

Where east meets west

WILLIAM AHERN, STEP COUNCIL MEMBER FOR HONG KONG, SPEAKS TO HANNAH DOWNIE ABOUT THE BRANCH'S STRONG PUBLIC POLICY RECORD AND THE JURISDICTION'S BRIGHT PROSPECTS

At the end of 2013, Hong Kong introduced significant changes to its trust law.¹ Among other things, the amendments created a statutory duty of care similar to that of the UK and established a beneficiary's right to remove trustees without resort to the courts. STEP Hong Kong played a significant role in the drafting and eventual enactment of the amendments.

Two years on, the effects of the amendments can be seen. 'Hong Kong is now a more desirable jurisdiction for families establishing trusts. The changes got rid of the law against perpetuities, made the duty of care more certain and allowed settlors to reserve investment powers, which is interesting particularly for business people putting their business assets into trust. A lot of the wealth in Hong Kong is still held in family businesses,' explains William Ahern TEP, Hong Kong representative on STEP Council.

THE ALLURE OF EDUCATION

William has over 25 years' experience in Hong Kong and elsewhere in Asia helping families deal with complex tax, succession and legacy issues. He established Family Capital Conservation Ltd in June 2008 and provides independent and strategic advice to families and intermediaries on complex tax, succession and legacy planning.

William first heard about STEP in 2000 and he became one of the first members of the Hong Kong branch. It is the professional development and networking opportunities offered by the organisation that he most values. 'STEP has helped me on the professional development side, not only through the courses and seminars but also



through the many fantastic contacts I have made. My work has improved through STEP. When I'm dealing with international problems, I now have very a good idea of who to go to in what jurisdiction,' says William.

STEP Hong Kong is now the ninth-largest STEP branch and, while it has a steadily growing membership, the committee is still looking to make better inroads into particular professional sectors, including legal and accountancy. 'There are plans being developed to increase our reach into those two groups of members. I think the breadth and depth of our education offering, and the wider STEP offering, will help us in all those constituencies,' says William.

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Over the course of 14 years, STEP Hong Kong has built a strong track record of public policy engagement. Its input into the 2013 trust law amendments was a high point: 'STEP Hong Kong is becoming more influential in government affairs and we are now being asked to participate in all sorts of policy decisions,' William explains.

The branch's success is also down to an active events programme. In addition to regular local events, the annual STEP Asia Conference rotates between Hong Kong and Singapore each year. William has been involved in all five of the Hong Kong-hosted conferences, primarily helping to write the programme and invite speakers. It is a very popular event, as William elaborates: 'People from all around the world attend the STEP Asia Conference. Last time, we had more people from abroad than locally, representing 26 jurisdictions. The conference draws a sizeable group, which helps attract good speakers.'

William's involvement in STEP has grown over the years – something that he attributes to the encouragement of Michael Cadesky TEP (former worldwide STEP Chair) and Nick Jacob TEP (STEP Council and Board member), but that can also perhaps be put down to his enthusiasm. 'I'm one of those rather sad, eager volunteer types who, if asked to do something, will normally say: "Okay." But, more than that, I really like the STEP people; I just really like STEP.'

William is also involved with STEP at a central level: he is on STEP Council and is a member of the newly formed STEP International Client Special Interest Group (SIG). The SIG was set up to expand STEP's offering into civil-law countries, including those in Europe, LATAM, Shari'a-influenced jurisdictions and the Confucian societies.

William believes the SIG will help STEP strengthen ties in these jurisdictions: ‘The STEP International Client SIG replaced the old International Committee. David Russell has a big role in that and it’s going to be a great thing, as it will help cement the member offer and be the means by which people across borders work and engage in a constructive way, both from a professional and business development standpoint.’

OPPORTUNITIES IN HONG KONG

It is not only the 2013 trust law amendment that has helped bring business to Hong Kong. Practitioners are also seeing an increasing interest in estate planning among Chinese clients: ‘A lot of planning goes into the holding of shares that come out of IPOs. But we are seeing substantial increases in Chinese clients both investing abroad and wanting to preserve their assets away from China. We are seeing a lot of interest in proper estate planning for those non-Chinese assets, coupled with an increase in the use of Chinese trusts.’²

Moreover, William predicts an increase in family law work for Hong Kong lawyers as the jurisdiction becomes more desirable as a forum for Chinese divorce cases: ‘I think [Hong Kong] is probably going to be the most popular forum for Chinese divorces,

be problematic under the Chinese GAAR. There will no doubt be a lot of rethinking of existing and new investments,’ says William.

But, with both Shanghai and Hong Kong being tipped to become the ‘centre’ of Chinese interest, is William concerned that Hong Kong will lose out? ‘It has always been Shanghai versus Hong Kong,’ he says, ‘but China is plenty big enough to have more than just Shanghai or Hong Kong. China needs both financial centres and probably a few more as well.’

What gives Hong Kong the edge over its competition is its adherence to the western understanding of the rule of law. William explains: ‘In Hong Kong, we have a very strong rule of law in the western tradition. China can’t copy that and one thing I hope the Chinese government understands and cherishes is the fact that it has a region where a western-style rule of law exists, because it is incredibly important for people wanting to invest and live in places that are part of China.’

THE FUTURE

William believes Hong Kong’s prosperity will be secured when Chinese clients have a change in attitude. ‘I think the real future for Hong Kong is when the Chinese mainlanders accept transparency from

organisation to evolve with its membership: ‘STEP is getting very big – we now have 20,000 members. It’s still a bit Eurocentric, and I think the challenge is to reflect the diversity of the membership in the way the society is run.’ This, William admits, is easier said than done.

The second challenge, and perhaps the bigger of the two from William’s point of view, is for the society to strike the right tone in public policy affairs. ‘A big challenge for STEP is to find the right public policy voice to try and protect the interests of our clients, particularly with respect to the privacy of exchanged tax information.’

Those are the challenges; the priorities were articulated by STEP’s worldwide Chair, Edward Buckland, in the February issue of the *STEP Journal*,⁴ and are echoed by William now: ‘Despite its important public policy role, STEP has to prioritise member services; that’s got to be the main focus.’

GET INVOLVED

Volunteer support is crucial to STEP, but it can also offer real benefits to those who get involved, such as improving your skillset, boosting your career, having a say in STEP’s strategic direction and influencing policy. There are so many ways to get involved – at a local, national or international level. From joining your local branch committee to taking part in regional or international working groups and committees, there are opportunities for everyone.

The best way to get involved is to speak to your local branch chair (see www.step.org/branches-chapters) or contact the STEP office (www.step.org/contact).

More information, including interviews with branch committee, Council and Board members, is available at www.step.org/get-involved

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particularly because of the Hong Kong courts’ tendency to follow the House of Lords decision in *White v White*.³ William believes the Hong Kong courts’ inclination to follow the UK courts is already resulting in a significant number of prenuptial and postnuptial agreements.

Initiatives from the Chinese government will also have a significant effect on Hong Kong. Last year, China announced that it was introducing a general anti-avoidance rule (GAAR) and new penalties, and in January the government announced a new policy against cross-border corporate tax planning. ‘A lot of people have structured their investments into China through Hong Kong. I think in a way it’s going to

the tax point of view and a source-of-funds point of view. Then Hong Kong is going to be a marvellous place in which to have part of their wealth looked after.’ William also believes the allure of offshore structures for Hong Kong families will diminish with the advent of the OECD’s Common Reporting Standard: ‘With the cost of establishing and maintaining offshore structures rising at the same time that confidentiality of these structures is being lost, Hong Kong families will look at local structures with a more welcome eye. I believe this trend will be replicated around the world.’

With regard to STEP’s future, William believes there are a few challenges that need to be overcome. The first is for the

- 1 William Ahern, ‘Reform of trust law’, *Trust Quarterly Review*, volume 11, issue 4, available at www.step.org/reform-trust-law
- 2 Hao Wang, ‘The year of the trust’, *STEP Journal*, volume 23, issue 1, available at www.step.org/year-trust
- 3 [2000] 2 FLR 981
- 4 Volume 23, issue 1, page 24

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