

In conversation

Best in Class Financial Services

Alan Taylor, CEO of the Cook Islands Financial Services Development Authority (FSDA), talks to CEO Insight about the jurisdiction's unique credentials, as well as the most noteworthy products and recent developments.

CEO Insight: What do you consider to be the Cook Islands' strongest and most unique jurisdictional credentials?

Alan Taylor: The Cook Islands has created, developed and sustained an offshore industry by being innovative and adaptable, and focusing on an aspect of trust and wealth management planning neglected by many.

The strength of the Cook Islands offshore jurisdiction is its laws and its ability to pass laws to meet the needs of today's society. The Cook Islands has established itself internationally by developing within its laws a wealth protection framework that makes it an industry leader in the preservation and protection of wealth, and the jurisdiction of choice for many high net worth individuals, their families and professional advisors.

In 1989, the Cook Islands amended its trust laws to introduce comprehensive asset protection provisions seeking to protect the rights of individuals and their assets from those who attempt to take them by force, litigation or legislation, whether through illegal, unethical or immoral means. The laws were innovative and groundbreaking at the time, their success reflected in the number of jurisdictions that have since copied them in part, or in whole.

Since the amendments to its trust laws, the Cook Islands has also enacted foundation and limited liability company laws, which contain similar asset protection provisions. Of particular note are rules that provide certainty to the rights of those who might claim against assets by reference to specific dates and events.

CEO: Why should Chinese HNWI consider the Cook Islands for their wealth management planning needs?

AT: When deciding on a jurisdiction for his/her wealth management planning needs there are many

factors the Chinese High Net-Worth Individual (HNWI) should consider.

Trusts are the cornerstone of most wealth management plans. For over 30 years, Cook Islands trust laws have proved to be robust and practical. They were designed to enhance the benefits provided by a common law trust and protect the individual's assets and rights. Cook Islands trust laws provide certainty to a settlor as to how assets will be managed, invested and distributed during his/her lifetime and after. The choice of law and trustee are paramount when establishing a trust structure. The Cook Islands can provide licensed trustees of vast experience, knowledge, integrity, substance and professionalism to rival any jurisdiction in the world. They have experience in dealing with Asian, and particularly, Chinese clients, while some are part of organisations with an Asian presence. They are based in a sovereign jurisdiction that is politically stable, has a judiciary experienced in dealing with trust matters, and that respects the rule of law. In addition, the trustees are regulated by an independent authority that will monitor their activities and accept and investigate any complaints made by a settlor or trust beneficiaries.

Features of Cook Islands trust law that appeal to Chinese settlors include the ability to retain a degree of control over the assets settled into a trust through reservation of certain powers, including the power to invest and manage assets. Of further appeal is the fact that a trust can be dynastic and continue indefinitely.

When combined with its modern communication facilities, banking options and convenient time zone that allows for same day transactions, these factors ensure the Cook Islands stands out as an ideal option for the Chinese HNWI.

01. Alan Taylor, CEO of the Cook Islands Financial Services Development Authority (FSDA).



CEO: Significantly, the Cook Islands does not feature on the European Commission's list of jurisdictions considered to have weak AML/CFT regimes, nor on the European Union's list of non-cooperative tax jurisdictions. To what extent is this endorsement by omission a reflection of efforts on the Cook Islands' part?

AT: The Cook Islands has worked extremely hard to meet its international obligations to avoid being placed on any list that would suggest otherwise. The negative impact on its international reputation and its ability to carry out international financial transactions that would result from being on any such list, is something that cannot be contemplated.

Over recent years the Cook Islands has received an outstanding Mutual Evaluation Report from the FATF indicating it has one of the best AML/CFT regimes in the world. It has implemented the CRS and FATCA into its laws to ensure automatic exchange of financial information with other jurisdictions in order to counter tax evasion and other financial crimes. The Cook Islands is a member of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes as well as its BEPS Inclusive Framework. In addition, the Cook Islands has avoided being placed on the EU's AML/CFT list, by virtue of its MER report, and its non-cooperative tax jurisdiction list, by virtue of commitments it has made to the EU, which are to be implemented by 31 December 2019. →

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CEO: Has the Cook Islands amended products or services in response to new global trends in taxation and regulation?

AT: The products and services offered by the Cook Islands remain at the forefront of the wealth protection industry, despite the increased international regulatory and compliance demands. The Cook Islands is committed to meeting its international obligations. It has not therefore amended its products and services, but instead amended laws and regulations applicable to those providing financial products and services to ensure they meet international compliance and regulatory standards. This has unfortunately meant increased costs for service providers and their clients, yet wealth may be put at risk if compliance obligations are not met.

In 2017, and as part of the preparation process for its Mutual Evaluation, the Cook Islands passed updated anti-money laundering legislation revised to meet current FATF standards. Financial service providers are required to carry out risk assessments on their businesses and clients, and obtain enhanced due diligence on beneficial owners and effective controllers where they identify increased risk.

Can you provide some headline detail on the type of structures made available in the Cook Islands? In particular, what can you tell us about the benefits of a Cook Islands managed trustee company (MTC)?

AT: Cook Islands International Trusts

The Cook Islands is best known internationally for its development and progression of the trust concept through its trust laws, and the use of those laws in modern day wealth management planning. The cornerstone of the Cook Islands international financial services industry is therefore the Cook Islands International Trust, established pursuant to the International Trusts Act 1984. The Act provides some of the most comprehensive protection available to settlors from foreign judgments and creditors.

Managed Trust Company (MTC)

The ability to access the Cook Islands’ strong legal and regulatory framework, as well as its independent and

robust judicial system, without the need to establish a physical presence, has always been an option for those looking to carry on trustee company business in the Cook Islands. The cost of setting up and maintaining a business can be avoided, whilst enjoying the benefits available, through the use of an MTC.

To further encourage trust and company service providers to consider the Cook Islands as a location for their business, the Cook Islands Financial Supervisory Commission (FSC) has recently issued a guidance note on MTC business to provide certainty and clarity as to the regulatory regime applicable to MTCs, as well as to assist with operational matters. An MTC allows the licensee time to develop its business before deciding to establish a physical presence.

An MTC is licensed under the Trustee Companies Act 2014, but rather than having a physical presence in the Cook Islands, it has its trust company business managed by a licensed trustee company (LTC) that does have a physical presence. An MTC is required to submit a full licensing application to the Financial Supervisory Commission (FSC), and will be subject to the same regulatory and AML legislation as an LTC. The MTC is not required to have a resident director, although the FSC may require a director be present for any audit or onsite inspection. The MTC can conduct its business and keep its records at the offices of the LTC. That LTC can also provide the money laundering reporting officer and compliance officer (as required by legislation) to the MTC.

Private Trustee Companies

The Cook Islands does, in limited circumstances, permit carrying on of trustee company business without licensing under the Trustee Companies Act 2014. The Act provides that a Cook Islands international company (incorporated pursuant to the International Companies Act 1981-82) does not carry on trustee company business where it acts as trustee of no more than three Cook Islands international trusts. This form of PTC is very popular amongst families wishing to retain management and control of the family wealth management structure. The administration of the structure is often outsourced by the PTC to a Cook Islands licensed trustee company. ●