

Global Jersey

International Perspectives



Jersey Finance

Delivering Insight • Driving Innovation

Global Jersey: International Perspectives

Wednesday 14 July 2021

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Opening Remarks

Joe Moynihan,
Chief Executive Officer,
Jersey Finance

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Building Connectivity Across Global Markets

Allan Wood,
Global Head of Business Development,
Jersey Finance

Our Key Markets



Growing Footprint



Maria McDermott
Business
Development - Asia



Dr Rufaro Mucheka
Business
Development
Consultant - Africa

United Kingdom



Robert Moore
Director - UK



Gulf Region



Faizal Bhana
Director - Middle
East, Africa &
India



An Kelles
Director - GCC



Africa



Faizal Bhana
Director Middle
East, Africa &
India

Dr Rufaro Mucheka
Business
Development
Consultant – Africa



Asia Region



**Maria
McDermott**
Business
Development -
Asia



United States



Philip A. Pirecki
Business
Development – The
Americas



A light gray world map is centered on the Atlantic Ocean. Concentric white circles are drawn around the United Kingdom, suggesting a global reach or focus on international markets.

Looking to

The Future



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Women Driving Wealth Management

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An Kelles,
Director – GCC,
Jersey Finance

Women Driving Wealth Management Panel Session

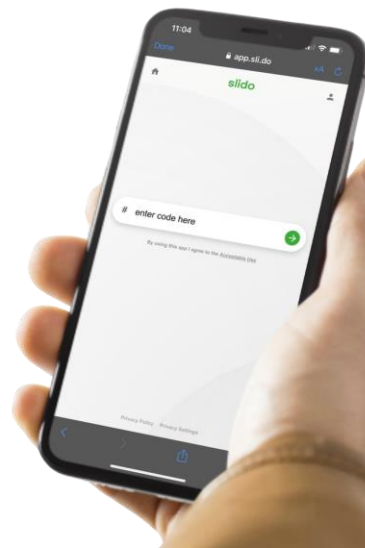
- **Moderator:** **Lisa Forster**, Head: Family Office South Africa: Wealth and Investment, Standard Bank
- **Joanna Caen**, Managing Director, PraxisIFM (Hong Kong) Limited
- **Elaine Dobson**, Partner, Taylor Wessing
- **Leonie Kerswill**, Head of Tax and Structuring, Sanctuary



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The Future of Banking

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Welcome

Faizal Bhana,
Director – Middle East,
Africa and India,
Jersey Finance

The Future of Banking Panel Session

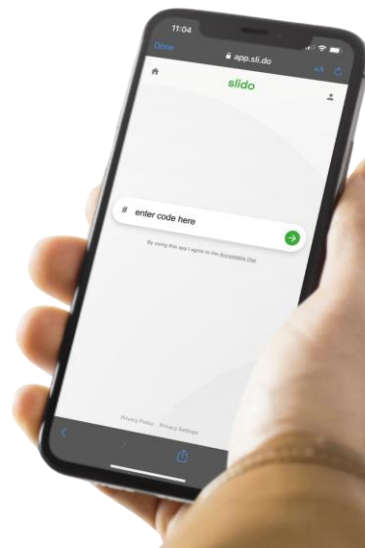
- **Moderator:** Ashar Nazim, Group CEO, Aion Digital
- **Ahmed Khaled Albalooshi**, Founder and Chief Executive Officer, Advantari
- **Olivier Crespin**, Co-Founder and Chief Executive Officer, Zand
- **Aidan McAvinue**, Chief Executive Officer, BankClarity
- **Yetunde Bolanle Oni**, Chief Executive Officer, Standard Chartered Bank - Sierra Leone
- **David Rice**, Chief Operating Officer, Global Banking & Commercial Banking USA, HSBC



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**Political Risk
Minimization –
Understanding
Investor and Asset
Protection**

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Welcome

Philip A. Pirecki,
Business Development – The Americas,
Jersey Finance

Political Risk Minimization – Understanding Investor and Asset Protection

- **Moderator:** Philip Marcovici, Consultant
- Hussein Haeri, Partner and Co-Head of International Arbitration, Withers LLP
- Iraj Ispahani, CEO, Ispahani Advisory Ltd
- Tom Le Feuvre, Director – Global Markets and International Agreements, Government of Jersey
- Jacqueline Loh, Director and Head of Private Wealth, Asia Hong Kong, Ogier



Understanding Investment Risk Today

- How to develop a family strategy, how to talk to and prepare families for their wealth/family business, including structures and legal agreements that serve to achieve their vision.



Political Risk has Arisen in Different Ways Over Time

- Hong Kong in the run up to 1997
- Wartime examples: Philips and Others
- Reflections on today: Brexit, Trump, Hong Kong, wealth and income inequality and what is coming next
- Increasingly, tax as political risk



How is Political Risk Manifested and What Does History Tell Us?

- Expropriations
- Freezing and vesting orders
- Taxation is a growing form of political risk
- Capital levies
- The Ritz Carlton, Saudi Arabia
- Philips Corporation in second world war splitting its structure and having its U.S.
- Interests owned in a trust
- Hong Kong and the many public and non-public companies that did a corporate inversion - how did this work and what were the additional planning steps needed?



Disruption Impact on Wealth and Business Owners

- History has shown us the disruption that occurs when revolutions happen, borders are redrawn, and wars develop.
- There are common themes which run through the Mexican revolution, the Bolshevik Revolution, the Nazi German invasion of Europe and the Cuban Revolution.
- In every instance assets including key industrial and commercial assets and land was seized from private citizens by governments, in some cases by being declared abandoned property. This taking of private property for supposedly public use is something which wealth owners globally still fear.
- Before Covid-19 dominated the headlines we were seeing disruptive events internationally with increased frequency because of the lack of political and economic stability.
- These events included direct governmental interference from military takeovers, expropriation, or mandated national ownership of businesses as well as indirect actions such as currency restrictions or onerous income or estate taxes.

What are Today's Worries?

- Populist governments kidnapping the real issue of inequality
- Offshore jurisdictions are in trouble and traditional offshore planning is moving midshore but are your structures in the offshore world safe?
- What happened in Cyprus and what are capital levies? What can we learn from that recent event?
- How will governments pay for Covid-19 costs? Historical lessons, and German musings
- Covid-19 relief measures and denial to "tax haven" entities



Geopolitical Risk in a COVID-19 Landscape

- We are living through a time of heightened and ongoing anxiety created by Covid-19
- The human cost of the coronavirus outbreak has continued to mount
- The pandemic has now spread to more than 190 countries around the world
- We face a common enemy, there is no cure today and until vaccines have been rolled out on a global scale we must all focus on containment
- Today there remains the very real risk of increased inequalities caused by the pandemic
- Never before have we been so reminded of our mortality and of the importance of an integrated approach to health and wealth planning
- However, in this environment of heightened risk and disruption to our lives and our businesses there are things that we can risk manage better



How Can a Pandemic Increase Political Risk for Wealth and Business Owners?

- All families are subject to political risk - in countries they live or are citizens of; in countries in which their ownership structures are located; and in the countries in which they invest.
- What can wealth and business owners learn from political risk planning undertaken by some of the largest global companies in and around the Second World War and what can be learnt from more recent events?
- Inequality, taxation responses, populism and more political risk is real and substantial.
- Structuring trends and challenges exist in an increasingly transparent world.
- Families should consider reviewing structures in place by undertaking a Holistic Continuity Audit - comprehensive but tailored to the family and involving all stakeholders including their advisors.



Why do Wealth and Business Owners Need to Worry About Political Risk?

There are three levels:

- Country of residence/citizenship,
- Country of investment, and
- Country of intermediate structures, such as holding companies, trusts, etc.

This means that every wealth and business owner suffers political risk.



The Political Risk Minimization Toolbox

- Diversification of ownership structures
- Diversification of where family members live
- Diversification of citizenships and residences – but what is long term possibility of multiple citizenships being allowed?
- Corporate inversions
- Trusts, insurance, foundations and more
- Investment protection agreements - including investment treaties
- Leverage
- Political Risk insurance and relationship to captive insurance



Does Tax Transparency Affect Political Risk?

- Automatic exchange of information is positive, but not all countries are ready for CRS.
- Families need to know what governments have what information on their families and family assets.



Bilateral Investment Treaties



What are BITs?

- **Bilateral Investment Treaties** (BITs) are international agreements establishing the terms and conditions for private investment by nationals and companies of one state in another state.
 - BITs provide rights and protections for foreign investors and investments in countries where investor rights are not already protected through existing agreements.
- BITs not only obligate host countries to provide certain protections for foreign investments, but also create a powerful private right of action for investors against a host government if it falls short of those obligations.
 - BITs include provisions for resolving any disputes that may arise, often referred to as **Investor-State Dispute Settlement** (ISDS).



Key Provisions and Benefits

- **Capital exporting countries:** protect companies' investment abroad, and encourage the adoption of market-oriented domestic policies in host countries that treat private investment fairly.
- **Capital importing countries:** protections will reassure and encourage foreign investors.
- Substantive Protections:
 - **National Treatment;**
 - **Most Favoured Nation (MFN);**
 - **Limits on Expropriation;**
 - **Fair and Equitable Treatment;**
 - **Full Protection and Security; and**
 - **Right to Transfer Funds.**
- **ISDS:** should an investors' rights under the BIT be violated they could have recourse to International arbitration rather than suing the host State in its own courts.



Who has BITs?

- **Jurisdictions with large BIT networks**
 - Asia: China; South Korea
 - Middle East + Africa: Kuwait; UAE; Mauritius
 - Europe: Netherlands; Switzerland; UK
 - Regional Blocs: EU e.g. CETA; AfCFTA?
- **UK Agreements**
 - IPPAs
 - Free Trade Agreements (but not EU-UK Trade & Cooperation Agreement)
- **Jersey negotiations**
 - UAE
 - Ghana
 - Rwanda



UK BITs (IPPAs) applicable to Jersey

- The vast majority of the current UK BITs (which are over 100) contain provisions allowing for their territorial scope to be extended (with the agreement of the other Contracting Party) to Jersey.
- The **UK extended 37 BITs to Jersey** including those with Bolivia, Cameroon, Kazakhstan, Eswatini (Swaziland), Turkmenistan, Pakistan, Mauritius, Uzbekistan, Nepal, Panama, Lesotho, Jordan, Korea and Thailand.
- UK policy is to consider **ISDS on a case by case basis** as part of the negotiation of a new network of future Free Trade Agreements – Jersey is very much involved in these discussions and open to participation.



Jersey Model BIT: overview

- Jersey is in the process of launching its own model BIT
- The Jersey model BIT is designed to promote responsible investment and enhance bilateral investment flows between Jersey and its future Contracting Parties
- It is a new generation model BIT which carefully balances public interest of the host State and investors' rights
- Such a critical balance is achieved through a combination of qualified protections, defined exceptions and provisions recognising the host State's right to regulate



Jersey Model BIT: Procedural Provisions

- The Jersey model BIT features investor-State dispute settlement provisions that are both innovative and in line with modern treaty practice
- They include provisions addressing transparency, frivolous claims and independence and impartiality of the adjudicators.

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Political Risk – Investment Protection in Practice

Case Study One

Chinese investor v African State

- Investment by a Chinese investor relating to the development of a free trade zone in Africa under the framework of an agreement / concession with the host State
- Host State authorities terminated the concession, harassed and forcefully ejected the investors from the free trade zone
- Investors successfully sued the State in international arbitration under the applicable BIT and were awarded almost US\$ 70m (including moral damages)



Case Study Two

Swiss companies v Latin American State

- Investment project undertaken in South America through Swiss companies by individuals mostly of US nationality
- The investors' joint venture was hit by a series of adverse measures taken by the host State, which culminated in its expropriation
- Investors brought investment treaty proceedings against the host State and secured a US\$400m award



Case Study Three

Indorama International Finance Limited v Arab Republic of Egypt, ICSID Case No ARB/11/32

- Investment by investors through a UK company
- Indorama filed an investment treaty claim under the UK-Egypt BIT against Egypt in relation to interferences with Indorama's textile factory
- Case settled on positive terms for the investor with a US\$54m settlement



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Investment Treaty Structuring – Pitfalls to Avoid

1 – Is There an Investment Treaty in Place?

Importance of treaty due diligence – examples

Certain British overseas territories and common offshore jurisdictions for companies have few investment treaties in place

- E.g. Cayman Islands, Bermuda, British Virgin Islands

Is the relevant investment treaty in force? Has it been terminated? Uncertain status of certain investment treaties

- E.g. Oded Besserglik v Republic of Mozambique, ICSID Case No ARB(AF)/14/2
- Mozambique – South Africa BIT (1997) listed as "in force" on ICSID and UNCTAD websites but arbitral tribunal found it had not entered into force

2 – Investment Treaties are all Different

- Investment treaties don't offer the same level of protection
- Requirements for a company to qualify as a protected "investor"
 - Certain BITs refer to the "seat" being located in the home State: e.g. Germany - Morocco BIT (2001);
 - Certain BITs require "real economic activities" in the home State: e.g. Switzerland – Egypt BIT (2010);
 - Switzerland – China BIT (2009)
- "Denial of benefits" clauses
- Different standards of treatment – e.g. Is the "fair and equitable treatment" obligation "qualified"?
- Investor-State arbitration clauses absent or limited to disputes involving amount of compensation

3 – Importance of Timing ("Prevention is Better than Cure")

Arbitral tribunals have recognised that investment treaty / nationality planning is lawful

- E.g. *Aguas del Tunari SA v Republic of Bolivia*, ICSID Case No ARB/02/3 – "not illegal to locate one's operations in a jurisdiction perceived to provide a beneficial regulatory and legal environment in terms"

But problems if dispute existed already at the time of restructuring the investment

- E.g. *Phoenix Action, Ltd v Czech Republic*, ICSID Case No ARB/06/5

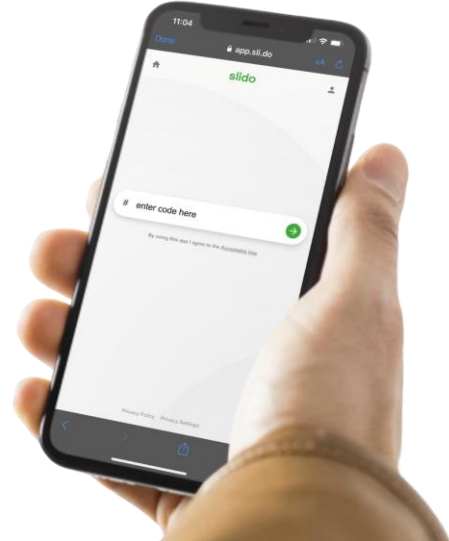
Asian Perspectives and Opportunities for Jersey with Wealth and Business Owners in Asia

- B2025 25% of the global UHNWIs (net worth of over US\$30m) will be from Asia-Pacific
- We are seeing growing concerns of political risks in certain parts of Asia
- Jersey is a well-known and well respected trust jurisdiction by Asian clients
- Reputable Jersey law firms in Asia (in particular Singapore and Hong Kong)
- Manageable time difference between Jersey and Asia
- English common law principles on trusts in Jersey
- Different types of Jersey trusts which can cater for the different needs of clients in Asia
- Jersey has a clear and tested asset protection regime

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Samantha Cohen

**Chief Executive Officer,
The Commonwealth Enterprise and
Investment Council**

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**Positive Solutions:
Resolving Conflict in the
Private Wealth Sector**

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Welcome

Robert Moore,
Director – UK,
Jersey Finance

Positive Solutions: Resolving Conflict in the Private Wealth Sector Panel Session

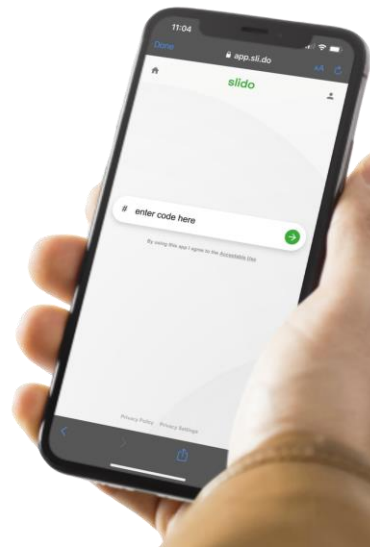
- **Moderator: Russ Haworth**, Family Business Consultant, The Family Business Partnership
- **Emma Jordan**, Partner, Taylor Wessing
- **Sevyn Kalsi**, Senior Counsel, Walkers
- **Mrs. Bimpe Nkontchou**, Founder and Managing Principal, W8 Advisory LLP
- **Nick Phillis**, Executive Coach, Mentor and Trusted Advisor



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**Stability Meets Innovation
in an Evolving
Funds Landscape**

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Elliot Refson,
Head of Funds,
Jersey Finance

Stability Meets Innovation in an Evolving Funds Landscape Panel Session

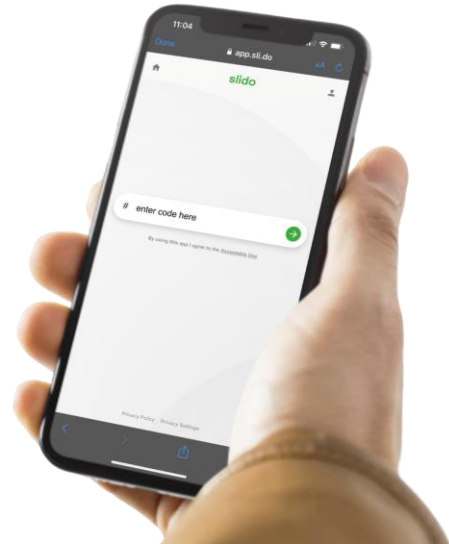
- **Moderator: Tim Morgan**, Chair of the Jersey Funds Association and Partner, Maples Group
- **Brian Howard**, Partner, Trowers & Hamlins
- **Shayne Krige**, Director and Co-Head of Investment Funds & Private Equity Practice (Western Cape), Werksmans Attorneys
- **Barbara Niederkofler**, Partner, Akin Gump Strauss Hauer & Feld LLP
- **Lavanya Raghavan**, Counsel, Ropes & Gray



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The Next 60 Years

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Welcome

Claire Lyons,
Head of Marketing,
Jersey Finance

The Next 60 Years Panel Session

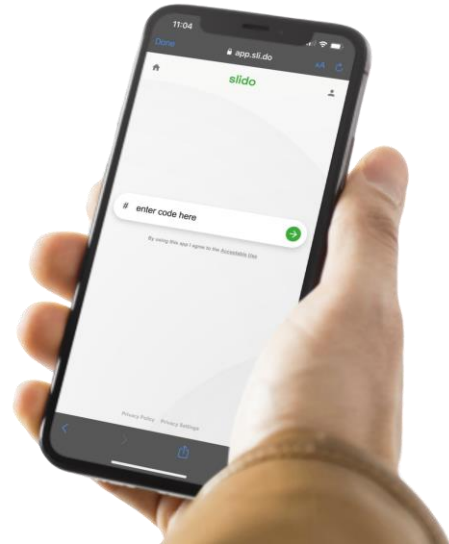
- **Moderator:** Claire Lyons, Head of Marketing, Jersey Finance
- Henry Baye, Chief Executive Officer, Standard Chartered Jersey
- Steve Meiklejohn, Partner, Ogier
- Jackie Videgrain, Chief Risk Officer, VP Risk, Jersey, Butterfield Bank



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