

Thank you for your note and the letter from Chris Edwards. What he says makes good sense, we simply need to put it in the balance with other circumstances which you are aware of. I am copying Brenda with this note so she can make insurers aware of the present position and our thinking, and also David so he can keep our communication records on this issue up to date.

I was approached recently by Peter Macgill (PM), who is Andy Macgill's (AM) brother and an accountant. PM told me about the Kenya connection with the Kamanis and how they had taken advantage of Ian and AM to set up and operate the no. 2 account. He explained that a settlement had been reached with HMRC that was going to cost AM a lot of money (he later mentioned one and a half to two million pounds plus interest and penalties). As I understand it he is finalising the settlement this week. PM's position is that the tax is payable because the structure was badly conceived based on poor advice primarily from Ian Burns. It was then badly managed, primarily by Bachmanns but subsequently by Investec, to leave AM with the consequent tax bills. PM's initial position was that he accepted Investec was not the most guilty party and whilst AM had the intention to bring proceedings against Bachmanns and Ian Burns Investec need not be part of those proceedings (and the consequent potential reputational damage). Investec needed to transfer out all of the assets as requested and make a payment of around £200k by way of reimbursement of accounting fees charged and paid, then cooperate in the proposed proceedings if we were to avoid becoming embroiled in the litigation. In PM's view Investec did not keep proper accounting records and did not demonstrate effective understanding of what was happening in the structure, which has compounded the problem which already existed with Bachmanns.

Our reaction has been to deny liability - and to express doubts as to the merits of the suggested action. I have however also continued without prejudice discussions with PM with a view to trying to disassociate ourselves from this structure/client at the first available opportunity. It is not the only possible course. The other, as Chris Edwards correctly points out, is to hold on to assets in the belief that they may provide us with a source of financial redress in the event that the government of Kenya brings a claim. Obviously that course has potential consequences such as

As trustees we are obliged to consider the interests of our beneficiaries (however distasteful they may be) rather than our own interests.

AM may make good on his threat of litigation - when we would have to justify our refusal to transfer assets

PM has prepared accounts for all the entities in the group himself. He has also negotiated the HMRC settlement. He will give us no documents and no confirmations regarding our possible tax liabilities otherwise

than as part of a negotiated settlement. It therefore becomes very difficult to manage the rump of the structure without possible continuing liabilities.

Being pragmatic an involvement in avoidable litigation will be more expensive very quickly than the possible solution now available to us.

It could be argued our principal risk here is reputational - if it does come into the public domain a past completely severed relationship where we have done the right thing with regard to reporting etc and bringing it to an end would seem less unattractive than a continuing relationship with this client.

Given that the monies moving through the number 2 account were not received for the account of LBA in its own right I suspect any constructive trust issues and the ability to recover any financial loss from funds or assets held will be far from straightforward.

There are many other considerations but perhaps the above points give an adequate flavour for the moment.

The discussions I have had with PM (which have not been concluded in any way) would, if consummated, probably take us in the following direction

AM would be appointed the only beneficiary and all assets be transferred to him, and only him. The assets are property and cash of about £70k. PM has specifically requested a prompt transfer of the cash as he believes it will help him in his penalty negotiation with HMRC.

AM (and others as or if appropriate) will provide Investec with full releases of any claims there may be together with appropriate indemnities.

AM will bring his proceedings against Bachmanns only.

Investec will refund fees charged to the structure of between £50k and £75k

Investec will receive from HMRC a confirmation that none of the entities administered by it or their officers have any tax liability in the UK.

Before any arrangement could be finalised there are a number of other aspects to be explored. For example PM alleges that Ian Burns provided tax advice in relation to the structure whilst at Bachmanns and then continued to do so at Investec. I have asked for copies of the correspondence which PM alleges establishes this fact. Equally we will want and need comprehensive legal advice with regard to the scope of any releases and indemnities needed to achieve the desired separation on satisfactory terms. At the end of the day that discussion may scupper any compromise but we will find out more detail if we go down this route.

Given the above my personal preference is to complete a negotiation of our way out of this relationship once and for all, and with all due speed. The sum payable (however irksome) would be met by the Guernsey business alone by way of reimbursement of accounting fees raised.

Brenda, I am obviously happy to provide any more information that insurers may require. Subject to that perhaps you would update them with our present thinking (we had never contemplated a possible claim by AM for obvious reasons) and see if insurers are agreeable to us managing the exit of this client. I would suggest we ask Ozannes to assist us, at our own expense, if insurers are prepared to agree to the proposed action.

Many thanks

Robert