

BCLP's Ruben Sinha on Refining the Art of Asset Protection for Asia's Uber-wealthy

Ruben Sinha is a Senior Associate in the Family Asset Protection team at the international law firm Bryan Cave Leighton Paisner (BCLP). A Yorkshireman by birth but global citizen by inclination, Sinha has some well-articulated views on the world of family asset protection, something he believes UHNW families have paid insufficient attention to while often concentrating on other areas such as investment growth, tax mitigation and succession planning. He moved to the London office of BCLP in January, soon before lockdown, returning from a five-year stint in Hong Kong. In 2016 he helped launch and develop the Family Asset Protection team, which is now a key part of the firm's market-leading international Private Wealth group. He met with Hubbis recently by video link to offer his insights into what he and his team offer, and why asset protection is now, more than ever, so important to wealthy families when hundreds of millions or billions are at stake.

Sinha opens the discussion by noting that BCLP's Family Asset Protection team was the first of its kind to be launched in any major City or international law firm for decades. "Since we began from a standing start," he reports, "we have gone from strength to strength and are fast becoming the 'go-to' choice for many wealthy families. The team has built a fully integrated international practice, and been involved in a number of leading and 'cutting edge' family and asset protection cases across both London and Hong Kong."

Sinha focuses on advising UHNW clients, professional trustees, family offices and private banks in complex international cases. Over the last few years, he has been involved in a number of high profile and reported matters, some of which have shaped the law in this area.

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"My perspective," he explains, "is that while in Asia there has been some progress in the sphere of estate and succession planning, there has not been sufficient emphasis or focus on asset protection. The potential risks and financial impact that family litigation and divorce can have on a family's wealth can be disastrous. In England and Hong Kong, the courts look at all financial resources, however they are held and wherever they are. Typically, all of the wealth built up

during a marriage will be shared and often divided equally. But it does not stop there. Unlike many other countries around the world, in Hong Kong and England what the lawyers call 'non-matrimonial' wealth, so in other words inherited wealth, gifted wealth, money that was brought into the marriage, money that was made post-separation as well can, in certain circumstances, be divided. None of it is automatically ring-fenced."

Sinha has developed a niche with a focus on work at the 'intersection' of the traditional family and chancery spheres, often advising on matters involving overlapping matrimonial and private client issues. In his view, "this is an area where there is a big gap in both the London and Hong Kong markets" and, as he says, "wealthy international families are now looking for

seamless private client and family advice from lawyers who get both sides of that coin". He specialises in asset protection and 'divorce proofing' structures to ensure wealth is preserved in the event of a family dispute. On the litigation front, he acts in complex high-value cross-border divorces. He has a particular interest in cases involving contentious trusts and these days acts as much for offshore trustees caught up in the divorce crossfire as he does warring spouses.

Divorce capitals of the world

Having previously worked in both London and Hong Kong, most of his work is of an international nature, and he has particular experience advising clients with connections to and interests in Asia and the US. Although now in London and working closely with Elizabeth Hicks who heads up the team there, Sinha also continues to work with the firm's Global Head of Family Asset Protection in Hong Kong, Marcus Dearle, advising clients across Asia.

"Both London and Hong Kong have witnessed some astronomical financial awards over the last few years," he points out. "For the international super-rich, divorce has become a serious financial issue and one that cannot be overlooked."

He reports that more and more of the claimant spouses of wealthy international families, perhaps with multiple homes across Asia, Europe, and the US will start divorce proceedings in the financially most advantageous jurisdiction, in other words England or Hong Kong. This approach – known as 'forum shopping' – has become increasingly common. "These jurisdictions are financially far more generous than pretty much any other jurisdiction in the world," he states, and "that is not set to change anytime soon."

Open season

This, he says, often results in a race, as soon as a relationship breaks down, to file in the jurisdiction where a party thinks they are going to end up with the better deal. This, in turn, has seen Hong Kong become the divorce capital of Asia and London now



RUBEN SINHA

Bryan Cave Leighton Paisner

widely reported as the divorce capital of the world. “So, we often see and advise families who might not even be permanently based in either jurisdiction, but which might have some sort of connection to either, a home, or a business, perhaps.”

The corollary of all this is that in the context of wider wealth planning and family governance, Sinha argues families must consider the serious financial risks of divorce.

Pre- and post-nuptial agreements

He comments that there is a perceived, but incorrect, view that these types of agreements are always one-sided, but actually, if they are drafted properly, they will make proper provision for the other party. “In England and Hong Kong,” he notes, “you want to avoid a situation where the agreement leaves all of the wealth with one side or the other, so making proper provision for the other party and ensuring the claimant spouse’s needs are met are crucial. The agreement, broadly speaking, must be fair. If

Getting Personal with Ruben Sinha

“Being involved since we set up the Family Asset Protection practice in 2016 has been a real highlight of my career so far,” he enthuses. “Helping get the practice to where we are today in just a few years has been incredibly rewarding. We have been able to pull together a great team at all levels and things are very much on the up.”

The Family Asset Protection team operates as part of the firm’s market leading international Private Wealth group, which focuses on advising ultra-high net worth international families on tax, trusts, and estate planning. “Our team is very much integrated into our worldwide practice,” he explains, “as we naturally deal with families spread across the globe and with wealth spread across many jurisdictions. I have a particular focus on those families and clients with interests in China, Hong Kong and Singapore and regularly advise wealthy Asian families with connections to the UK. I have also built a considerable book of experience in cases involving US and European (in particular Swiss) clients and issues and I’m regularly dealing with trust related cases involving the major offshore centres.”

Sinha has been recommended in the Private Client Global Elite ‘Ones to Watch’, Citywealth’s Top 100 Future Leaders, Citywealth’s Leaders List and Legal 500. He has also written for a number of industry-leading journals and publications and has spoken at international conferences. On a personal note, “Rugby has always been a big part of my life,” he reports, “so I am really hoping it will resume and I’ll be back at Twickenham watching England before too long. My fiancé Liza and I also loved to travel in Asia, and now back in London will certainly miss the Asian cuisine and colourful life out there. Being able to just hop on a plane so easily from Hong Kong to the exotic corners of Southeast Asia was great and we both miss that, but it is really great to be back in London.”

not, it is unlikely to be given much weight by a court.”

As an aside, he comments that there is some debate as to whether these agreements arguably make for more stable marriages. “We know from the statistics that sadly divorce rates remain high these days,”

he remarks, “so having an open dialogue around who has got what and how assets will be divided in the event something goes wrong is well worthwhile. It might even help the marriage, but at the very least these agreements do achieve a degree of transparency, certainty and security.”

He reports that post-nuptial agreements are often coming up in the context of international families who are thinking about what needs to be done, not just again from a tax perspective but from an asset protection perspective when they are planning to relocate. "Post-nups are an equally important part of pre-arrival planning for those looking to establish or strengthen connections with England or Hong Kong."

He explains that there are also families, perhaps second generation, coming to earlier or unexpected wealth. "If they are already married, there is often the discussion around what protection can be put in place and will a post-nup be appropriate in those situations," he reports. "There are also liquidity events, for example, listing or selling a business, and these topics are also very pertinent to Asia given the nature and speed of private wealth creation taking place there."

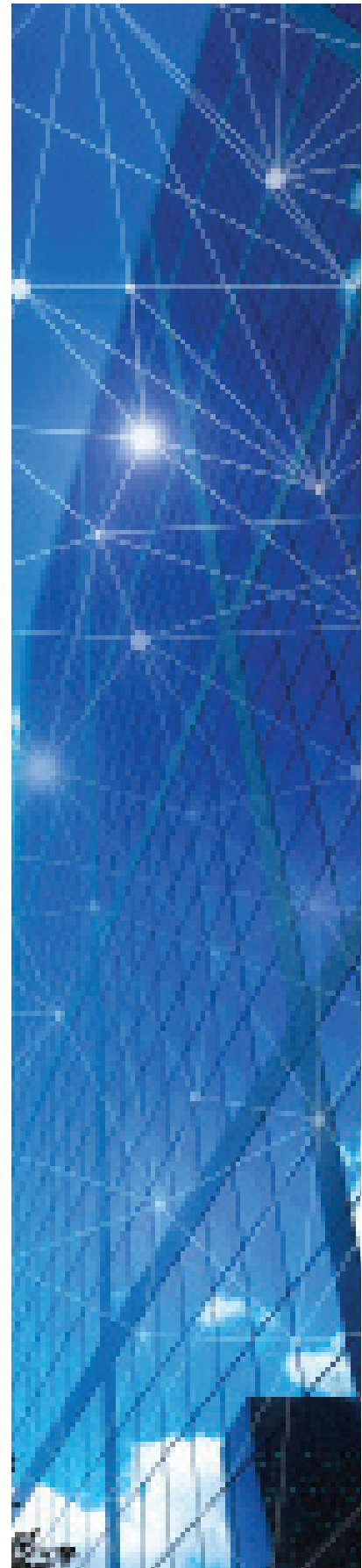
"The international angles are equally important," he explains. "I'm currently spending a lot of time working with foreign experts to ensure English and Hong Kong pre and post-nups are prepared in such a way so as to ensure they would be upheld and enforced by a foreign court in the event a divorce proceeds in a different jurisdiction." Similarly, "those with existing foreign pre- or post-nups should not assume those agreements will automatically bind the English or Hong Kong court in the event of a divorce there. They won't and those families should be obtaining specialist advice on how those agreements may be treated and what other steps should be taken to ensure they are properly protected."

Can you fully trust your trusts?

He also addresses the issue of whether trust held assets are automatically ring-fenced. "It is actually a myth that assets held in trusts are automatically ring-fenced and protected from claims from divorce," he reports. "That is not the case. In fact, it depends on a number of factors. Various issues need to be considered at the start and through the life of the structure to make them as robust as possible, for example, in the case a beneficiary divorces. These structures need constant stress testing. It is as much about how they are run, operated and managed during a marriage."

Sinha offers more insight into why trusts are not as safe as might be imagined. "A court can treat a trust's assets as a resource, so it can make orders against the divorcing beneficiary on the basis he or she will receive assets from the trust in the future, particularly if they have in the past," he reports. "Alternatively, a court can vary a trust, so it can make orders varying the trust structure, ordering payments out, creating sub-trusts or adding and removing beneficiaries. These are quite draconian orders many families are unaware of and surprised by when things go wrong."

Accordingly, the simple discretionary trusts so often favoured will, in essence, leave the assets and beneficiaries exposed in many instances. "We need to specifically look at trust structuring from an asset protection perspective and ensure these vehicles are as robust as possible in the event a marriage breaks down," he advises.





This scrutiny and caution should also extend to corporate structuring. “We need to look at how corporate structures and the shareholders and directors can be protected too,” he states. “There is a lot of work that can be done to mitigate any weaknesses, spot potential fault lines and protect corporate structures from the divorce net.”

The wealth management community at large, he argues, should be tuned in to these issues, as private bankers, wealth managers, professional trustees, family offices, and others need to have conversations not only on growing wealth, but also formulating plans for protecting it. Not just from market vacillations and the tax man, but from other family members. “Too often, families will assume they are immune from the potential financial risks on divorce in Hong Kong or England, but the short answer is it is not that difficult to establish

protection and the impact a divorce could have need to be taking place when times are good.”

Sinha delves somewhat into the practicalities, noting that these things can’t be done on the back of a postage stamp in five minutes. “It requires a lot of work,” he explains, “it’s about meticulous detail, and considering issues from all angles.” Certainly with prenups, “discussions need to start at least six months before a wedding and earlier if there are particularly complex or international issues involved. Ideally, we want the agreement signed at least 28 days before the wedding.” He goes on, “too often things are done on the cheap. When substantial wealth is involved this is fraught with risk and a false economy. The law in these areas is very much in a state of flux and has become increasingly complex and nuanced. As a result, this type of asset protection work has become highly specialised. In many ways, for families, these solutions are a form of insurance policy - it may never

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jurisdiction in these countries. So, thinking and acting on these matters should be integral to any viable wealth planning strategy or family governance charter.”

A stitch in time...

Timing is also a key issue. “If something has already gone wrong in the marriage, it is already too late to think about these things,” he warns. “I often say that the potentially sensitive and tricky discussions around asset

have to pay out but, if it does, you want to make sure you have a good policy in place. Quality advice can save millions if things do go wrong later down the line.”

And in terms of ‘selling’ the concept to a financially weaker future spouse, he explains that of course a pre- or post-nup may be painted and drafted to protect the source of the wealth but also so there is appropriate provision in place to ensure a potential claimant’s future needs are properly met. As he

explains, “it’s about sensible and responsible asset protection.”

“Without careful consideration of all these issues,” he warns, “a wealthy family might end up with several years of litigation and immense financial and emotional stress.”

Sinha’s priorities

“We have been fortunate and remained very busy across both London and Hong Kong during the lockdown,” he mentions. “My key priority,” he explains, “is to leverage this global hiatus caused by the pandemic to help families focus on these issues and begin to address them. It is a dreadful situation worldwide, but good use can be made of

the lockdown time for families to assess priorities, risks, plans and so forth. In fact, we know that the growth coming through in our practice is testament to the growing importance of this whole sphere of activity, as clients gradually come around to thinking about and then addressing the risks these issues pose and then seek out appropriate advice from the experts.”

He draws the discussion to a close with an aside that the lockdown is also creating a difficult situation for those parties who reached divorce settlements some years before.

“It is a reality that the current weakness in the financial markets and liquidity drying up in some

sectors, as well as the dramatic impact on businesses and cashflows are creating issues around a party’s ability to comply with an order. If asset values were central to a settlement and have plummeted, we see clients coming back and a lot of satellite litigation, basically arguing that they cannot afford to comply with the order.”

Sinha is clearly energised by his field of specialisation. “I enjoy seeing and understanding what makes people tick,” he says on closing the call. “It is about much more than legal documents and litigation. It is about life, marriage, family and the impact substantial wealth can have on all of that. It’s a fascinating area to be involved in.” ■

