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## Challenges Increasing for Wealthy Chinese Individuals Using Offshore Trusts

**Chinese ultra-high-net-worth individuals are increasingly relying on offshore trusts, but recent cross-border cases show courts and creditors are increasingly scrutinizing these structures, especially when settlors appear to retain control. With rising regulatory scrutiny and evolving laws in China, maintaining strong independent governance and carefully structured protections is essential to keep these trusts effective and shield family wealth.**

As Chinese ultra-high-net-worth individuals (UHNWIs) increasingly use offshore trust structures in jurisdictions such as the Cayman Islands, the BVI, Jersey, and Guernsey for wealth preservation and succession planning, these arrangements are increasingly exposed to creditor claims. Aggressive creditors may challenge the validity or enforceability of such trusts, or target settlors, family members, or other stakeholders in disputes over the trust's creation or asset transfers, in efforts to access underlying assets.

Recent cases show that offshore trust structures tied to Chinese UHNWIs are coming under increased scrutiny across jurisdictions. In the Zhang Lan / La Dolce Vita dispute— arising from efforts to recover assets linked to the founder of a high-end restaurant group following its debt default—courts in Singapore, Hong Kong, and the BVI granted wide-ranging relief, including freezing injunctions and receivership orders, and made findings of beneficial ownership in relation to assets nominally held in trust. This demonstrates an increasing judicial readiness to look beyond formal trust documentation, where settlors retain effective control over assets and exercise that control for their own purposes.

At the same time, rising wealth in mainland China and Hong Kong appears to be driving increased interest in offshore trusts for succession and diversification purposes, heightening the potential for disputes among creditors, regulators, and family members. With new

measures, such as expanded liability for *de facto* controllers under China's amended Company Law (effective July 2024) and Hong Kong's enhanced disclosure and AML requirements, these structures are becoming more susceptible to legal and regulatory challenge.

The cross-border nature of these trusts compounds risk. A trust's governing law, often that of an offshore common-law jurisdiction, may conflict with the laws that govern creditor, enforcement, or family claims in mainland China or elsewhere. Assets involving onshore components, even indirectly, may face claims in multiple jurisdictions. These dynamics create uncertainty for settlors seeking to protect wealth and for trustees fulfilling that mandate.

Positioning offshore trusts to withstand these challenges requires foresight and strategies that reinforce their structure and help prevent erosion of their intended purpose.

- **Ensure trustees are active and responsive.** Independent trustees play a key role in defending trust assets and protecting beneficiaries' interests. An engaged trustee ensures obligations are met and rights represented. Settlers, protectors, and beneficiaries should assess a trustee's approach early on. If a trustee proves inactive or uncooperative, prompt steps, through negotiation or court intervention, may be needed to enforce their duties or appoint a replacement.
- **Keep oversight separate from control and administration.** While settlors may retain oversight powers, excessive control can increase the risk of challenges. Courts may "look through" formalities and consider the settlor as the effective owner. Appointing an independent protector with authority to nominate or remove trustees or approve key decisions helps preserve independence and trust validity.
- **Strengthen trust documentation.** Trust instruments should include strong defensive mechanisms, such as broad trustee powers to handle external claims, indemnities for trustees acting in the trust's interests, and clear dispute-resolution clauses. While the settlor cannot amend the trust post-settlement, periodic stress testing, such as reviewing how the structure would perform under potential disputes, creditor claims, or regulatory scrutiny, can help identify and mitigate vulnerabilities.
- **Select enforcement-resistant jurisdictions.** Even trusts established in popular offshore jurisdictions can be susceptible to creditor enforcement under anti-avoidance laws. Some jurisdictions offer stronger protection through shorter limitation periods or higher proof thresholds. Understanding these differences helps reduce exposure to aggressive or unfounded claims.

Effective protection for Chinese UHNWIs depends on proactive planning and disciplined management. Ensuring independent trustee accountability, separating oversight from administration, and managing jurisdictional risk can create resilient offshore structures that preserve family wealth and withstand cross-border challenges.

## About Kobre & Kim

Kobre & Kim is a global law firm focusing on cross-border disputes and investigations, often involving fraud and misconduct.

To preserve the assets, liberty and reputation of ultra-high-net-worth individuals with global business interests, our team:

- Provides offensive and defensive cross-border litigation and crisis management strategies in court and out of court;
- Formulates and executes cross-border strategies across global jurisdictions, including the Middle East, Latin America, the BVI, Cayman Islands, Cyprus, Delaware, Hong Kong, Israel, Korea, New York, and the PRC;
- Takes a multidimensional approach to UHNWI-focused dispute investigations to resolve business disputes and regulatory investigations, trace and recover misappropriated funds, and defend against asset attacks.