

# SESSIONS

TRANS TRUSTS – LITIGATION DAY - 13/10/2021

Transcontinental Trusts: Geneva Forum 2021

13 - 15 October 2021

Fairmont Grand Hotel Geneva (formerly Grand Hotel Kempinski Geneva)  
Geneva, Switzerland

## Chairman's welcome and opening remarks

09:30 - 09:35

### Participants

**Adam Cloherty** - Barrister, XXIV Old Buildings

## Going Gently into that Good Night?

09:35 - 10:20

- What happens when a settlor or power holder loses capacity

### Participants

**Peter Steen** - Partner, Mishcon de Reya

**Emilia Piskorz** - Managing Associate, Mishcon de Reya

## Through the Looking Glass

10:20 - 11:05

- The latest on the duties of trustees and corporate trust providers in relation to underlying corporate structures
- How far we have moved since *Bartlett v Barclays Bank* [1980] Ch 515
- *Zhang Hong Li and another v DBS (Hong Kong) Ltd and others* appeal:
  - Judgement implications
  - anti-Bartlett clauses and their future
- How trustees can protect themselves
- Permission to appeal

### Participants

**Andreas Kistler** - Partner, Carey Olsen

**Marcus Staff** - Barrister, XXIV Old buildings

## Morning coffee break

11:05 - 11:25

## All is Well that Ends Well

11:25 - 12:05

- How should trustees tackle historical shortcomings in trust management?
- Can they seek to right mistakes of the past
- Consideration of the recent decision in *C Trust* [2019] SC (Bda) 44 Civ

### Participants

**Hannah Mantle** - Senior Associate, Forsters

**Sandie Lyne** - Partner, Ogier

**Robert Gardner** - Partner, Bedell Cristin

## What do you Want? Information

12:05 - 12:45

- Issues around disclosure and confidentiality of information relating to trusts
- What can a beneficiary do if they know nothing about a trust - save that they are suspicious about its trustee?
- Life after *TDT* and the "*Guernsey 2*" proceedings
- Where does it leave trustees and third parties who deal with them?
- Obscuring the truth or protecting legitimate rights?
- Exploiting differing understandings of open justice to obtain information

### Participants

**Olga Boltenko** - Managing Partner, Boltenko Law

**Benoît Mauron** - Counsel, LALIVE

## We Are Family...

12:45 - 13:30

- Modern concepts of 'the family' continue to evolve
- How **settlers, trustees and beneficiaries** alike can effectively tackle the issues that arise
- International family provision claims:
  - impact across different jurisdictions
  - issues surrounding the domicile of the deceased
- Legitimate children, trusts and human rights:
  - European human rights principles within offshore jurisdictions
  - new interpretations of trusts and testamentary instruments
  - constitutional prohibitions against non-discrimination

### Participants

**Joseph Steadman** - Barrister, Wilberforce Chambers

**Dawn Goodman** - Senior Counsel, Withers

## Luncheon

13:30 - 14:40

## Breaking up is never easy ... Is enforcement easier?

14:40 - 15:10

Robert will look at some recent cases relevant to international trustees and fiduciaries arising from decisions of the English courts, including *Akhmedova* and *Behbehani*, including:

- the limits of anti-avoidance legislation (under the Insolvency and Matrimonial Causes Acts)
- the English courts' approach to extraterritoriality
- joinder and findings against third parties

### Participants

**Robert Avis** - Counsel, Charles Russell Speechlys

## Insolvent Trusts

15:10 - 15:50

- Z Trust litigation – and the Privy Council
- Clarity at last?
- Recent onshore tax changes and implications for insolvent trusts
- Just what is the scale of insolvent trusts?

### Participants

**Clare Usher-Wilson** - Deputy Managing Director, Summit Trust International

**James Sheedy** - Senior Associate, Baker & Partners

## Afternoon coffee

15:50 - 16:10

## Remains of the Day: Massively Discretionary Trusts

16:10 - 16:55

- Issues that can arise with black hole or Red Cross trusts
  - who are the beneficiaries?
  - who can bring the trusts to an end?
  - what other issues can arise?
- Personal ramifications for holding office in the new age of international tax collection
- Beneficiaries right to terminate trusts:
  - *Saunders v Vautier*
  - the recent Court of Appeal hearing in *Rusnano v Molard*

### Participants

**Rupert Morris** - Partner, Walkers

**Steven McDonald** - Partner, Enyo Law

## Chairman's summary and close of Litigation day

16:55 - 17:05

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**Drinks reception hosted by Athena Art**

17:05 - 18:35

# SCHEDULE

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<b>11:00</b>	<b>11:05</b> - Morning coffee break <b>11:25</b> - All is Well that Ends Well
<b>12:00</b>	<b>12:05</b> - What do you Want? Information <b>12:45</b> - We Are Family...
<b>13:00</b>	<b>13:30</b> - Luncheon
<b>14:00</b>	<b>14:40</b> - Breaking up is never easy ... Is enforcement easier?
<b>15:00</b>	<b>15:10</b> - Insolvent Trusts <b>15:50</b> - Afternoon coffee
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<b>17:00</b>	<b>17:05</b> - Drinks reception hosted by Athena Art

### Registration

09:00 - 09:30

### Welcome from the Co-Chairs

09:30 - 09:40

Stella & Jess will set the scene for the next two days, highlighting key themes and topics which will be discussed over the course of the conference.

### Participants

**Stella Mitchell-Voisin** - Managing Director, Summit Trust International SA

**Jessica Henson** - Partner, Payne Hicks Beach

### The Keynote address: Money Launderer: Psychology of lying

09:40 - 10:40

- Meet Ken Rijock
- Twice decorated Vietnam veteran
- High flying lawyer
- And one of the world's biggest money launderers

- Discover:
  - how he got 'sucked in'
  - how bad it got
  - whether he thinks today's transparency/AML measures would have stopped the criminal fraternity that he knew
  - what he thinks the issues are today

- And how that affects you!

### Participants

**Ken Rijock** - Financial Crime Consultant & Author, 'The Laundry Man - Memoirs of a multi-million money launderer'

### Morning Espresso: A Shot in the Arm - What happened yesterday?

10:40 - 11:10

- Distilling the key issues arising out of yesterday's litigation day
- Highlighting issues likely to dominate the next 12 months in the arena of trust litigation

### Participants

**Adam Cloherty** - Barrister, XXIV Old Buildings

### Morning Refreshment Break hosted by Hassium Asset Management LLP

11:10 - 11:30

### In Loco Parentis: Understanding Younger or More Vulnerable Beneficiaries

11:30 - 12:00

- When to introduce the financial conversation
- Navigating substance abuse problems
- Access to funds
- When is that appropriate?
- How do you know if someone is lying to you?

### Participants

**Diana Chambers** - The Family Wealth Mentor and Founder, The Chambers Group Sàrl

### Substance, Regulation and other initiatives

12:00 - 12:40

An update from around the offshore world...

### Participants

**James Quarmby** - Partner, Stephenson Harwood

### Lunch hosted by Katten Law

12:40 - 13:45

### An Introduction to the Omar Akhbar Trust

13:45 - 13:50

- The Omar Akhbar family, are a wealthy entrepreneurial family with:
  - roots in the Middle East
  - business enterprises in various parts of the world
  - an extensive property portfolio in Switzerland, the UK and the Far East
- The family are undertaking a complete health-check on their structures
- Various industry experts:
  - look at different trust and tax issues as pertains to the various asset classes
  - point out the common issues and pitfalls from their own unique perspectives

### Participants

**Jessica Henson** - Partner, Payne Hicks Beach

### The Omar Akhbar Trust Part 1: What are the key issues to look for from a tax perspective?

13:50 - 14:35

- Omar Akhbar, the Settlor, who is a Middle Eastern entrepreneur, was detained (and later released without charge) at the Ritz in Riyadh
- His son, Karim is 22 and has been studying in London, and now looks set to settle there
- His daughter, Amina, is 20 and is considering taking up a position with a bank in Geneva
- Mr Akhbar is keen to consider his options as to residence and is particularly drawn to either the UK or Switzerland, but is also considering other options
- Mr Akhbar and his children all receive distributions from the trust from time to time.

### Participants

**MIDDLE EAST:: Marianne Kafena** - Partner, Harbottle & Lewis

**SWITZERLAND:: Fouad G. Sayegh** - Partner, Walder Wyss Ltd.

**ITALY:: Alessandro Bavila** - Partner, Maisto e Associati

### The Omar Akhbar Trust Part 2: Contentious Issues, Insolvency, Intra Structure Lending and Anti Bartlett Clauses

14:35 - 15:20

- The trust owns operating businesses:
  - two of which are healthy, profit making operations
  - and one of which is struggling financially
- Cover off insolvency within trust
- Loans between entities
- How much overview trustees need
- Anti Bartlett's etc
- Glenalla/Z Trusts/DBS

### Participants

**Emma Jordan** - Partner, Taylor Wessing

**Sarah Aughwane** - Senior Associate, Withers Worldwide

### Afternoon Refreshment Break hosted by Hassium Asset Management LLP

15:20 - 15:40

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## Set out Your Pitch – Where Should I Set Up My New Trust Structure?

15:40 - 16:30

- Panellists pitch for a piece of new business....

### Participants

**What the Client is Looking for:: Christopher Potter** - Senior Counsel, Societe d'Etudes Techniques et Economiques SA

**Singapore:: Jill Carpenter** - Partner, Rawlinson & Hunter Singapore

**Isle of Man: Paul Blake** - Head of Banking and Fiduciaries, Finance Isle of Man

**Liechtenstein:: Hannes Arnold** - Senior Partner, Gasser Partner (Liechtenstein)

**New Zealand:: Geoffrey Cone** - Founder of Cone Marshall, New Zealand and Teton Trust Company, Jackson, Wyoming, USA, Cone Marshall

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## Philanthropy & Giving: War Stories and Making a Difference

16:30 - 17:10

Part I - The International Committee of the Red Cross:

- Development economics
- Humanitarian action
- International trade and co-operation:
  - economic dynamics of armed conflict
  - nexus between natural resources and development
- Humanitarian bonds and the global aid market

Part II: - Trusts:

- Facilitating philanthropic giving through trusts
- Why many wealthy people do not give to institutions like the red cross but set up their own foundations etc.
- What can go wrong if they do
- Regulatory framework

### Participants

**Gilles Carbonnier** - Vice-president, International Committee of the Red Cross (ICRC)

**Matthew Smith** - Barrister, Maitland Chambers

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## Chairs' Closing Remarks & End of Day One

17:10 - 17:20

### Participants

**Stella Mitchell-Voisin** - Managing Director, Summit Trust International SA

**Jessica Henson** - Partner, Payne Hicks Beach

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## Tour of the Red Cross Building, Geneva (Limited Spaces Available)

18:30 - 19:30

Tour of the museum 6.15 to 7.15.

Drinks 7.15 to 8.30.

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## Dinner at the Red Cross Building, Geneva - hosted by MIRABAUD & CIE SA, and Summit

19:30 - 21:30

Dinner 8.30 to 10.30

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<b>12:00</b>	<b>12:00</b> - Substance, Regulation and other initiatives <b>12:40</b> - Lunch hosted by Katten Law
<b>13:00</b>	<b>13:45</b> - An Introduction to the Omar Akhbar Trust <b>13:50</b> - The Omar Akhbar Trust Part 1: What are the key issues to look for from a tax perspective?
<b>14:00</b>	<b>14:35</b> - The Omar Akhbar Trust Part 2: Contentious Issues, Insolvency, Intra Structure Lending and Anti Bartlett Clauses
<b>15:00</b>	<b>15:20</b> - Afternoon Refreshment Break hosted by Hassium Asset Management LLP <b>15:40</b> - Set out Your Pitch – Where Should I Set Up My New Trust Structure?
<b>16:00</b>	<b>16:30</b> - Philanthropy & Giving: War Stories and Making a Difference
<b>17:00</b>	<b>17:10</b> - Chairs' Closing Remarks & End of Day One
<b>18:00</b>	<b>18:30</b> - Tour of the Red Cross Building, Geneva (Limited Spaces Available)
<b>19:00</b>	<b>19:30</b> - Dinner at the Red Cross Building, Geneva - hosted by MIRABAUD & CIE SA, and Summit

# SESSIONS

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## Pre-Conference Coffee

09:00 - 09:30

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## Opening Remarks from the Co-Chairs

09:30 - 09:40

### Participants

**Stella Mitchell-Voisin** - Managing Director, Summit Trust International SA

**Jessica Henson** - Partner, Payne Hicks Beach

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## The Great Debate: Are Swiss Trusts a Good Thing or a Distraction?

09:40 - 10:20

- Switzerland is proposing to introduce a trust law to allow for a 'Swiss Trust'
- Practitioners are divided as to the merits
- Our speakers will debate the issue so that you can decide....

### Participants

**Luc Thevenoz** - Director of the Centre for Banking and Financial Law, Professor of Law, Geneva University

**Sandrine Giroud** - Partner, LALIVE

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## What the Crypto?!

10:20 - 11:00

- Younger benefs are asking trustees to consider 'investing' in things like:
  - CRYPTO
  - SUSTAINABLE INVESTMENT
- Can you possibly make a trustees decision that these are appropriate investments for a trust fund?
- What are the pitfalls?
- Does it matter anyway?

### Participants

**Moderator:: Joe Donohoe** - Director - Jersey, Asset Risk Consultants

**John-Maximilian de Salis** - Executive Director and member of the Group Investment Committee, PWM Division, Mirabaud

**Esmond Brown** - Counsel, Appleby

**Niklas Schmidt** - Partner, Wolf Theiss

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## Morning Refreshment Break

11:00 - 11:20

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## Jurisdiction Update

11:20 - 12:10

- Jurisdiction updates: What's new in the zoo?
  - what's in the pipeline?
  - where jurisdictions are seeing growth
  - what keeps jurisdictions awake at night
- Comparing different trust regimes:
  - which is better, which is best?
  - what we have that others don't
- Jurisdiction's record and approach to:
  - comparing various jurisdictions' trust regimes and court processes
  - responding to information requests from foreign governments
  - the court using firewall legislation to protect from divorce / forced heir ship proceedings
  - beneficiary rights to information

### Participants

**Jersey: Nigel Sanders** - Partner, Walkers

**Liechtenstein: Hannes Arnold** - Senior Partner, Gasser Partner (Liechtenstein)

**Caribbean: Fred Milner** - Counsel, Mourant Ozannes

**Asia:: Nicholas Jacob** - Partner, Forsters

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## Transparency at Any Cost? The Fallacy of Privacy

12:10 - 12:40

- Where do we stop with the transparency agenda?
- How does it play into the need to preserve privacy?
- A look at global information sharing in today's world by various tax authorities
- Most clients and advisors underestimate the amount of data sharing and the use of data
- Switzerland has become the only country to stop exchanging under CRS
- Reciprocal security arrangements are needed between all exchanging countries
- Problems in holding operating businesses as trust assets

### Participants

**Dawn Register** - Partner, BDO

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## Lunch

12:40 - 13:40

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## The Omar Akhbar Trust Part 3: Practical Structuring Issues for luxury assets

13:40 - 14:20

- Continuing the theme of yesterday afternoon
- The Omar Akhbar Trust:
  - owns 2 yachts (one in construction and one berthed in Antibes)
  - is building a seriously valuable art collection
- Mr Akhbar would like to ensure that the yachts are held in a tax efficient manner
- He has decided that he would like to display some of the art currently in Port Franc on his walls
- Our experts look at the issues for the trustee to grapple with e.g.
  - VAT issues
  - paying crew
  - charter arrangements
  - no kids, no pop stars and no Russians!
  - art on yacht walls?

### Participants

**Joanne Morse** - Director, Family Office Services, Summit Trust International SA

**Nic Arnold** - Head of JTC Private Office - UK, JTC Group

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## The Omar Akhbar Trust Part 4: the Economics of Marriage

14:20 - 15:00

- An excited Mr Akhbar calls to update you on the family
- His daughter has fallen in love with a French man who has swept her off her feet
- The wedding is taking place in Paris on 30th June
- His son meanwhile has been dating an American TV star
- His son is proposing a move to the US at the beginning of 2021
- What headaches will the trustee encounter here?
- Can we divorce proof for the future?...

### Participants

**Joshua Rubenstein** - Partner, Katten Muchin Rosenman

**Marine Dupas** - Partner, Arkwood SCP

**Simon Blain** - Partner, Forsters

**Bénédicte Pigeon-Brügge** - Senior Associate, Trust and Estate Practitioner (TEP), Schellenberg Wittmer

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## Afternoon Refreshment Break

15:00 - 15:20

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## Infamy, Infamy, Offshore Under Attack

15:20 - 16:00

- Current perception of offshore, the industry's evolution and future
- Can and should the industry take steps to change the perception of the general public?

### Participants

**Moderator: Alona Golling** - Senior Trust Officer, Summit Trust International SA

**Chris Moorcroft** - Partner, Harbottle & Lewis

**Naomi Rive** - Group Director, Highvern

**Jonathan Riley** - Head of Private Wealth, Partner, Fladgate LLP

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## Chairpersons Summation

16:00 - 16:10

### Participants

**Stella Mitchell-Voisin** - Managing Director, Summit Trust International SA

**Jessica Henson** - Partner, Payne Hicks Beach



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<b>11:00</b>	<b>11:00</b> - Morning Refreshment Break <b>11:20</b> - Jurisdiction Update
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<b>16:00</b>	<b>16:00</b> - Chairpersons Summation