The 23rd Annual Conference

A Barry McCutcheon Conference

# ranscontinental Trusts 2008

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## What will you discover at TransTrusts 2008? IN-DEPTH COVERAGE BY WORLD CLASS SPEAKERS HERE COME THE HEAVYWEIGHTS!

\* Trusts – Trustworthy or Not?

Trust law doesn't get any easier. We've got three of the very best thinkers to help you understand the pressing issues.

Justice David Hayton - Review of Key Trust Issues David Brownbill QC - Practical Problems with Private Trust Co's Christopher McCall QC – Does Your Trust Stand up to Scrutiny?

\* Foundations – Firm or Shaky?

Common law Foundations are the coming thing, and common lawyers need to know how Foundations really work. Share the experience of three acknowledged experts.

Richard Pease - Choosing a Foundation Instead of a Trust Edgar Paltzer – **Setting Up and Running a Foundation** Paul Stibbard – Problems and Possibilities for the Uninitiated

\* Worldwide Review

We give you comprehensive coverage on the latest developments and key jurisdictions

John Rimmer - A Global Review of Case Law/Legislative Developments Nedim Peter Vogt - Switzerland and Trusts - Still a Problematic Nexus? Kenny Foo - Singapore - The Lure of the East

\*The Industry Forecast - Bright or Cloudy?

What's often lacking is the big picture, but not at TransTrusts.

Richard Hay - The Hay International Survey:

**Exploding Opportunities & Emerging Threats** 

Peter Larder - An Industry International Reality Check Monty Raphael - I'm Your Trustee, Can You Trust Me?

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## Special conference features

## 8 BRAND NEW, CUTTING-EDGE **BREAKFAST BRIEFINGS**

Your chance to tap directly into top level expertise while meeting delegates with matching interests

#### UNRIVALLED **NETWORKING OPPORTUNITIES**

- A fantastic opportunity to question industry leaders and get acquainted with other international private client professionals
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Hear from & Debate with *the* Leading **Authorities in the Global Trust Industry** 

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**Richard Pease LENZ & STAEHELIN** 

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**Paul Stibbard BAKER & MCKENZIE LLP** 

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**Kenny Foo WITHERS LLP** 

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**Charlene Storr** THE PRIVATE TRUST CORPORATION LIMITED

**Michael Betley** TRUST CORPORATION OF THE CHANNEL ISLANDS

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(L. Lutterman, Walkers)

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(G. Toy, RBC)



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# 23rd Annual Transcontinental Trusts

# **Breakfast Briefings with the Experts**

Enjoy informal briefings and conversation over coffee and croissants with the experts of your choice.



#### **Monday 23rd June** 0815-0900

#### **Briefing 1**

#### Do's & Don't's for Retiring Trustees

- Retirement or removal the consequences The Protector's obligations - fiduciary or nonfiduciary – the same?
- Documentation indemnity: What's it really
- The beneficiaries trustee obligations fall on sword or challenge?
- The last resort the Court the consequences! **Paul Dougherty**

#### **DOUGHERTY QUINN**

#### Briefing 2

#### **Legislating for Private Trust Companies:** The BVI & Beyond

- PTC issues for families, their advisors and the legislators
- Control points for regulators
- Partnering with a professional trustee: Is this necessary?
- The trustee's duties and obligations: Education, costs, reporting and compliance The checks and balances - meeting the
- requirements of modern trusteeship Looking at the jurisdictions for PTCs - they are
- The new BVI legislation and beyond...

#### **Peter Larder AMS GROUP**

#### Briefing 3 **Arbitration of Trust Disputes**

- The problems revisited
- The power of arbitration
- Drafting out of the difficulties what is
- A statutory solution?
- The Swiss way
- Getting on with it: The US approach

## **David Brownbill QC**

#### XXIV OLD BUILDINGS, LINCOLN'S INN

# Coping With the New UK Tax Rules for

- Foreign Domiciliaries & Residence

  \* The new time tests and graduated charges for foreign domiciliaries
- Closing of existing loopholes
- Opting in and out
- A potpourri of planning possibilities Impact on trusts
- The beginning of the end? Residence of offshore trustees – looming
- Residence of individuals the possibility of an
- objective test **Paul Stibbard**

# **BAKER & MCKENZIE LLP**

#### **Tuesday 24th June** 0815-0900

#### **Choosing a Corporate Asset Holding Vehicle**

- Type, theory and relevance of the available
- Examining risk and practical administration issues
- Practical uses
- Limited liability companies
- Protected cell companies Incorporated cell companies

#### **Paul Christopher**

#### **OZANNES**

#### Michael Betley TRUST CORPORATION OF THE CHANNEL ISLANDS

# Evaluating Your Options - Private Trust Companies, Foundations & SMART Funds

- Understanding the essential differences of the various options
- When is the use of each vehicle appropriate?
- What is the Bahamian solution?
- How does this compare with other jurisdictions?
- Structuring the options to meet client needs Important ancillary considerations

#### **Wendy Warren**

# BAHAMAS FINANCIAL SERVICES BOARD

# Charlene Storr THE PRIVATE TRUST CORPORATION LIMITED

#### Briefing 7

#### **How Trustworthy is Your Trust?**

Christopher will expand on elements of the matters discussed in his presentation on Monday, 23 June.

#### Christopher McCall, QC

#### MAITLAND CHAMBERS, LINCOLN'S INN

#### A Latin American Tour

- OECD economic outlook for Latin America 2008: Will the region adopt the OECD's fiscal
- Mexico 2008 reform: The new "simulation"
- Insurance are clients buying it?
- Venezuela: Helping the clients alarmed by
- Brazil: Planning for the private helicopter set Chile: Dealing with the inheritance tax
- challenges

#### **Richard Hay**

## STIKEMAN ELLIOTT

"[I really enjoyed] The high calibre of speakers and the ability to speak with them'

(R. Ruddy, Cititrust)

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Isle of Man Finance is the Division of the Isle of Man Government Treasury with responsibility for the facilitation and ongoing development of the Isle of Man as a leading international finance centre. The Isle of Man offers a broad range of wealth management services and solutions and is a well respected trust law jurisdiction.

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The BVI's attractiveness as an international finance centre has been enhanced by various modern pieces of legislation, including:

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- business community in mind Private Trust Company regulations, affording clarity and certainty to family trusts and private trustees in terms of licensing exemptions
- Contact:: Sherri Ortiz, Chief Operating Officer, BVI International Finance Centre Tel: +1 284 494 1509, Email: info@bviifc.vg

Guernsey

Guernsey – developing trust. Guernsey is a leading international fiduciary centre with 50 years experience in supplying trust and corporate services.

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of fiduciary risk. We believe in teams of specialists and strong partnerships with market leaders where the combination of specialist skills delivers the optimum result for the client

Registration

0800

Breakfast Briefings: (choose 1 of 4)

Briefing 1 Do's & Don't's for Retiring Trustees

Briefing 2 Legislating for Private Trust Companies: The BVI & Beyond

Briefing 3 **Arbitration of Trust Disputes** 

Day One: Monday 23rd June 2008

Briefing 4 **New UK Tax Rules for Foreign Domiciliaries & Residence** 

Chairman's Welcome and Introduction - Barry McCutcheon 0915

# I. KEY ISSUES FACING

#### **Chair: Richard Pease**

#### The Hayton Review of Current Trust Law Issues

- \* Utilising a foreign trust law for local property – avoiding the pitfalls
- Utility of "no contest" forfeiture clauses in trusts and wills
- \* Hastings-Bass: When does it apply and how does it work?
- \* Should a draftsman exclude the operation of Hastings-Bass? \* How far can trustees, protectors or
- settlors have non-fiduciary powers? \* Extent of personal and proprietary

remedies against innocent wrongful

recipients of trust property His Honour Justice David Hayton THE CARIBBEAN COURT OF JUSTICE

#### **Practical Problems with Private Trust Companies**

- \* Directors' duties: Answerable to whom? And for what?
- \* Is the bark worse than the bite: Dog leg claims and other beneficiary
- \* It's behind you! Lifting the corporate
- \* Directors as dishonest assisters \* Insolvent PTCs and liquidator's
- \* Regulatory nightmares \* PTC shares: The Holy Grail of

#### ownerless assets **David Brownbill QC**

XXIV OLD BUILDINGS, LINCOLN'S INN

1100 Coffee

1130

#### The Bottom Line for a Trust: **Bust or Robust? An Architectural Guide**

- Forget the fixed trust and the discretionary trust – it's third generation time
- \* Trusts with gizmos all singing, all dancing answers to trustees' prayers or cumbersome contraptions that just don't work in practice?
- \* How should a good trust work in practice – taxis, limos or self-drive?
- Mediations and arbitration clauses snares and delusions or safety valves which do no harm and may help: Is Switzerland leading the way forward?
- \* Off stage guidance: Open letters of wishes, confidential warnings or a bit
- \* What should a good settlor leave to help his heirs and what should a good trustee want to strengthen his trust?

#### Christopher McCall QC MAITLAND CHAMBERS, LINCOLN'S INN

#### **Panel Discussion** The morning speakers plus: **Paul Christopher OZANNES**

Luncheon Hosted by: ⊕ Investec

# "Good networking"

(P. Dougherty, DOUGHERTY & ASSOCS)

#### II. FOCUS ON FOUNDATIONS

**Main Conference** 

#### **Chair: Christopher McCall QC**

#### When are Foundations Better than Trusts?

- \* Are Foundations the new vehicle of choice?
- \* Advantages over trusts \* The Brave New World common law

(Jersey, Bahamas, St. Kitts) models -

- how comfortable are they? \* The new Liechtenstein model
- \* The advantages of a free standing \* Possible solution to CFC problems \* Use in connection with Private Trust
- Companies \* Review of case law **Richard Pease**

#### **LENZ & STAEHELIN Setting Up & Running a** 1500

- **Foundation in Practice** \* What are the client's objectives?
- \* Documentation statutes, bye-laws, agreement of donation, transfers instructions, KYC documents
- Defining Founder's position, reserved rights and entitlements Defining beneficiaries' positions and
- their expectations or entitlements, including access to information Control and confidentiality – how far
- The Foundation's board members selecting them and providing for their
- succession or replacement \* Liability issues for Foundation's board Curators – possible tasks and position
- within Foundation structure Getting to grips with a key issue - how will the Foundation run after the Founder dies (or becomes
- incapacitated)? \* How are conflicts resolved?

## **NIEDERER KRAFT & FREY**

Tea

1545

1615

Dr. Edgar Paltzer

# **Foundations:**

- **Problems & Possibilities** \* Range of uses for Stiftungs, Anstalts and other Foundations
- \* Potential impact of forced heirship claims from civil and Islamic law jurisdictions
- Use of hybrid structures \* Islamic Foundations (WAQFS) – a developing vehicle?

Tax related issues

\* The code crossing Founder

## Paul Stibbard **BAKER & MCKENZIE LLP**

#### **Panel Discussion** The afternoon speakers plus: **Wendy Warren**

Close of Day One

#### 1900 LAKE GENEVA EVENING **NETWORKING CRUISE**



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#### **Programme**

Day Two: Tuesday, 24th June 2008

0830 -0900

**Breakfast Briefings:** (choose 1 of 4)

Briefing 5

**Choosing a Corporate Asset Holding Vehicle** 

Briefing 6

**Evaluating Your Options: Private Trust Companies, Foundations & SMART Funds** 

Briefing 7

**How Trustworthy is Your Trust?** 

Briefing 8

**A Latin American Tour** 

0920

Chairman's Welcome and Introduction - Barry McCutcheon

III. SOME INTERNATIONAL PERSPECTIVES
Chair: Richard Hay

#### **Recent Case Law** & Legislative Developments-A Global Review

This presentation will review the recent cases and legislative developments of which international private client practitioners need to be especially aware.

John Rimmer **DICKINSON CRUICKSHANK** 

#### Singapore: 1015 The Safe Harbour for **International Private Clients?**

markets that do \* The only way to incur Singapore

Who wants Singapore trusts? Four

- tax liability (with great effort) \* Using Singapore companies: All
- about Treaty networking Can Singapore handle a fullyfledged trust industry?
- \* Statutory enhancements: Singapore shows that less is more
- \* The Empire strikes back Can Singapore handle international pressure?
- Singapore, New Zealand and Switzerland – mortal combat or mutual cooperation?
- \* Use in connection with Private **Trust Companies**
- \* A worldwide centre for philanthropists?

**Kenny Foo** WITHERS LLP

1100 Coffee

#### **Switzerland & Trusts: Still A Problematic Nexus?**

- The Swiss nexus as an example of civil law nexus problems generally
- \* The varieties of nexus Swiss trustees, Swiss protectors, Swiss assets, Swiss beneficiaries/settlors
- \* Trusts and Swiss law understanding the impact of the **Hague Convention**
- \* Forced heirship how far can it torpedo a trust?
- \* Prenuptial agreements how effective are they really?
- \* Divorce and determined attacks on trust assets
- Matrimonial property law issues
- \* Beware civil law rules against

**Nedim Peter Vogt** BAR & KARRER

#### **Panel Discussion Featuring the Morning Speakers**

1230 Luncheon



(C. Courtois, Merril Lynch)

IV. THE INDUSTRY OVERVIEW **Chair: Barry McCutcheon** 

#### The Hay Private Banking **International Survey: Exploding Opportunities & Emerging Threats**

- The private wealth explosion new markets, new products, new demands
- Getting acquainted with the Mumbai mentality: What the private banking industry needs to know about India
- The new UK foreign domiciliary bombshell: Who will be the industry winners and losers?
- Implications for trustees of the UK Revenue's massive data leak: More settlor scrutiny of trustee data collection and exchange obligations?
- \* Maintaining credibility for the trusts why proactive multi-level lobbying is essential for industry survival
- \* Offshore wars will the supranationals ensnare the US?

**Richard Hay** STIKEMAN ELLIOTT

#### The Industry's Past, Present & **Future: A Global Reality Check**

- The past and future evolution of our industry
- Learning from the past what is the sum total of our experience (and how relevant is it in these rapidly changing times?)
- Private client climate change: The dynamics of our industry understanding the factors and forces that drive and direct us
- \* The leading financial centres what are they doing right? What differentiates them?
- \* The good, the bad, and the ugly: Some home truths
- Strategic planning for the future insurance through education, exploration...and smart dice
- \* How many new tricks can old dogs learn – do they need to learn? Or do the new dogs need to learn the old

**Peter Larder AMS GROUP** 

1545 Теа

#### I'm Your Trustee, 1615 Can You Trust Me?

- To keep your affairs confidential from government, your assets out of the hands of your grasping spouse and/or your grasping Revenue service?
- The fiduciary as gatekeeper is this the ultimate oxymoron?
- The Third EU Money Laundering Directive: Theoretical and practical dilemmas
- Victim of the inconsistencies of cross-border regulation
- Victim of the inconsistencies in implementing regulatory requirements
- \* I'm only a trustee, don't extradite me!
- \* I'm only a trustee, don't confiscate my assets!

Monty Raphael **PETERS & PETERS** 

**Panel Discussion** 1715 Featuring the Afternoon Speakers

1730 Close of Conference

## **Speaker Biographies**

Barry McCutcheon, author of McCutcheon on Inheritance Tax, practiced for many years at the English Tax Bar advising on both domestic and international tax planning.

Justice David Hayton MA, LLB, LLD, Caribbean Court of Justice The Hon Mr Justice David Hayton is a Justice of the Caribbean Court of Justice and an Additional Bencher for Lincoln's Inn. He was formerly a Fellow of Jesus College, Cambridge and then a Professor of Law at King's College, London University on Private International Law and was head of the UK Delegation for XV and XVI sessions of the Hague Conference for the Trusts Convention and the Succession Convention. He is the author of a Report for The Association of Corporate Trustees on Trusts and their Commercial Counterparts in Continental Europe (2001) and is responsible for ten books in the area of trusts, property, succession and tax, including the practitioners' text, Underhill and Hayton: Law of Trusts and Trustees (16th ed 2003). He sat as a part-time judge in London (1984-2000) and in the Bahamas (2000 & 2001). He was a Deputy Chair of the Trust Law Committee (of England & Wales) from its inception in 1994 until 2005.

David Brownbill QC, of XXIV Old Buildings, Lincoln's Inn, is a barrister specialising in Chancery and Revenue matters with a particular emphasis on domestic and offshore trust drafting and administration, international estate planning and litigation involving domestic and offshore trusts. A member of both the STEP International and Technical Committees, he is the founder and editor of the Journal of International Trust and

Christopher McCall QC of Maitland Chambers, is one of the senior silks at the English Chancery Bar, well known for his enthusiasm in making sense of the law of trusts in a way which keeps the sector in good health. He has advised on trusts and their taxation in almost all the main jurisdictions and appeared in the English courts at all levels, including the House of Lords and the Privy Council. He has also appeared in or been involved as an adviser in litigation in the courts of various foreign jurisdictions, including the Cayman Islands, the Isle of Man, Hong Kong and Jersey.

Richard Pease, an English solicitor and Chairman for STEP Worldwide for 2006-2007, is Counsel to the Swiss firm of Lenz & Staehelin where he specialises in international tax and estate planning.

Dr Edgar H Paltzer, LL.M & TEP has worked as attorney-at-law for major law firms in Geneva, New York and Zurich and is a partner in the private client team of the Zurich law firm Niederer Kraft & Frey. He has held positions as an officer of the IBA and STEP. An Academician of the International Academy of Trust and Estate Law, his preferred areas of practice include international wealth transfer planning, trusts, foundations, taxation and private banking.

Paul Stibbard is the head of the London Private Banking Department of Baker & McKenzie LLP, London, and editor of the Private Banking Newsletter. He specialises in advising individuals and trustees on complex cross border tax, trust and succession issues, particularly concerning the validity of existing offshore trust structures with specific reference to the possible rights of forced heirs from civil and Shari'a law jurisdictions.

John Rimmer, a Partner at Dickinson Cruikshank, a leading law firm on the Isle of Man, advises individuals and trust companies on all matters concerning trusts, wills, succession and probate. Chairman of the Manx branch of STEP and a member of ACTAPS, he qualified as a solicitor in England and practised in London before requalifying in the Isle of Man. He is the author of the Isle of Man chapters in Tolley's International Succession Law and Kluwer's International Succession.

Kenny Foo, admitted as an Advocate and Solicitor in Singapore and as an Attorney and Counsellor-at-Law in New York, is based in the Geneva office of Withers LLP where he focuses on the international tax, trust and succession needs of wealthy families around the world. Kenny previously practiced as a tax lawyer in Singapore, Sydney, New York and Zurich.

Nedim Peter Vogt is a partner with Bär & Karrer in Zurich, where he heads the private client team, specialising in international inheritance, probate and trust litigation. He is also a lecturer at the University of Zurich and co-founder and co-editor of the leading Swiss commentary on Swiss private and commercial law.

Richard Hay is the tax partner of the Private Capital Group in the London office of Stikeman Elliott, Canadian and international lawyers. The Group advises on information exchange and financial regulation matters, including the initiatives pursued by OECD, the EU, the FATF and the IMF, and on international estate planning structures, particularly in Latin America, Canada and the Middle East. Richard is co-chairman of the STEP International Committee.

Peter Larder, Managing Director of the AMS Group in the British Virgin Islands, has over 35 years offshore experience and has managed international trust companies in the Cayman Islands, the Isle of Man, Jersey, Switzerland and Bermuda. Founder of STEP in Cayman, and co-founder of the International Trust Companies Association, he has worked on Government Consultative Committees in a number of jurisdictions. Peter brings an experienced and pragmatic approach to offshore planning and the dynamics of families and their estates.

Monty Raphael has been with Peters & Peters, London solicitors, throughout his legal career. Senior Partner until April 30, 2005, he now remains with the firm as a full-time head of Fraud and Regulatory. Regarded as the "doyen" of white collar crime lawyers, and with a particular specialty of civil and criminal fraud, both domestic and international, he has been engaged in all aspects of litigation involving fraud and regulatory issues for more than 40 years. Among the high profile cases he and his firm have been involved with over the last 20 years are Lloyds of London, Guiness, Barlow Clowes, Blue Arrow, BCCI, Maxwell Versailles, Oil for Food and Cash for Honours

Paul Christopher is a partner in the Guernsey Corporate Department of Ozannes where he specializes in investment, finance, and corporate work, including advising on the establishment of offshore investment funds of all kinds and on the regulatory and commercial issues in relation to them. He also has an established trust practice and acts for a number of the leading Guernsey trust institutions.

Wendy Warren Wendy Warren, a chartered accountant, began her professional career in 1988 with one of the big four accountancy firms and subsequently held senior positions in a global private banking institution and a niche provider of fund services. She is the second Chief Executive Officer and Executive Director of the Bahamas Financial Services Board.

Paul Dougherty, having originally qualified as a solicitor in Northern Ireland, subsequently practised with W.S.Walker in the Caymans for 8 years. Based in the Isle of Man since 1989 where he qualified as a Manx advocate, he is now senior partner of *Dougherty Quinn*, a full service law firm where he specialises on

Michael Betley the founder and Managing Director of the Trust Corporation of the Channel Islands, previously worked in London and Guernsey as a private client partner of firm of solicitors . He has acted as director of a number of regulated and un-regulated businesses and assists wealthy families developing wealth management and estate planning strategies.

Charlene Storr a certified public accountant, at present serves as a Director of The Private Trust Corporation Limited (PTC). Charlene, who has over nine years experience in offshore corporate and trust administration with PTC and Deloitte & Touche in the Bahamas and Jersey, is also a director of the Bahamas Financial Services Board.

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