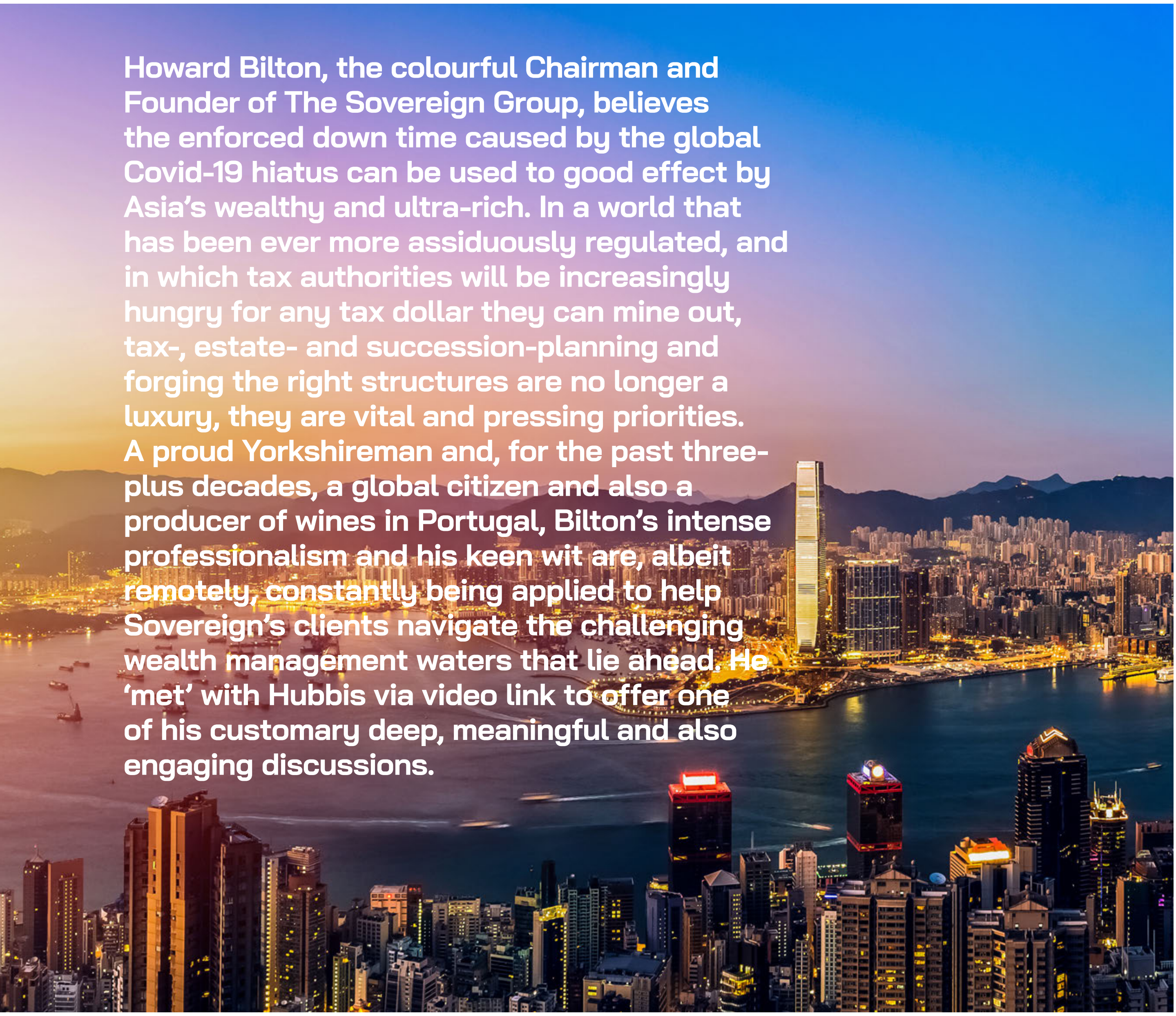
Sovereign Group's Bilton on the Vital & Pressing Importance of Robust Wealth & Estate Planning



Howard Bilton, the colourful Chairman and Founder of The Sovereign Group, believes the enforced down time caused by the global Covid-19 hiatus can be used to good effect by Asia's wealthy and ultra-rich. In a world that has been ever more assiduously regulated, and in which tax authorities will be increasingly hungry for any tax dollar they can mine out, tax-, estate- and succession-planning and forging the right structures are no longer a luxury, they are vital and pressing priorities. A proud Yorkshireman and, for the past three-plus decades, a global citizen and also a producer of wines in Portugal, Bilton's intense professionalism and his keen wit are, albeit remotely, constantly being applied to help Sovereign's clients navigate the challenging wealth management waters that lie ahead. He 'met' with Hubbis via video link to offer one of his customary deep, meaningful and also engaging discussions.

Bilton's vineyard in the Alentejo in Portugal produces wines under the label Howard's Folly. But the true folly, he says, is risking wealth and undermining the future of family and loved ones by not planning properly for the future. And, of course, this is especially crucial for those wealthier individuals and families, often with homes, assets, businesses and lifestyles across the globe.

"We live in a world that is very different today, even before this pandemic," he explains, "and HNW and UHNW clients who do not plan for the future sufficiently well are storing up major problems for themselves, their businesses, their families and others. This is an ideal time for these types of people to be upgrading their whole wealth planning infrastructure."

He remarks, for example, on a number of unexpected consequences of the protracted global lockdown. The first he mentions is people getting stuck in, for example, the UK, when normally they might be working, or resident in a low tax country such as Hong Kong, Singapore or others. He questions what flexibility there might be from the authorities, based on past experiences, especially in the UK. He does note that at least the UK's HM Revenue and Customs department (HMRC) has indicated that it will treat this situation sympathetically but have declined to explain what that means.

"This is becoming an increasing problem for people in the UK and other European countries where it is difficult if not impossible to get back to where they normally live or work, with the danger being they might again become tax resident in those higher tax jurisdictions," he cautions.

Bilton's Key Priorities

Firstly, Bilton says he and his senior colleagues have taken the decision to not pay out dividends, to retain cash and not to lose key staff.

"We told everybody that there would be no job losses due to this pandemic," he reports. "We have examined the worst-case scenario, and that is our position, although of course, nobody in this world knows what might be ahead of us all, but for the time being we have battened down the hatches and will try to retain our loyal and excellent staff to work for us for many years ahead. We remain confident at this time, but of course, we are all in survival mode."

As to business priorities, the firm are focusing clients on the subjects Bilton covered in the main discussion. "So many people just put these things in a drawer somewhere, thinking they did this some years ago and all is well," he comments, "but we all know that is very seldom the case. These structures and solutions must be reviewed regularly, as we know how rapidly regulations change and who knows what is around the corner. In short, this is a major priority and a major growth business for us in normal times, and even more so now."

Bilton also notes that most of the firm's business comes from referrals, so quality, integrity, transparency, consistency and reliability are vital facets that all help the firm build its reputation and clientele.

In some situations, this might not be as big a problem as it initially seems. For example, with the Hong Kong-UK tax treaty, there are "tie-breaker clauses", which operate when an individual (or company) is tax resident in both places. Clause 3 of the treaty gives the sole taxing rights to the place with which the taxpayer has the closest connection. This is determined by where someone might have their main home, business, and/or social and economic circle. That is the good news. The bad news is that in many such instances, the taxpayer may have all of those things in both places so it is very difficult to decide, and decisions will often be heavily disputed. "One can imagine the costs in time and fees of having to argue with HMRC that although you are tax resident in the UK because you have stayed there for more than the maximum number of days you should not be taxed because you have a closer connection with Hong Kong and the tax treaty overrides domestic tax law to give the sole taxing right to Hong Kong. Stress or what?"

UNINTENDED CONSEQUENCES

UK expats need to be particularly wary whenever they move to a new country. UK Inheritance Tax is charged according to domicile

HOWARD BILTON
The Sovereign Group

and domicile is very sticky. Many UK expats living in the Far East region may well have retained their UK domicile even if they have been out of the UK for many years. If so, they are subject to 40% Inheritance Tax on the total capital value of their worldwide estate. Some are aware of this and have taken the necessary steps to establish a new domicile wherever they currently live. The problem is that if they leave that place, it doesn't matter where they go next. Their UK domicile of origin will almost certainly revive, and they will be subject to the 40% tax on their estate again. They will remain subject to the 40% tax until they can establish a new domicile in their new country. In theory, that can happen quite quickly, but in practice HMRC will never agree that a new domicile has been established for the first 3 years and it will normally take a lot longer than that. Until then, their estate is at risk.

Standard planning for UK expats who have definitively established a new domicile was to transfer as much of their estate as possible into an offshore trust. Assets held in trust no longer form part of that person's estate, and so in theory avoid the 40% tax. That still works, except for those UK expats who return to the UK where new legislation considers them to be immediately domiciled back in the UK again and the 40% tax, with a few exceptions, applies to the assets in the trust. If that person settles outside the UK, the trust should still protect against UK Inheritance Tax, so that planning is still good in most cases for those who do not return to the UK.

Getting certainty on domicile is crucial as transfers into trust attract a charge to tax of 20% for those who remain UK domiciled. HMRC used to give rulings on domicile, but unhelpfully stopped doing that many years ago. Now the best option is to get legal opinion from a leading UK barrister. Only then is it safe to proceed.

Bilton also remarks that he is increasingly seeing trust structures where the settlor named in the documents is an employee of a law or accountancy firm who helped set the structure up. Theoretically they are the settlor as they transferred a nominal sum to start the trust, but the real settlor is whoever transferred the valuable assets into trust. Nevertheless, banks often focus on the person named in the documents failing to understand the reality, and so want annual due diligence on that employee who may no longer be around or no longer sees it as their job to provide documentation. This can cause great difficulties.

"At the moment I am getting a lot of calls from people who want to have their trust structures reviewed. In many cases they have had no interaction with their trustee for many years. Frequently,

"The trust simply won't stand up to scrutiny and won't withstand an attack from a creditor, a greedy beneficiary or the tax man. There is no point in paying fees for something useless, so we always suggest restructuring to make it fit for purpose or just get rid of it. Trustees in Hong Kong have become a lot more knowledgeable in recent years, but what we have seen recently and over the years has been a cause of much mirth or incredulity."

By contrast, anyone who has never had a UK domicile can live in the UK for many years without picking up a UK domicile. There are many well-known tax advantages to being a UK "non-Dom". These advantages have been narrowed over recent years, but the UK remains one of the world's great personal tax havens.

these old-fashioned trust deeds leave so much control in the hands of the settlor that it is clear that what they have isn't a trust at all. It's some kind of nomineeship, which just doesn't work. The trust simply won't stand up to scrutiny and won't withstand an attack from a creditor, a greedy beneficiary or the tax man. There is no point in paying fees for something useless, so we always suggest restructuring to make it fit for purpose or just get rid of it. Trustees in Hong Kong have become a lot more knowledgeable in recent years, but what we have seen recently and over the years has been a cause of much mirth or incredulity."

THE MUDDY WATERS OF DOMICILE

Bilton mines down into further complexities surrounding estate duties and domicile, noting that with wealthier individuals and families often having assets, homes, accounts and other assets dotted around the globe, implying that there is a real risk of several authorities demanding duties on death, while of course, the US demands tax based on the passport they hold, not residency.

"There are so many details and issues to consider," he comments, "which although possible to overcome, must be done early and with a concerted focus, so now during lockdown is actually a good time to really get into this type of detail, especially as everyone has been reminded of their own mortality and the potential impact of the pandemic on their earlier planning and expectations."

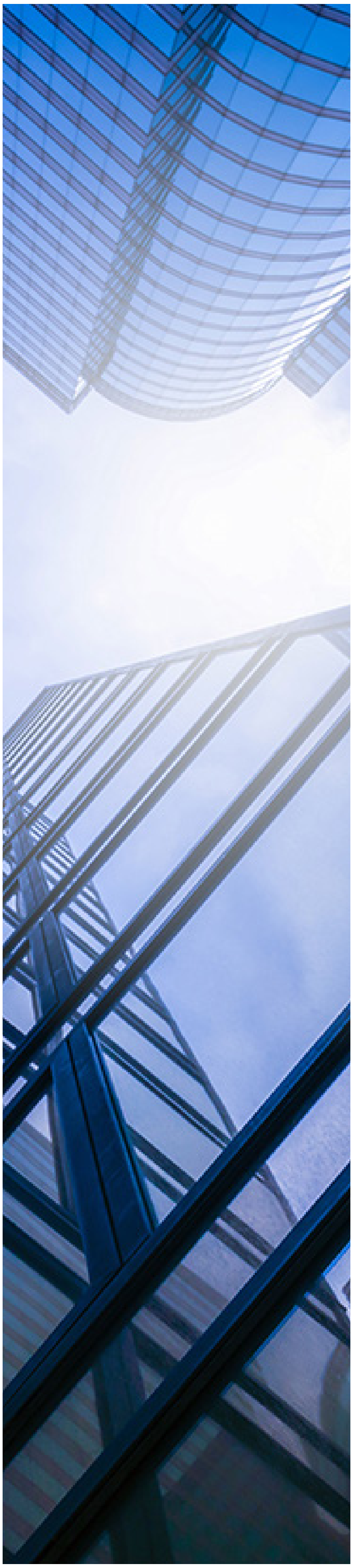
MANY RIVERS TO CROSS

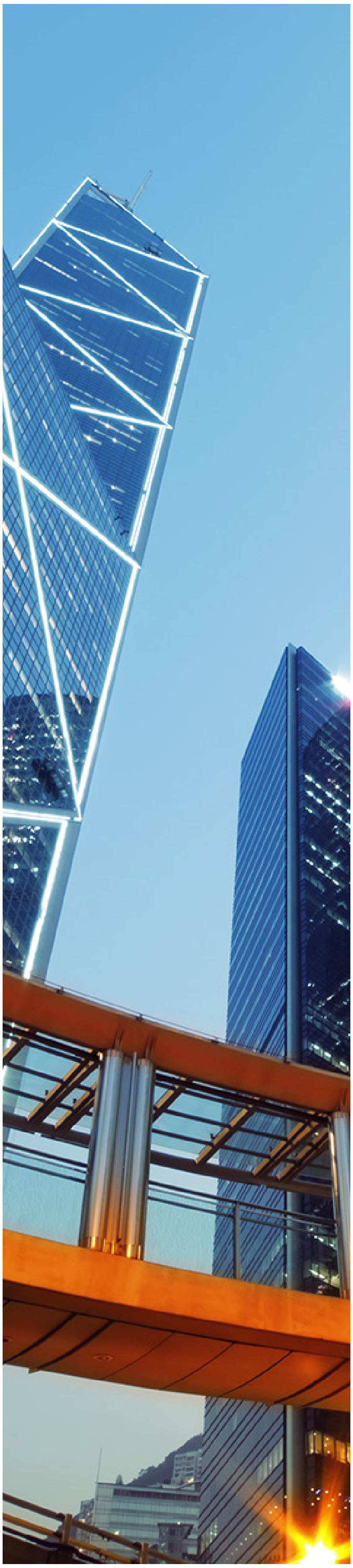
He adds that from a family and personal relationship perspective, there are usually many people to consider in this process including, obviously, the spouse and offspring and their children, but that many people are divorced, remarried, or with other male or female life partners they may want to look after, should they pass away. "Should someone die intestate," he comments, "there are those countries which have forced heirship rules which dictate where your estate has to go; those rules may not be in accordance with your wishes. Typically, in civil law countries your estate is in thirds, one-third has to go to your wife, one-third to your children, and one-third is a free estate which can go to anybody. Take, for example, a wealthy individual who is divorced and goes to live overseas with his new partner; she would not necessarily be properly covered unless you have planned properly."

RESTRUCTURING THE STRUCTURES

Bilton expands the discussion further into the realm of structures. "This is also a good time to review what structures you might have in place," he advises, "as many are unnecessarily complex or no longer fit for purpose. In Hong Kong, for example, the trust industry is relatively young and initially was not very sophisticated, even when estate duties were applicable, which today they are not, although as those laws are in furlough and could be reinstated any time, especially with China heading towards Inheritance Tax. So as all governments around the world will be hunting for more taxes, people need to plan properly not just for the existing rules, but in anticipation of nasty changes."

Moreover, Bilton advises that sensible liquidity planning is in place well ahead of time. "We estimate that a simple estate with assets in just one country might take about two years to go through the probate procedure," he reports, "and during that time, those assets are effectively locked up. It becomes more complex and costly with an international estate."





CUTTING COMPLEXITY, AVOIDING PITFALLS

Accordingly, consolidating to one type of structure, for example a trust or company structure, or perhaps a combination of the two will greatly help tax mitigation, but also significantly reduce the complexity and the anxiety the heirs and loved ones might face on the demise of a key family member.

He comments that a professional private banker needs to focus on all these areas as part of their added value to their HNW clients. "If they also help introduce clients to the right trustees during the process, the AUM tends to be stickier and the relationships enhanced," he comments. "There is a practical advantage, as very often the bank will continue to think of the settlor of the trust as their client, so their client stays their client, even though the money is legally owned by the trustee and the trustees have the power to decide whether that bank is going to continue managing it or not."

"I have never once come across a single case where the bank trust company has fired a bank investment arm and moved the money elsewhere. An external firm offers that potential, at least."

Bilton explains that whatever the approach, people must place their trust on other people, one way or another. "Under a will, there are executors who must take possession of your worldly goods and distribute as per the will" he notes. "With a trust, the trustees do the same job, but take ownership during your lifetime when you are around to supervise the procedure. All of these structures and solutions cost money, but failure to plan can result in hefty taxes and costs, and potentially be somewhat of a disaster. Accordingly, we strongly recommend that people review their structures, many of which will be out of date and full of grey areas. Moreover, a review of the trustees in place and their efficacy is also important, and some of the trustees will be retired or soon to retire."

NO QUICK-FIRE SOLUTION

Bilton also remarks that there is usually no rapid solution. "Often this sort of process, to do it properly, could take a couple of years," he reports, "and a lot of pushing is required, as people get distracted. So start early and sort it out."

GOOD ADVICE COUNTS

The reality is that if a private bank refers trust business to a trust firm, this ongoing mutual relationship is natural if they wish to get more referrals, even if legally they are entirely off the hook in terms of their independence. "The private banks actually work on the premise that money held in trust normally stays with them about five times as long as money held in individual name," he reports. "So, trusts actually work well for private banks."

Moreover, he adds that the banks used to, and still to some extent, do offer to act as trustees. Bilton and Sovereign Group as a firm advises clients not to take up that offer because the bank has a very obvious conflict of interest. "In my more than three decades doing this," he reports, "I have never once come across a single case where the bank trust company has fired a bank investment arm and moved the money elsewhere. An external firm offers that potential, at least."

Bilton concludes this point by stating that there is little doubt in his mind that RMs in all firms will benefit in many ways from having clients thankful of being encouraged to take these matters in hand, urgently. "There might be self-interest in there on behalf of the bankers," he notes, "but there is also a sound rationale for encouraging these good practices."

INDEPENDENCE DAYS

He then centres the discussion on the role and DNA of Sovereign and its position as an independently owned firm.

"We are not tied to any particular investment house, and we do always work to ensure optimal solutions at optimal prices from the market," he reports. "There was an academic, Professor Peter Willoughby in Hong Kong, who wrote the standard work on Hong Kong Estate duty and lectured at the University here. He was good friend but is now sadly deceased. He was always highly critical of banks who acted as trustees for this reason. We, however, work to ensure that the best performance is achieved for the assets throughout the life of the trust; we are beholden to no one and leverage our relationships to help ensure the best outcomes."

Bilton explains that this type of issue regarding bank trustees is far less prevalent in the more mature European markets and the UK. "They have been doing this a lot longer and perhaps understand the nature of a trust rather better," he observes. "My view is if you don't have a fairly close relationship with your trustee and know who they are and have regular discussions with them, or at least quarterly meetings in which the affairs of the trusts, the underlying companies under the trust, the portfolio under the trust are reviewed, I would suggest your trustee isn't doing their job properly. Just because it is called a trust on the document doesn't make it one. Trusts will not give any protection from the taxman, or creditors or other claims on these assets if they are not properly set up and managed."

He adds that family members also need information as to the contents of the trusts, so there is both transparency and continuity in the event of a death.

THE FOLLY OF PREVARICATION

Bilton's final word is that Sovereign has been reviewing and upgrading a variety of such trusts and has found that they are often beset with current or potential pitfalls. Some might supposedly hold entities or assets that no longer exist: "we recently took over one trusteeship where the assets were the shares of a holding company, which in turn owned other companies which held an investment portfolio and some properties. We found the holding company has been struck off 15 years earlier! Legally the assets had been lost in their entirety. The trustees didn't even know. Incredible and obviously negligent"

"In short," he cautions on closing, "there are some really worrisome situations out there. My view is simply that anybody who has got a trust and who has heard very little from their trustees needs to be questioning matters and needs to be proactively rectifying the situation. Everyone can take advantage of this global hiatus in activity to review their personal and family situations, to ensure that their wealth and estate planning is robust, fit for purpose and future-focused." ■

Getting Personal with Howard Bilton

Howard Bilton is a barrister by training and Chairman of The Sovereign Group, as well as visiting Professor at Law at Texas A&M University. Amongst his many accomplishments, he is also a winemaker in Portugal, although he lives much of the time in Hong Kong.

He amusingly opens this section of the discussion by stating that he might today be a global citizen, but is at heart a proud and unswerving Yorkshireman by heritage. "I was born in the Independent People's Republic of Yorkshire," he quips, "and was educated there at St. Peter's School in York for my formative years, up to 18, and that by the way is reputedly the oldest school in the world, established in 627."

Of course, there is no such thing as an Independent People's Republic of Yorkshire, but to those natives of what is a most delightful county in the north of England, many, even those who have long since left, see themselves as rooted as deeply in that soil as the veritable English oak.

"I was a boarder at St. Peter's, even though we only lived an hour or so away," he recalls. "The school offered a well-rounded education. I should add there have been some improvements in the facilities since 627; they even have indoor, flushing toilets as of a few years ago!"

Bilton has been with Sovereign since very early in his career. "I had done everything in holiday jobs up to that time, right from emptying the bins and waiting tables," he reports, "anything for beer and travel money, and then after graduating from Keele University in Classics and Law and passing the Bar course at The Inns of Court School of Law in London I joined a trust firm in the Isle of Man as in-house counsel. The very short story is that I eventually bought the company."

Bilton is proud of his achievements and of Sovereign today, which houses some 450 staff globally. "It is great to be involved in this business today and to be working with so many people," he reports. "We greatly value our team members, and we take the slow and steady approach; there are no great highs, but hopefully therefore also no serious lows."

Bilton has two sons from his first marriage and 16-year-old daughter with his current partner.

Other loves include The Sovereign Art Foundation, a major passion for many years, which has helped raise more than USD9 million for disadvantaged children the world over, and is particularly active in Hong Kong helping some of the 170,000 children who, according to official Government statistics live below the poverty line. "Yes, in Hong Kong, one of the richest cities in the world," Bilton notes.

Howard's Folly

He is also the proprietor of a vineyard in Portugal, although he admits that making and selling wines is a lot harder work than his day job. "The hard currency I earn at Sovereign is used to fill the holes at the vineyard," he jokes, "but actually, it is a joy and the wine is improving each year, so the holes are getting smaller. Portugal produces many world-class wines today, and anyway, I can always drink it. So much more fun than owning stocks and shares!"

He also observes that the people involved in wine are the most generous of hosts. "They tend to be very amenable and sociable people, not just in Portugal but around the world," He reports that he continues to play tennis and squash regularly, and actually used to be a tennis coach 30 years and 30 pounds ago, even in his spare time when working earlier on in his career.

He also loves visiting Wimbledon and has attended the last 20 Wimbledon finals, semi-finals and quarter finals, missing out only in 2019 in favour of the World Cup Cricket final, a match between England and New Zealand that turned out to be one of the finest one-day matches ever, all the way down to the nail-biting extra six balls of the play-off 'super over'.

"I was there with my two sons, and while we were enjoying the match and drinking way too many lagers, my younger remarked that the problem is "life will be all downhill from hereon, it just cannot get any better than this." I had to agree. It was altogether euphoric."