

DISHARMONY AND MISTRUST TOP KEY CONCERNS FOR TRUSTEES

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News

Managing disharmony amongst beneficiaries and keeping up with the demands of regulatory compliance are amongst the greatest challenges faced by Trust Companies as they navigate the pressures of administering onshore and offshore trusts and estates.

As part of ongoing analysis of the most complex issues facing trustees, Herbert Smith Freehills surveyed senior executives in some of the world's leading Trust Companies to identify the issues most likely to lead to disputes.

The results reveal seven challenges which consistently appear at the top of trustees' in-trays. An ability to keep on top of general regulatory compliance requirements is front-of-mind for more than half of those questioned (53%), with tax compliance and the risk of data exposure through cyber-attack also high on the list of concerns.

With Trust Companies often having to manage competing demands and expectations, respondents were asked to identify the primary source of beneficiary disputes. An overwhelming majority (78%) suggested that disharmony amongst the beneficiary group was a major concern. However, the results also point to the risks of communication failures, with 11% suggesting that a failure by settlors to communicate the purpose and function of trusts lay at the heart of many problems. Some also admit that a breakdown in the relationship between trustees and beneficiaries causes disputes.

"There are numerous examples of the desire to avoid difficult conversations unfortunately resulting in spiralling disputes. If the settlor of the trust is not willing or able to have those conversations, it can become incumbent on the trustee to fill that void. Whilst clarity of information is obviously important, trustees' ability to navigate sensitivities and competing international requirements will also go a long way to better management of the risks trust companies face. Our research suggests that trustees accept this, but recognise there is no quick fix," says Richard Norridge, partner and head of Herbert Smith Freehills' trust disputes practice.

Focusing on compliance, half of those questioned suggested that the growth in remote working over the past two years has increased risk. A similar proportion also agreed that the cost and complexity of on-boarding new clients is a significant AML compliance challenge. Many also accept that proposed EU reforms relating to money laundering will have an impact on their organisation (78%).

Against this backdrop 1 in 10 respondents agree that they need to recruit more qualified staff and 56% have already increased the size of their compliance teams over the past 12 months. Around a quarter have also implemented enhanced policies and procedures.

Norridge concludes: "The increasing burden from various directions being placed on trustees is a doubled-edged sword that will continue to be sharpened over the next few years. It means that the risks to their businesses may increase but, at the same time, provides an opportunity for Trust Companies to improve their operational resilience and distinguish themselves from competitors. That can only be a good thing as mitigating the risk of attack – whether from cyber criminals or disgruntled beneficiaries – reduces the risk of regulatory intervention and ensures that maintaining trust stays at the heart of what trustees do."

The survey was conducted in May and June 2022 amongst Trust Companies located in a range of jurisdictions, including England, Hong Kong, Singapore, Bermuda, Luxembourg and the Cayman Islands.

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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