

# THE WIDER THREATS TO TRUST COMPANIES

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Legal Briefings

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We recently completed the run down from seven to one of the most significant risks faced by trust companies. Of course, that list could not cover all the risks trust companies face so in this final article in the series we wanted to acknowledge and comment on some of the other risks and challenges trust companies face. These include:

## GEO-POLITICAL CHALLENGES

- **Geo-political challenges:** separate from obvious threats posed by changes to international fiscal regulations and the imposition of sanctions or 'blacklisting' measures against individual jurisdictions where trusts are commonly established and managed, companies offering trust services are also susceptible to other aspects of political risk. This can be extra-territorial – for example, the possibility of adverse changes to legislation governing wealth management in a key client origination market – or domestic, as recent political instability in Malta has highlighted. Extreme weather events similar to the British Virgin Islands' traumatic experience with Hurricane Irma in September 2017 should also not be discounted.

## TALENT ATTRACTION AND RETENTION

- **Talent attraction and retention:** although they do not typically experience consistently high turnover comparable to other professional services providers, trust and corporate services providers can face a range of talent pressures – the impacts of which can be exacerbated where succession planning may be limited in scope or amid deteriorating morale in individual offices experiencing protracted adversity. The supply of specific skillsets – in particular, risk and compliance – can be constrained and expensive in what are often small and competitive local labour markets, especially during periods of escalating demand when regulation is strengthening, making poaching to plug key gaps and loss of knowledge in its wake credible risks. Tightening labour laws in many markets meanwhile impose long lead-times to fill vacancies with expatriate candidates.

## M&A

- **M&A:** acquisition to increase market share, access new jurisdictions or tap into new customer verticals has long been a preferred pathway to growth in the trust sector. Risks here include identifying the right targets at the right time in a crowded terrain stalked by other players in purchasing mode, conducting sufficiently rigorous due diligence to ensure an accurate valuation and identify possible compliance liabilities in the client portfolio of superficially attractive plays, and achieving post-deal integration that truly realises synergies across constituent parts that often have very varied origins, leadership styles and operating models.

## RELIANCE ON THIRD PARTIES

- **Reliance on third parties:** utilising non-affiliated counterparties to provide complementary services to multi-national clients across jurisdictions where the trust company does not have its own footprint presents a range of delivery and reputational exposures. In a sector where a significant proportion of new business originates via intermediaries including legal, accounting and banking firms, over-reliance on individual 'rain-maker' relationships can also be detrimental when these change unexpectedly. With a consistently sizeable proportion of data leaks, tax evasion and corruption incidents (among other regulatory breaches) attributable to errors and misconduct by

third parties, keeping up with evolving regulatory requirements in jurisdictions where 'eligible introducers' remain permitted and continue to be utilised represents a further – and significant – compliance challenge.

## COMPETITION

- **Competition:** in a sector where it is widely accepted that customers rarely change service provider before liquidation, winning the business initially becomes all-important – as the point above on avoiding complacency around risks associated with key referrals channels emphasises. Standing out from the crowd is increasingly important, especially online where searches and due diligence are increasingly focused, and in the teeth of intensifying rivalry from larger competitors buoyed by the strategic coherence and professionalization of accompanying targeted sales and marketing activity that private equity backing and international expansion/consolidation can confer. Bottom-up margin erosion from smaller challengers aware that baseline price comparisons form part of the new client evaluation process likewise has to be resisted. And in what is usually a relatively 'small world' with a revolving door between and frequent dialogue amongst family offices and funds, service providers and the regulator, a reputational misstep can inflict lasting damage on market position, and over time market share.

Herbert Smith Freehills have experience advising trust companies on a full spectrum of risks, technical and legal issues across all major offshore and onshore jurisdictions; please reach out to a member of our global team (see below) if you would like to continue the conversation and find out how we can help your trust company.

*\*with thanks to James Smither, Head of Enterprise Risk, for his contributions to this article.*

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To read the full report, or our analyses of the most significant risk and compliance issues trust companies face, please click the button below:

[Herbert Smith Freehills Trust Companies Survey: Navigating Troubled Waters](#)

## KEY CONTACTS

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



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