



# LIBERATED BY REGULATION

**Philippe J Weil** believes the huge regulatory changes brought about by global transparency initiatives may be good news for families, allowing them to discuss family wealth openly

## KEY POINTS

**What is the issue?** The challenges of the current changes in the regulatory environment are considered a burden and a threat to our industry.

**What does it mean for me?** These changes are actually opportunities, for both the industry and clients.

**What can I take away?** The industry will be forced to improve due to greater competition. Clients will finally be free to exploit the full potential of their wealth, and openly discuss the best governance for their family and wealth.

**International pressure for transparency,** tax compliance and exchange of information has shaken the financial services industry and most of the private clients we serve. The financial safe havens of the world are struggling to cope with the mass of new regulations, with demands from international and domestic regulators, and with international pressure to disclose and collaborate. Clients who have stewarded privately held family funds are now faced with the need to make governance decisions on different management of the funds. Is this new era of transparency and regulation going to be negative for trustees, bankers and asset managers, and for the high-net-worth individuals (HNWIs) and families that they serve, or will there be a silver lining?

## INDUSTRY DISRUPTION

We have seen much mergers and acquisitions activity in the financial

industry. Private banks are being closed, taken over or sold off from big international houses. Once, the private banking arm of an internationally active bank was the cash cow of the institution; today, it blocks the future of the bank and is often sold to a competitor. This is particularly true in Switzerland, which has often been considered synonymous with secrecy in relation to clients' family wealth. The sea change resulting from new regulation, and its effect in Switzerland, is worth understanding.

Today, foreign governments and the OECD are encroaching on Swiss sovereignty. Swiss bank secrecy and Switzerland's differentiation of tax evasion from tax fraud laws have changed under foreign pressure. The fact is, however, that these concepts are not just laws, but century-old Swiss traditions. The changes imposed on the Swiss threaten and insult. Switzerland is a direct democracy and is very proud of the fact that many changes in law have to be made by public referendum. The imposed regulatory changes, however, have happened very quickly and in this case people were not asked; the government had to change the laws. The changes are seen as intrusive and as undermining the political independence of Switzerland.

## THE OFFSHORE NEST EGG

Historically, clients of financial institutions in fiscal safe havens felt protected from their own governments and tax authorities, as well as, in many cases, nationalisation of their assets, dictators, political putsches and revolutions. Suddenly, century-old habits and traditions are being dispensed with, and, under pressure from the very institutions that should safeguard them, secret assets are being discovered or

forcefully disclosed, or must be voluntarily declared to avoid criminal proceedings.

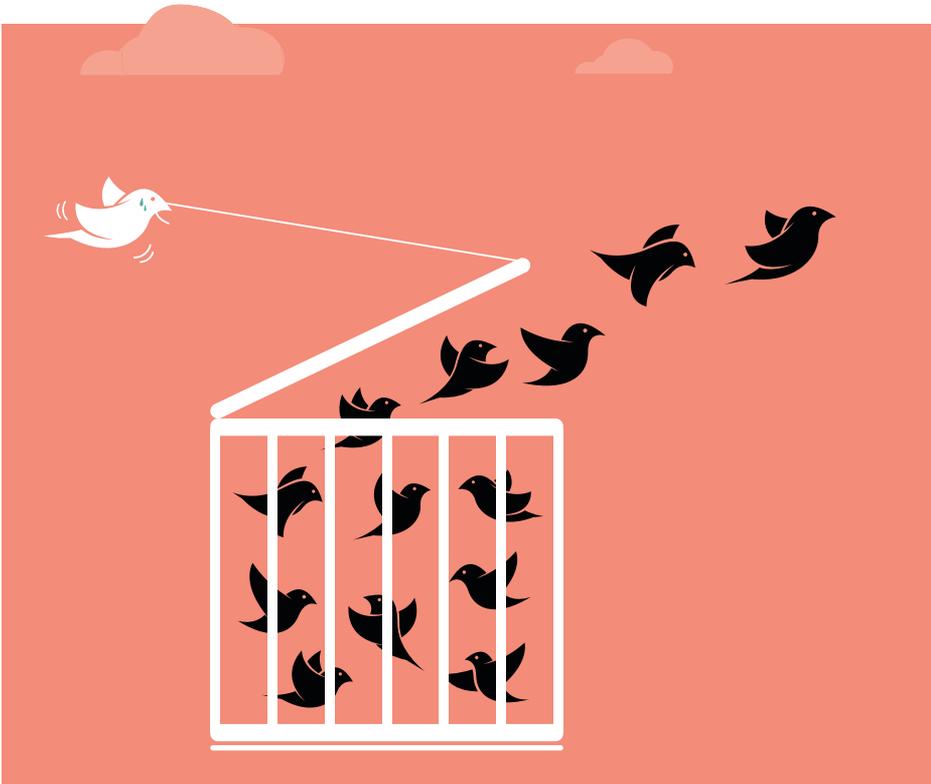
## COSY ARRANGEMENTS

Secret, discreet banking arrangements were historically very comfortable for all parties involved. The offshore bankers had a monopoly on the money and knew their clients did not have much freedom to manoeuvre. This allowed for a very expensive and well-organised service industry with no real international competition outside the offshore world. The foreign client was actually a 'prisoner' of their own wealth, and both parties – the client and the banker/trustee – had a mutual interest in perpetuating the secret arrangement forever.

Both the client and the service provider had a very loyal relationship: the client remained with the same financial institution, and the banker/trustee served the client for generations. The results of asset management were of lesser importance because, first, the client was afraid to move to another financial institution (which would have required disclosure to a total stranger) and, second, the client's asset manager competed only with the bank down the road, which usually invested with the same strategy of preservation. A third reason was that communication between the financial service provider and the client was limited, as the client did not want to be contacted in their country of origin; if contact proved necessary, then they wished to be contacted only in the most discreet manner.

Characteristics of this safe-haven money were that it was not easily accessible and hardly ever touched. The head of the family was in charge of this money and would, from time to time, travel to the 'mountains' – i.e.





Switzerland – and return with a ‘box of chocolates’ – i.e. cash. But the bulk of the money was left alone and each generation considered itself the steward for generations to come. Even when the family could have used this money to invest in its business or for some emergency, it often preferred to use finance from a domestic bank and leave the money in the mountains – even at a lower return than the cost of financing in the domestic market. Repatriating this money was impossible or costly and involved disclosure, trusting strangers and sometimes prosecution.

Loyalty to the personal family banker was so strong that bankers could change workplaces and be almost certain that clients would follow them.

### **SURVIVAL OF THE FITTEST**

What long-term impact will the regulatory changes and pressures of the past decade have on the offshore financial industry? Will anything be left after the introduction of the OECD’s Common Reporting Standard in 2018? What impact will these changes have on HNWIs and family clients?

Despite the changes, our clients still need trusted advisors, asset managers and trustees. What has changed, and will continue to change, is the nature of the competition. Until now, a financial institution had to compete only with other institutions in the same jurisdiction (or only inside the offshore world). Now the competition is global. The client’s bank in their country of origin now competes with

offshore private banks. Usually the local bank is better equipped to consider taxes and understand the local needs of the client, and that is one of the reasons why the major banks are today acquiring local retail banks in many markets.

Our industry has to learn to cope with the fact that we are now involved in an open, global competition. We can no longer be sure that our client will remain with us: they now have many more options. While all of this may be very stressful and uncertain for individual service providers, and for our industry, it will separate the good from the bad, and the fittest will survive. Clients will be better served.

### **TRANSPARENT STRUCTURES**

What will happen to all the structures in place, offshore companies and trusts? Will clients unwind everything and take the money home? Unlikely. More than ever, the trust will be recognised as a useful tool to protect assets from fiscal authorities, family, and so on, as well as for estate planning, family ownership of businesses, generation skipping, charitable giving, legacy planning and many more situations.

The global effort to tax the rich is in full swing but fiscal planning is still an important service that our industry can offer to wealthy families.

### **TRANSPARENT FAMILIES**

One of the overlooked side-effects of these regulatory changes is the impact on the family of wealth itself. The client who once

watched over the emergency funds and considered themselves steward of the family’s war chest is now faced with wealth that is easily accessible by other family members. If the family is not careful, all the money that has been safeguarded for so long may quickly be absorbed into family businesses or, at worst, be frittered away on excesses.

However, the change from steward to owner can actually be very liberating for a family if approached prudently. The change creates an opportunity to have an open conversation about the family’s wealth, and the best use thereof. In fact, the huge regulatory changes may actually be among the best things that can happen to a family.

Should the family not have a governance plan in place, the change offers a chance to invite the entire family into the governance process, to draft a family constitution, and to write down how members want to preserve the emergency funds set aside and stewarded by their ancestors. The elephant in the room can finally be addressed. Many families will be well advised to continue to consider this newly accessible wealth as their emergency fund, remaining its steward for future generations. They will need structures that make sense in this new regulatory environment and they will need competent advisors and trustees to guide them.

## **SECRECY, SURPRISES AND SUCCESSION**

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As we enter an age of transparency for tax and regulatory purposes, we are likely to see greater transparency within wealthy families too.

However, sharing financial information in a family is not a simple matter, and reluctance to do so has many roots, from practical concern as to whether substantial wealth will demotivate children to the very human fear of death. Keeping control of financial information can make people feel powerful and important.

The families I have known have taken different approaches to this problem. Ultimately, those that shared information avoided (litigious) surprises, and achieved success in the generational succession.



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