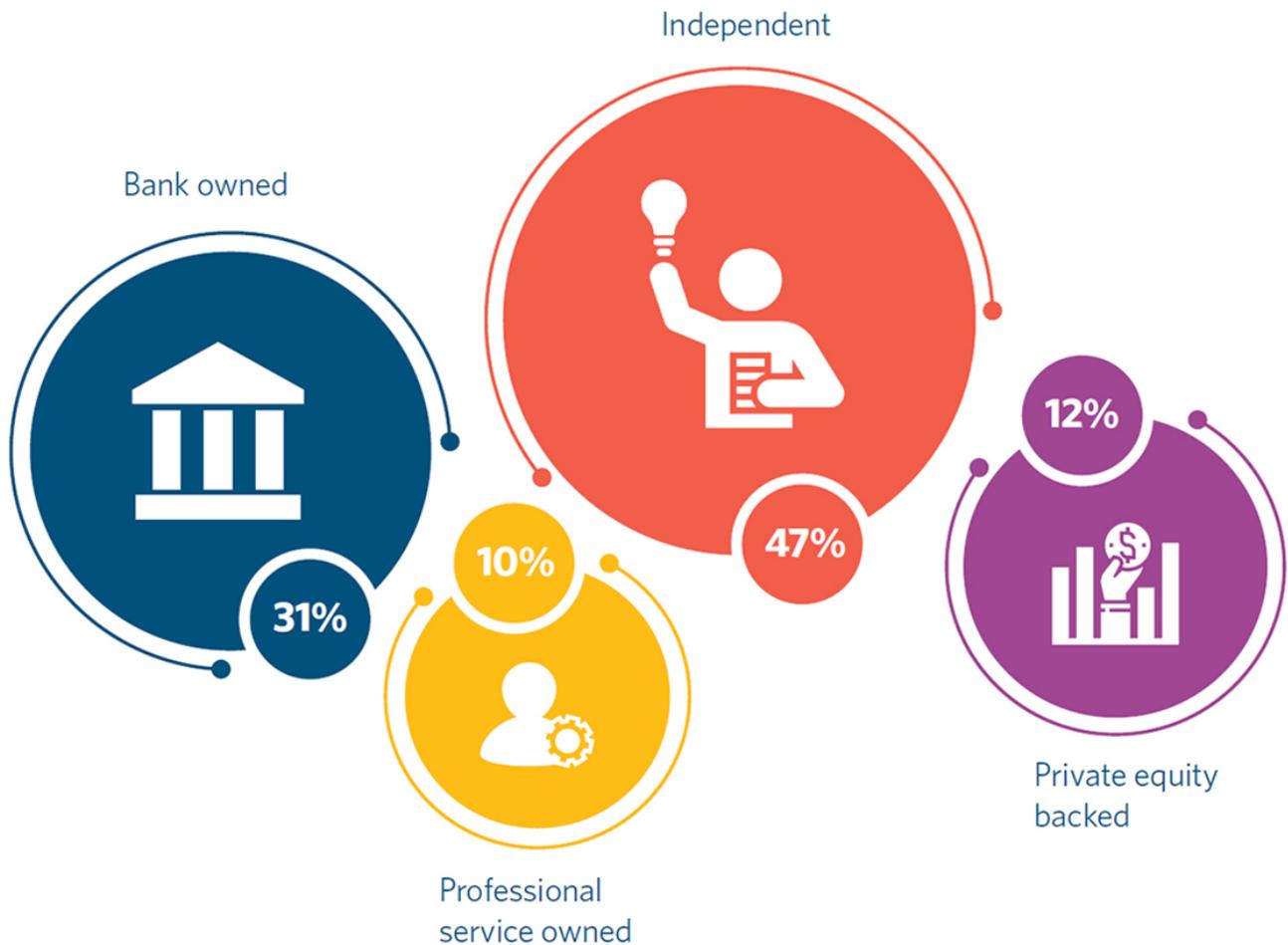
WHICH JURISDICTION(S) DO YOU OPERATE IN?*



***respondents were able to choose more than one jurisdiction**

The survey also covered a wide range of trust company ownership structures. Around 10% of the respondent businesses are owned by professional services firms and around the same proportion are private equity backed. Around 30% are bank owned, and just under 50% are independent.

WHAT IS YOUR OWNERSHIP STRUCTURE?



SPECIFIC TOPICS COVERED

- **Anti-Money Laundering (AML):** We discuss and analyse the most significant AML compliance challenges for trustees; how AML compliance issues have affected trust company businesses in the last year; how helpful (or otherwise) the trustees find the new guidance and more prescriptive Know your Customer (KYC) requirements.
- **Beneficiary disputes:** Our survey reveals the most common sources of beneficiary disputes (i.e. disputes brought by beneficiaries against trustees) that trust companies encounter. We also consider the measures trustees might be able to take to minimise any adverse consequences from such disputes.
- **Cybersecurity:** Our analysis covers what the main cybersecurity risks faced by trustees are; the types of cyberattacks trust companies tend to suffer in practice; and what trust companies are currently doing, and what they could be doing to tackle the cybersecurity risks they face.
- **Data protection:** We have investigated what trust companies find the most challenging about privacy compliance, and provide practical guidance on managing the most difficult aspects.

- **Regulatory compliance:** We have mapped the most significant regulatory challenges faced by trust companies, as well as trust companies' views on whether regulatory intervention in their business is inevitable.
- **Reputational risks:** We discuss the reputational risks for trust company clients arising out of being associated with "offshore" structures and jurisdictions.
- **Tax compliance:** We cover what trust companies identified as the most burdensome tax compliance issues and the most helpful solutions for handling tax compliance within trust company businesses.
- **Wider threats to trust companies:** We analyse a number of wider threats faced by trust companies, and why they are important for many trust companies to consider. These include competition, geo-political tensions and attraction and retention of staff, amongst other factors.

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KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**RICHARD
NORRIDGE**

PARTNER, HEAD OF
PRIVATE WEALTH
AND CHARITIES,
LONDON

+44 20 7466 2686
richard.norridge@hsf.com

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