

# Look back, face forward: 25 years of offshore in Asia

Frances Woo, group chairman and managing partner (Hong Kong) at Appleby, looks at the past and future of offshore



**Twenty-five years ago, when Appleby** opened an office in Hong Kong in 1990, it was one of the first offshore law firms to establish a physical presence in Asia, delivering offshore legal services on the ground in the Asian timezone. We have seen first-hand the market-shaping events that have defined our clients' requirements for offshore advice and services, and we have been on the frontline as Hong Kong, and Asia, has emerged as one of the world's most vibrant economies.

We have witnessed the transitional period right after Tiananmen Square running up

often on a rotating basis every few years, causing truncated client relationships and disparate local knowledge. The majority of complex expertise on the ground came from foreign lawyers, with most of the meetings conducted in English. At the same time, the Chinese market was barely starting to open up, and it was not yet recognised as a key developing economy for law firms. Indeed, the concept of private law firms in China was just in its infancy from the mid-1990s. South-East Asia, including Singapore, was also an emerging market.

vehicles, particularly in relation to public and/or cross-border transactions, funds and succession planning. As Asia has increased in prominence globally, there has been an increase in investment, both inbound and outbound. Asian growth is highly dependent on international cross-border investment and deal flow, and requires efficient access to capital. Offshore IFCs help to facilitate and intermediate and provide a familiar, comfortable and stable platform for investors moving into an often opaque and fast-moving regulatory environment in the emerging Asian nation. In the past decade, pan-Asian deals (not necessarily involving a developed country) have also risen in both number and value. These deals too are often facilitated through the use of offshore IFCs given the otherwise complex laws and regulations in place among the differing Asian countries.

Asia has proved highly receptive to innovative structures and jurisdictions, and this has helped enhance the efficiency of doing business in the region.

China is a much more significant market for us since the sovereignty of Hong Kong changed in 1997. Hong Kong acts as an international conduit for foreign investment; is the primary offshore capital-raising centre; and enjoys an active and co-operative relationship with China. Over the years, offshore firms have had to develop a broader understanding and appreciation of the financial, political, legal and social landscape in China, and find ways to adapt to the changing needs and demands of clients, some of whom are no longer relying solely on Hong Kong and Singapore as key business centres. In tandem, offshore firms have also had to recruit more talent aligned to meeting those needs, especially possessing Chinese language skills and a deep understanding of the culture.

Clients' expectations have risen dramatically, and they are now looking for a much greater suite of options. Often clients require advice on more than one offshore jurisdiction, and they want that

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to the handover, the opening up of the Chinese market, the Asian financial crisis right after the handover, SARS, the global financial crisis etc.

Appleby started in Hong Kong with just a couple of lawyers in a very small office, with fax and telephone providing the only means of communication. It was not an easy time: there were significant cultural differences to get to grips with, as Hong Kong itself was undergoing a period of great uncertainty following the Sino-British Joint Declaration in 1984 that determined the island's return of sovereignty to China in 1997.

Back then, Jardine Matheson, the British trading conglomerate, had taken the decision to relocate its legal domicile from Hong Kong to Bermuda so as to maintain its governance under a British legal system, and in so doing had raised the awareness of businesses in the region about offshore jurisdictions, something that our firm's establishment in 1990 sought to capitalise on.

The legal and business environment in Asia was very different 25 years ago. Asia was still under significant development, and from a legal perspective that meant many international firms relied on the secondment of partners from developed countries (primarily the UK and the US),

Over time, the focus in Hong Kong shifted from speaking English to Cantonese in meetings, and today, increasingly to Mandarin. Hong Kong has risen in prominence as an international financial centre (IFC), and the use of offshore structures has become more popular and sophisticated. Appleby has significantly enhanced the scope of the services that are offered clients here to accommodate this changing environment, and our position in the market is no longer the representative/liaison role that it once was, offering only one choice of offshore jurisdiction in a limited practice area. Today, we are a fully-fledged offshore firm providing advisory and structuring services across a number of practice areas (corporate, funds, banking, trusts, disputes etc.) for eight of the key offshore IFCs. We are the only offshore law firm that covers this breadth of offshore jurisdictional choices for clients.

### THE GROWTH OF OFFSHORE IN ASIA

Over the years in Hong Kong, we have seen businesses and private clients acquiring more knowledge about offshore IFCs and better understanding the strengths and advantages of structuring using offshore



advice married with transaction and sector experience, an in-depth understanding of the local legal and regulatory environment, market norms, the cultural perspective, and the language capability.

We have witnessed a change in terms of the jurisdictions that our clients in the region are interested in. When Appleby first set up in Hong Kong, Bermuda was seen as the blue-chip jurisdiction for offshore financial services, thanks in part to its oversight over the bona fides of beneficial owners and regulator and investor acceptability globally. The majority of the listed companies in Hong Kong were Bermuda entities at one point, including Jardine Group, Li & Fung Ltd and Shangri-La Hotels and Resorts, but over time that has changed. The British Virgin Islands has for over two decades been very popular in Asia as it is seen as a flexible and cost-efficient jurisdiction especially for private, simple and/or intermediate transactions.

The creation of the GEM Board on the Hong Kong Stock Exchange in 1999 moved the focus to the Cayman Islands, which is increasingly favoured as a listing vehicle domicile. Nowadays, the majority of the companies listing on the Hong Kong exchange are Cayman-incorporated, but Cayman has also long been favoured and recognised as the domicile of choice for private equity and hedge funds.

Over the last ten years we have noticed an increased interest in the emerging markets of India and Africa, and that has led to the growth in use of Mauritius and the Seychelles, due to their broad networks of double tax treaties. The Seychelles is gaining in popularity because of its administratively streamlined but balanced company laws, and is less ubiquitous compared to the BVI, and at

the same time the Crown Dependencies of the Isle of Man, Guernsey and Jersey are looking to develop a higher Asian profile and we see those being used particularly for EU/Asian transactions, as well as in private client and trust matters.

#### **LOOKING AHEAD: THE NEXT 25 YEARS**

Going forward, we need to ensure that offshore remains relevant and efficient for the onshore market. The advent of the OECD's White List of jurisdictions that have substantially implemented internationally agreed standards around the exchange of tax information has given offshore IFCs credibility, particularly in China, but we need to continue to innovate and adapt with new laws and structures to serve the Asian business and private client communities.

If Asia becomes more uniform and protectionist, there is a risk that new laws and regulations might inhibit the use of offshore, but we believe that it is essential for us to retain a base in an IFC in Asia to maintain our finger on the pulse of developments and trends, and continue to educate and promote the advantages of our eight jurisdictions to the Asian market. Asia plays such a large part in most global strategies – according to the World Economic Forum predictions of 2012, by 2030 Asia will host 64% of the global middle class and account for 40% of global middle class consumption. Concomitantly, European and American middle classes will shrink from 50% of the total to just 22%. Taking into account the timezone, language and cultural significance, it is difficult to imagine us not being present in Asia to keep pace with growing client needs and expectations.

The legal market in this part of the world is changing fast, and we have started to see

changes in the relationships that onshore firms are building with domestic firms in China. These domestic firms are becoming more sophisticated, and continue to be hungry for knowledge on international deals and matters, attempting to understand the role of offshore so as to gain competitive advantage for their clients.

We see a trend towards domestic firms linking up with international players, through combinations such as King & Wood Mallesons and Dacheng and Dentons. For firms like Appleby, the focus remains on building relationships with onshore providers, and offering a suite of offshore jurisdictions and capabilities to clients. Through our various thought leadership pieces we aim to inform the market about the trends and structural developments in offshore IFCs, and to keep clients abreast of developments on the regulatory front, such as the OECD's work on Base Erosion and Profit Shifting.

The meteoric rise of the high-net-worth individual, particularly in this part of the world, may be the next big story. The Boston Consulting Group highlights the growing volume of private wealth globally – up more than 14% to US\$152trn in 2013 – and wealth in the Asia-Pacific region (excluding Japan), is expected to almost double in value reaching US\$61trn by 2018.

For all of these reasons, Hong Kong and the Asian market have become even more dynamic today compared to 1990 when we arrived here. The key to its continued relevance will be its ability to innovate and adapt.

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