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TL4 Private Client MAGAZINE

ISSUE 9

AROUND THE WORLD 2022

INTRODUCTION

"The chance which now seems lost may present itself at the last moment."

Jules Verne, Around the World in Eighty Days

We are delighted to present the final issue of Private Client Magazine for 2022, where we explore what has been happening around the world during the past year. Our authors cover numerous topics, including technology, ESG investing, post-covid trends, and art finance. Our issue also covers recent developments from the UAE, Singapore, Italy and more.

Thank you to all of our members, contributors, and community partners for their support throughout 2022. The Private Client community continues to grow, we have more events, more magazines, and more content coming, so we look forward to working with you all in 2023.

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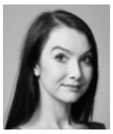

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60-SECONDS WITH:

SOPHIA ROGERS
BARRISTER
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Q What do you like most about your job?

A The variety. I enjoy the variety of people I get to meet in my cases, working with clients and finding solutions to client issues. In practical terms, I love that my time is spent doing a mixture of court room advocacy and work in chambers on written advice or in conference.

Q What would you be doing if you weren't in this profession?

A I'm not sure but probably something involving language and an element of public service, like law. Perhaps journalism.

Q What's the strangest, most exciting thing you have done in your career?

A The most exciting was the Court of Appeal hearing in Hirachand v Hirachand [2021] EWCA Civ 1498. I had acted for the claimant successfully at trial and was led by Constance McDonnell KC on the appeal. It involved some very interesting issues and I'm pleased to say we won the appeal.

As for the strangest thing, that was probably examining a witness remotely for the first time during lockdown.

Q What is one of your greatest work-related achievements?

A I have been shortlisted for a couple of awards early in my career, considering I was called to the bar in 2013. I was shortlisted for Star Junior Award at the Chambers and Partners HNW 2019 Awards and for Chancery Junior of the Year Award at the Legal 500 Bar Awards 2022.

Q What has been the most interesting case you have seen in 2022?

A Guest v Guest [2022] UKSC 27. A real development in the law of proprietary estoppel in which two of my fellow members of chambers acted. It will be interesting to see how it is applied in future cases.

Q What do you see as the most significant trend in your practice in a year's time?

A Appearing in court in person more. With Covid and lockdown, the trend has obviously been for remote hearings. I think that will change for me over the next 12 months.

Q What personality trait do you most attribute to your success?

A Determination.

Q Who has been your biggest role model in the industry?

A Constance McDonnell KC. Constance was one of my pupil supervisors. She's an incredible advocate, a master of her field and has forged a brilliant career at the Bar. She's a great role model for female barristers.

Q What is something you think everyone should do at least once in their lives?

A Travel.

Q You've been granted a one-way ticket to another country of your choice. Where are you going and why?

A Greece. The beaches, the history, the food, the sun…. what other backdrop could one want for remote working?

Q What is a book you think everyone should read and why?

A The Odyssey. A classic story featuring all the best elements – adventure, tragedy, romance, magic and monsters.

Q Reflecting on 2022, what three words would you use to sum up the year?

A Busy, exciting and refreshing. It's been a relief to be out of lockdowns and covid restrictions, get back into chambers and meet people in person.

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(Chancery: Traditional, Chambers High Net Worth 2022)

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Authored by: Till Vere-Hodge and Rosamond McDowell - Payne Hicks Beach

The theme of this issue is evocative. It conjures up notions of Jules Verne and an age of scientific and social breakthrough with the promise of boundless possibility. Around the World in Eighty Days was published in 1872 – exactly 150 years ago. The Victorians were in the process of pioneering ways of overcoming distance and geographic separation thanks to railway, telegraph and telephone.

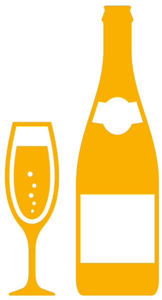
Today again, it feels as though collectively we stand at the cusp of profound and lasting change that has impacted and will continue to impact tremendously the way we live, work and interact.

A combination of era-defining events has made 2022 a good year to take stock.

The demise of Queen Elizabeth II has led some commentators to proclaim the end of the post-war period, once and for all. If "post-post-war" logically takes us back to "war", Russia's "special military operation" in Ukraine has given additional credibility, if any were needed, to a sense that history may be circling back upon itself albeit perhaps on a different axis.

The political fallout from that war has added further layers to what had already been a complex web of compliance and due diligence obligations: in addition to the Proceeds of Crime Act 2002, the international art trade has recently been brought more decisively under the umbrella of anti-money laundering legislation in the UK, the EU and the US. Add to that an ever more complex thicket of international sanctions rules.

We had already been familiar with being unable to deal with blacklisted persons in Russia, Crimea, and in a host of other jurisdictions subject to restrictive measures. Further to that, the G7 states (plus the EU) have introduced even wider restrictive measures, including a ban on trading in luxury goods with persons in Russia. The list of luxury goods in question is very comprehensive.[1] It includes "works of art, collectors' pieces and antiques", watches and clocks, cars, wines, champagnes, spirits, gold, jewellery, as well as fashion articles, caviar and truffles.



But we need not look to champagne, truffles and caviar to get a sense of the profound changes our global village is being subjected to. The world appears, at long last, to come out of the unprecedented disruption caused by Covid. Social gatherings, travel and in-person meetings are back on the agenda.

Because we were forced to interact even during the darkest days of the pandemic, this has arguably turbo-charged the ways in which our pursuits can carry on "virtually". Not only has Covid required us to rely on working remotely, attending court proceedings via video link and applying electronic signatures to documents of all sorts, it has also boosted new categories of assets that are deemed capable of being collected and/or desirable to own.

1 In the UK, it flows from Schedule 3 to The Russia Sanctions (Sanctions) (EU Exit) Regulations 2019, amended under the stewardship of then-Chancellor Rishi Sunak by the poetically entitled The Russia (Sanctions) (EU Exit) (Amendment) (No. 8) Regulations 2022.

While there is not (yet?) any virtual champagne or caviar on offer, some "virtual" assets for sale include digital artworks, crypto-currencies and, of course, non-fungible tokens (NFTs). It is worth remembering that in 1872 Claude Monet painted Impression, soleil levant, the painting that gave us the art historical term Impressionism, which in turn revolutionised art and art history itself. 149 years later, Beeple's NFT Everydays sold at Christie's for $69,346,250, with the unprecedented acceptance of cryptocurrency as means of payment. It remains to be seen, of course, whether Beeple will ever be seen as towering a figure in art history as Claude Monet, but the pandemic surely has helped along developments such as this.

Travel restrictions have required the global art trade to pause and move online exhibitions, fairs and VIP events, wherever possible. This, in turn, has led to a real shot in the arm for online sales of art and 3D imaging to allow prospective buyers to "walk" through virtual gallery spaces and appreciate the spatial context of works of art on offer for sale in a virtual setting.

But by and large, governments around the globe have struggled to "keep the economy going", expending eye-watering amounts of money to get us through the pandemic with our economy halfway intact. This has required the literal printing of money and keeping interest rates low. When tensions arose with one of the major gas exporters to Europe, Russia, inflationary pressures were always going to come back with a vengeance.

The current crisis, as ever, is hitting the poorest the hardest. The fate of international charitable giving has caught our eyes in that context, too. While the UK charitable sector suffered greatly during the pandemic, the Charities Aid Foundation reported[2] that giving rose from £10.6 billion in 2019 to £11.3 billion in 2020.

It decreased substantially again in 2021 to £10.7 billion, with one in eight donors considering cutting back their giving in response to the rising costs of living.

Historically, western legislatures have been generous in the tax exemptions available to support charitable giving. Nonetheless, there are some lacunae in that generous approach. To name one UK-specific example, individual recipients of distributions from an offshore trust will be subject to tax in the UK, under the mare's nest of anti-avoidance legislation, even if the same distribution is immediately donated to charity. Charitable relief may be available to cover a direct distribution, if the trustees are empowered to make one, and are forearmed with advice as to the negative tax treatment of the two-step approach, which is not invariably the case.

To name another example, charities receiving distribution from a discretionary Will trust will benefit from exemption from inheritance tax, if the distribution is made within two years of death. The same, however, is not true where a discretionary distribution is made from a trust where the life tenant has died, unless the trust is limited in its terms entirely to charitable purposes.

Writing of charities, 2022 may prove a watershed moment for museum trustees keen to return objects that are suspected of having been looted before being accessioned into the museum's collection: the anticipated powers given to trustees under the Charities Act 2022 would allow them to make ex gratia returns of such objects.[3]

Taking a step back once more: could it be that our era of progress is one that successfully democratises every aspect of life thanks to a digital dawn and by atoning for past injustices, or have we become ahistorical and blinded to some of the lessons learnt during the lifetime of the late Queen? We will update you in time for Around the World 2122.

2 Charities Aid Foundation UK Giving Reports 2021 and 2022.

3 Charities Act 2022, section 331A and section 106, sub-sections 1A and 1B.

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CAN TECHNOLOGY BE SUSTAINABILITY'S WHITE KNIGHT?

Authored by: Stéphane Monier - Lombard Odier Private Bank

Technology stocks are having a tough time, with the tech-heavy Nasdaq down 29% year-to-date[1]. Yet looking beyond cyclical concerns, technology will play a vital role as an enabler of the sustainability transition. Finding ways to harness its gains will be crucial for investors as the transition unfolds.

The scale of the sustainability challenge is intimidating.

Emissions must be halved by 2030.

Clean hydrogen production must increase sevenfold every year to meet net zero targets.[2] We must return 20% of agricultural land to nature in the next eight years, while feeding a growing population. As our economy moves from a take-make-waste model to a circular, lean, inclusive and clean (CLIC®) one, systems, processes and productivity must all change. Current high food and energy costs are acting as a catalyst. Innovation will be key. And technology will be a powerful enabler across the value chain.

One way of thinking of the key challenge ahead is the need to improve our energy productivity. This requires a threefold response: transforming our energy mix, and the efficiency of both the materials and services we use. While tech firms do not themselves produce greener power, cement or steel, they have a vital role on the latter two fronts, in helping achieve efficiency gains that can save both costs and resources. Computer modelling, robotics and 3D printing can make manufacturing less resource-intensive. Drones and advanced image analysis can help firms measure emissions and track leaks. Connected sensors and blockchain technologies can optimise production and supply chains.

Many industries are already employing software, electronics, chips and cloud computing in these ways, providing structural growth drivers for tech firms.

Shifting from in-house servers to the cloud can cut CO_2 emissions by around 60 million tons a year, estimates consultancy Accenture[3], and cut IT costs 30-50%[4].

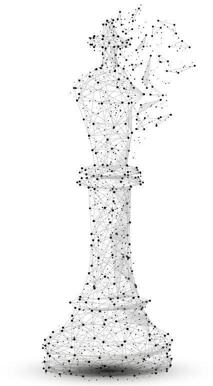
Aviation, construction and automobile industries are using software to model forces and visualise new products. Insurers are using blockchain-enabled smart contracts to offer climate cover to African farmers. Supermarkets are drawing on AI-based forecasting to better attune ordering and deliveries to demand. Precision agriculture is cutting

1 As of 27 October 2022
2 Hydrogen for net zero, Hydrogen Council and McKinsey, November 2021
3 The Green Behind the Cloud, Accenture, September 2020
4 Source: OpsRamp 2020 Survey, The Emergence of Cloud-First Enterprises

fertiliser use through better targeting; vertical farms run using internet-enabled sensors and automation can use up to 95% less water than traditional farms[5]. Nor are efficiencies limited to products: tech firms are also crucial in making service efficiencies, via platforms that help in the sharing economy, including via renting expensive items, and selling used clothing.

So digitalisation and dematerialisation could be key drivers of product and service efficiencies. In some fields, these trends have not only helped lower emissions, they have already generated huge share price gains, and blurred the line between tech and other sectors: cars in the case of Tesla, and retail in the case of Amazon. And tech firms also have a less obvious role to play in the net zero transition, via improving the energy mix. Solar panels and wind turbines rely on in-built sensors, and electric vehicles have roughly twice the value of semiconductor content of non-electric cars. Unlike fossil fuel-based systems, renewable energy needs internet-connected smart grids to manage flow and maximise resources. The energy transition will also require vast improvements in battery and long-duration energy storage and green hydrogen production, where advances are often driven by technology start-ups. These advances are typically non-linear: electric vehicle and renewable energy uptake today were unthinkable twenty years ago. Hydrogen manufacture may be the next to fall down the cost curve.

For all the popular concerns about technological advances leading to job losses, tech firms also have an important role to play in making the sustainability transition more equitable. Product and service efficiencies and the increasing affordability of connected devices and systems could be of particular benefit to developing countries, across areas as diverse as agriculture, sanitation, healthcare, finance and education. One example is mobile payment apps that are helping make financial services more inclusive. Another is a platform developed by one artificial intelligence company that can predict dengue fever outbreaks three months in advance with 81-84% accuracy, which has been tested in Malaysia, the Philippines and Brazil.



Cash-rich tech giants are themselves stepping into the early-and mid-stage funding space: Alphabet, Meta Platforms, Shopify and Stripe are investing alongside the Gates Foundation in a new Frontier Fund to scale-up technologies for carbon capture and storage. With their capital-light models, tech firms are often minimally exposed to climate transition risks. By our estimates, calculated with our technology partners SYSTEMIQ, the median CO2 investment ratio for software and services firms is 50 tons of CO2 emitted per USD million invested, versus over 3,000 tCO2e/USD million for oil and gas companies. Still, we must consider the exposure of tech companies. Many smaller firms do not publish emissions or other key sustainability data. Meanwhile, electrical devices are responsible for 27% of human-generated greenhouse gas emissions[6], and blockchain technologies can be hugely energy intensive. E-waste is another significant problem, with an estimated USD 60 billion of electronics discarded globally to date, according to UN estimates. A single email has roughly the same carbon footprint as a small plastic bag.

Yet even if the digital revolution came at an environmental cost, investors are now wondering if technology can help us solve the climate crisis. In our current investment positioning, we favour quality over growth stocks. We seek quality companies, which look well placed to maintain their margins, generate solid cash flows, have low debt levels and predictable profits. Structurally, the crucial role of tech firms could be as enablers and accelerators, as companies across industries seek to integrate their solutions. To integrate technology investments into a sustainable portfolio, we take a threefold approach: assessing the alignment and resilience of investments to the transition; launching strategies that capture its upside potential; and funding green investments in early-stage solutions or mature ones that need scaling up, which can help overcome a ‘green premium’ in costs. In this way, technology can be harnessed to meet sustainability goals, reduce climate risk and drive investment returns.

5 Source: Aerofarms

6 Source: Bill Gates, How to Avoid a Climate Disaster

INCREASED INVESTMENT IN PERSONAL TAX COMPLIANCE IN THE UK

Authored by: Helen McGhee CTA TEP and Nahuel Acevedo-Pena - Joseph Hage Aaronson

Advances in technology and increased international fiscal co-operation have made global personal tax compliance initiatives pop up in abundance in recent years. To compound the issue, the Russian invasion of Ukraine and the corresponding economic fallout prompted domestic governments to increase transparency in relation to investments held by wealthy foreign individuals (with a focus on oligarchs).

In the UK, in the context of the cost-of-living crisis, public opinion certainly seems to be in favour of increased accountability for high-net-worth individuals (eg, on 9 October 2022, 63% of Britons surveyed thought that "the rich are not paying enough and their taxes should be increased").[1]

HMRC is one of the most sophisticated tax collection authorities in the world and the department is making significant investments in technology in the field of compliance work; they are well placed to take advantage of new international efforts to increase tax compliance, particularly considering the already extensive network of 130 bilateral tax treaties in the UK (the largest in the world).[2] The UK was also a founding member of the OECD's Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) forum.

This article discusses the main developments in support of the increased focus on international transparency and personal tax compliance in the UK. There are other international fiscal initiatives, particularly in the field of corporate taxation, but such initiatives are beyond the scope of this article.

It should be noted that a somewhat piecemeal approach, with constant tinkering makes compliance difficult for the taxpayer and is often criticised for lacking the certainty that a stable tax system needs to thrive.

1 YouGov (2022) "Are taxes on the rich too high or low in Britain?", accessed 18 October 2022

2 The Tax Foundation (2022) "International Tax Competitiveness Index 2022", p 30, accessed 19 October 2022.

Economic Crime (Transparency and Enforcement) Act (ECA) 2022

Register of Overseas Entities

The ECA was fast-tracked through Parliament in March 2022 in response to the Russian invasion of Ukraine. It introduced the Register of Overseas Entities, which requires foreign entities that own or acquire property in the UK to register with Companies House and provide details of their beneficial ownership. The legislation received royal assent on 15 March 2022 and the register came into force on 1 August 2022.

Affected non-UK entities have to register the details of beneficial owners within six months from that date (ie, on or before 31 January 2023) and the obligation to register new acquisitions and to update changes in existing registrations will be ongoing.

Broadly, the ECA requires non-UK entities that own or buy UK land to disclose details of beneficial owners with significant control (eg, participants owning more than 25% of the shares) before they may receive an ID number which, in turn, is needed to complete the property title registration.

The information provided will be verified and updated annually. An application to the register will also require details about any disposition made since 28 February 2022, or a declaration saying that no disposition has been made.

Unexplained Wealth Orders

The ECA has also made some significant changes to the operation of unexplained wealth orders (UWOs), which were first introduced by the Criminal Finances Act 2017 to extend the powers available under the Proceeds of Crime Act 2002 (POCA 2002).

This requires individuals to declare the nature and extent of their interest in certain assets and to explain how they obtained such an interest or face seizure of such assets. UWOs have to date been used sparingly but the changes introduced by the ECA may allow cheaper and easier access to them as a tool available to enforcement agencies.

Under the ECA, UWOs can now be directed at a responsible officer as a means of "piercing the corporate veil" and stopping complex ownership structures from obscuring a source of wealth. The ECA also extends the time period for an authority to act or decide on the next steps in relation to the UWO and, importantly, curtails any application for costs against the authority.

To supplement the ECA, ***the Economic Crime and Corporate Transparency Bill*** is currently passing through Parliament. Part 1 of the bill will purportedly constitute the "biggest upgrade to Companies House" since the UK introduced a register of companies in 1844, by requiring all directors as well as persons with significant control and those delivering documents to have their identities verified. Part 2 seeks more information about partners in limited partnerships and requires limited partnerships to update the Registrar of changes and submit annual statements confirming that certain information held is correct.

Trust Registration Service (TRS)

The Trust Registration Service (TRS) is a register of the beneficial ownership of trusts. It was set up in 2017 as part of an EU anti-money laundering directive aimed at combating money laundering, serious crime, and terrorist financing.

Each EU member state has a similar register, and the UK agreed to maintain the TRS as part of the Brexit Withdrawal Agreement. The Retained EU Law (Revocation and Reform) Bill, presented to the House of Commons for its first reading on 22 September 2022, should not have an impact on the existence of the TRS. The TRS is maintained by HMRC and mandates that trustees of certain trusts must provide HMRC with specific information within a given time period. Trusts with a UK tax obligation have been required to register since 2017, and non-taxable trusts since 2020.

Broadly, the following two categories of trusts must be registered:

- Registrable express trusts – these are created deliberately by a settlor. All UK express trusts are required to register, unless explicitly excluded, eg, trusts arising in financial markets infrastructure. Some non-UK express trusts are required to register, even if they are not "taxable", eg, those that acquire land or property in the UK, or where at least one trustee is a UK resident and enters into a "business relationship" within the UK.
- Registrable taxable trusts – trusts with a UK tax liability must be registered, eg, non-UK trusts that receive UK source income or hold assets in the UK.

The primary registration deadline was 1 September 2022, but it varies depending on the type of trust (taxable or non-taxable) and date of creation. Currently, trusts are generally required to register within 90 days of any event that causes the trust to be liable to register, eg, becoming liable for UK tax or entering into a "business relationship" within the UK. Taxable trusts must declare that the TRS is up to date by 31 January each year.

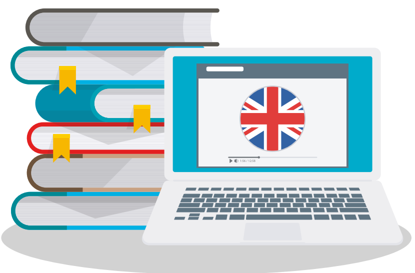
Person of Significant Control (PSC) Register

The PSC Register has been relevant for most UK companies and LLPs since April 2016. Companies House maintains the Central PSC Register but entities must also keep their own individual register.

A PSC meets one of the following conditions as someone who:

- holds more than 25% of shares;
- holds more than 25% of voting rights;
- holds the right to appoint/remove a majority of the board;
- holds the right to exercise, or exercises, significant influence or control (SIOC) over the entity; or
- holds the right to exercise, or exercises, SIOC over a trust/firm the trustees/partners of which meet one of the conditions above.

The entity's register must include the information within 14 days of being confirmed and any update must be recorded at Companies House within an additional period of 14 days.



Mandatory Disclosure Rules (MDR) for Common Reporting Standards (CRS)

The implementation of the MDR marks the UK's commitment to a global approach to tax transparency following its EU departure. The hope is that adopting a global MDR will further promote country-by-country consistency in the application of disclosure and transparency so that aggressive tax planning can be tackled globally.

When the UK left the EU, it was no longer bound to implement the widely criticised and unduly onerous EU directive on administrative co-operation (known as DAC6), designed to give EU tax authorities early warning of new cross-border tax schemes. DAC6 required intermediaries, such as law firms, accountants and tax advisers, to file reports where arrangements met one of several "hallmarks".

DAC6 was implemented in the UK in January 2020 but following Brexit was quickly replaced by the draft MDR regulations which reflect and implement the OECD model rules. After a lengthy consultation which finished on 8 February 2022, the new MDR regulations were expected to come into force last summer. However, so far nothing has been said about its enactment.

It should be noted that while SI 2020/25, which implemented DAC6 in the UK, will be replaced and repealed; those regulations will still affect arrangements entered into before the MDR regulations come into force.

While the two regimes are broadly similar, under MDR there will be a reporting exemption, where disclosing the information would require the intermediary to breach legal professional privilege. There is also a very welcome de minimis exemption that applies to reporting a potential CRS avoidance arrangement where the value of the financial account is less than USD 1 million.

Conclusion

Attempting to maintain some fiscal oversight on a global scale may be commendable and apparently consistent with current public opinion.

But there will always be a challenge where there is continued opportunity for tax arbitrage, as each sovereign state is entirely at liberty to levy taxes at a rate and in the manner most economically suited to local conditions. In addition, these measures are always subject to political will.

The vast network of tax treaties and information-sharing initiatives will nonetheless discourage any activity that seeks to exploit tax arbitrage beyond healthy competition, and with the now extensive raft of anti-avoidance, increased tax-compliance initiatives, there should no longer be any opportunity to hide wealth or assets beyond the reach of at least one tax authority.

On a more personal level, the message to clients as regards tax transparency is very firmly to get ahead of it. Get used to increased scrutiny from a larger and more varied group of stakeholders. Proactive rather than reactive mitigation is the future. If the questions is privacy versus the greater good of prevention of financial crime then opt for integrity. As a society we must advocate respect and responsibility towards the financial ecosystem which might mean to sacrifice some form of control over confidentiality.

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What do you like most about your job?

The variety. I enjoy the variety of people I get to meet in my cases, working with clients and finding solutions to client issues. In practical terms, I love that my time is spent doing a mixture of court room advocacy and work in chambers on written advice or in conference.

What do you like most about your job?

The variety of dealing with all sorts of clients, across all backgrounds and the range and complexity of their financial requirements that we help them with.

What would you be doing if you weren't in this profession?

I started my career working for large food and telecoms businesses, so finance wasn't my first-choice career.

My 16-year-old self would have liked to have been an actor, but reality took over and school plays were the pinnacle of my acting days!

What's the strangest, most exciting thing you have done in your career?

I have been extremely fortunate to meet some amazing clients, most of which I can't talk about. But meeting (then) Prince Charles at Buckingham Palace through some of my charity related work stands out.

What is one of your greatest work-related achievements?

Building a second career in finance has been incredibly rewarding. And within the client work I undertake, helping clients when they are most vulnerable is what makes the most difference to me.

What has been the most interesting case you have seen in 2022?

2022 has been one of the most interesting cases itself. There hasn't been a time like this in most people's working memories.

In terms of client work, then helping a married couple with US and UK reporting issues to consolidate 30 different accounts into seven new accounts to create a coordinated investment plan. So many moving parts and tax considerations!

What do you see as the most significant trend in your practice in a year's time?

Political changes that will impact tax planning opportunities.

What personality trait do you most attribute to your success?

The ability to deal with people from all sorts of backgrounds. And resilience.

Who has been your biggest role model in the industry?

Daniel Freedman, the founder of London & Capital. We only got to spend 18 months working together, but I learnt so many important lessons in that too short period.

What is something you think everyone should do at least once in their lives?

Charitable work

You've been granted a one-way ticket to another country of your choice. Where are you going and why?

America. It has so much variety that you can have so many different experiences in one country. But I would want a return – I couldn't live there!

What is a book you think everyone should read and why?

Just one? That's hard. For fiction, I'll say the Wolf Hall trilogy by Hilary Mantel which is about political machinations during the reign of Henry VIII, and for non-fiction, I have just read Empireland by Satnam Sanghera, which explores how Imperialism has shaped modern Britain.

Reflecting on 2022, what three words would you use to sum up the year?

O.M.G.

BUT I ACTED ON LEGAL ADVICE.......

Authored by: Paul Buckle - Ocorian

It may come as a surprise to some that where a trustee takes and follows legal advice, that does not necessarily mean it has behaved reasonably so that in some cases it may still be denied its costs when acting on that advice. That was the contention being made in the recent Guernsey case of In re J and K Trusts,[1] where counsel for a beneficiary argued a trustee legally advised to pursue a directions application before the court, should be denied the costs of that application where it was faced with a plain and obvious conflict of interest, even if the advice was that there was no such conflict.

To give some context, the case involved two trusts established by the same settlor (since deceased) and with the same trustee appointed by the settlor. The principal beneficiary of the first trust was A, who was the late settlor's wife, and of the second B, who was the survivor of the settlor's two daughters. In 2020, at a Guernsey Court of Appeal hearing, it was determined that a part of the second trust was to be transferred to the first, but counsel for A later argued the trustee was conflicted and should resign rather than pursue the transfer. The trustee was legally advised it had no conflict, or alternatively, that if there was a conflict it had been placed in that position by the terms of the trusts which thereby authorised it to proceed. However, in the face of A's contentions the advice was that it should seek court directions to confirm the absence of conflict, which it duly did. A lodged a counter application for the trustee's removal as trustee of both trusts. In the event the trustee did resign on terms making the two applications otiose. The one remaining question, on which the parties could not agree, was how to deal with their costs.

Collas LB thought the law was not in dispute, but that its application to the facts was more controversial. Drawing on Jersey authority, which he thought also represented the law in Guernsey, he said a trustee could be denied its costs if it was (not simply alleged to be) guilty of misconduct, which was a high threshold to surmount.[2] In arguing for misconduct on the trustee's part, counsel for A relied heavily on the Jersey case of BA v Verite Trust Co Ltd re the E, L, O and R Trusts,[3] where a trustee which failed to resign in the face of a plain and obvious conflict was denied its fees and costs even though it had taken advice. In response, the trustee argued it had acted reasonably in following the legal advice it had obtained.

Although he found for the trustee, Collas LB said "The act of taking legal advice does not provide a cast iron defence".[4]

1 [2022] GRC013

2 [2002] GRC013, [7] citing des Pallières v JP Morgan Chase & Co [2013] JCA146 and Re H Trust [2019] JRC072

3 [2008] JRC150

4 [2022] GRC013, [17

When faced with an allegation of conflict, a trustee should seek legal advice; to that extent, there was no distinction to be made between E, L, R and O Trusts and the instant case.[5] The difference lay in the trustee's assessment of the advice received. In E, L, R and O, by virtue of its trusteeships, the trustee found itself in a situation where in short, it would be on both sides of a contested hearing. That was a situation where, whatever the legal advice, the trustee should have acknowledged the patent conflict and resigned not sought court directions. In the instant case, the question was whether it was unreasonable for the trustee to have followed its counsel's advice or that the advice was so plainly wrong that no reasonable trustee would have accepted it. it was not for Collas LB to decide the correctness of the trustee's advice but having analysed it he concluded it was not unreasonable form the trustee to have accepted and acted on it.[6] The trustee was therefore entitled to its costs and was not obliged, as A had argued, to pay A's costs personally.

The court went on to decide on supplementary matters, such as the allocation of costs between the two trusts and so on. However, it is the question of legal advice that is the most interesting aspect of the case. There is no doubt that, not being expert in all matters,[7] trustees should take legal advice where they need it, and very often are expressly authorised to do so by the terms of the trust or by the trust's governing law.[8] Moreover, because a trustee cannot delegate the exercise of its discretion, it has to assess the advice it receives not blindly follow it;[9] and costs aside, a decision to act on flawed advice may result in the decision being set aside as the trustee will not have considered all relevant matters or considered irrelevant ones. These principles are seen at work in the familiar forum of a Beddoes application where trustees adduce their legal advice to the court, and the court and beneficiaries critically assess that advice before the court decides whether to allow the trustee to proceed in reliance on it.

Similar principles apply where a trustee is sued for breach. That the trustee took legal advice is no defence in itself, although it may become relevant if the court is asked to exercise its discretion to excuse a trustee that has acted

honestly and reasonably.[10] Also, a trust deed could expressly exonerate a trustee which acted on legal advice. But in general, acting on poor legal advice gives the trustee a claim against the advisers not a defence against the beneficiaries, and even acting on good advice does not mean there is no breach of trust.

All this means that trustees need to assess their legal advice carefully, not as experts themselves (as they will not usually be such) but as prudent professionals faced with a decision to take.

This is not to say they have to scrutinise advice and double check every last word, but certainly, if the advice is based upon false assumptions or has failed to take account of something the trustee reasonably considers relevant, an enquiry should be raised. Equally, however, trustees that go shopping for a favourable opinion may behave unreasonably if the original advice was not obviously suspect or whilst advantageous for the trust placed the trustee in a personally disadvantageous position. In extreme cases, trustees may have to go against their advice. In E, L, R and O Trusts, even though it acted in good faith, and genuinely thought the interests of the trust were served by remaining in office, the trustee should have appreciated that when the facts confirmed the existence of a patent conflict, its lawyers' enquiries for additional information and advice that no criticism of its trusteeship was being made missed the point; the conflict spoke for itself and the trustee should have resigned.[11]

The other point is that any advice is only as good as the instructions to the adviser. It is therefore as much a trustee's responsibility to ensure it provides instructions which contain all the relevant facts and documents, and ask the relevant questions, as it is to assess the end product.

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5 [2022] GRC013, [16] quoting [2008] JRC150, [38].

6 [2022] GRC013, [24].

7 Pitt v Holt [2013] UKSC 26, 10].

8 See s.32 of the Trusts (Guernsey) Law, 2007 (as amended).

9 Scott v National Trust for Places of Historic Interest or Natural Beauty [1998] 2 All ER 705, 717.

10 See eg Re Alsop [1914] ! Ch 1; Marsden v Reagan [1954] 1 WLR 423.

11 See especially [2008] JRC150 [33] - [34].


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WILL THE POST-COVID TRENDS OF 2022 CONTINUE IN TO 2023?

Authored by: Mark Pinnick and Kelly Watson - Accuro

After a world ravaged by Covid during the course of 2020 and 2021, with most of us having endured a lockdown of some sort or another, we were cautiously optimistic about 2022. Now that we are nearing the end of 2022 it would seem that our optimism about a rosy year was rather short-lived. Conflict continues to escalate in various countries around the world, and the climate crisis is as much of a concern as it has ever been, if not more so, with serious water and food shortages around the globe continuing to put pressure on daily life for many.

Monitoring and Communication

For most of our clients, the main impact of these pressures has seemingly been confined to the value of the assets we hold for their benefit. As trustee, we are very aware of the assets that we administer and the effect that a turbulent world with high market volatility has on those assets. After all it is our duty as trustee to preserve and enhance the value of the trust assets in our care; inflation alone is rapidly eroding even the most cautious of assets.

Regular communication and consultation with the appointed asset managers regarding the performance of an investment portfolio, or property managers in respect of tenants and tenancies, has always been an important part of meeting this duty and never more so when the normal order has been replaced with chaos.

Increased Use of Technology

Throughout the 20th and early 21st century, trustees were often found travelling the globe to see beneficiaries and intermediaries. During 2020 and 2021, the covid pandemic brought travelling to an abrupt halt and we were forced to embrace technology. Never before have we seen such advances in technology with regard to asset management, reporting and video conferencing. Skype, Zoom, Teams, all allowed us to monitor and manage assets, and attend meetings around the world when the pandemic prevented us from doing so.

What has become apparent over time however, is the importance of conversations we have with families over a cup of coffee or meal after the scheduled meetings. It is often once the agenda has fallen away that families relax and talk about the things that they don't realise are important pieces of information for a trustee. So it is understandable that 2022 has seen a rush by many to return to in person meetings. But how does that sit in a world that is trying to become carbon neutral?

Undoubtedly the environment received a benefit from reduced travel during the pandemic. There were fewer planes in the sky and less traffic on the road which meant less pollution. In the face of a global commitment to protect our planet, we have to strike a balance with our duties to the families we work with.

In 2023 we will therefore likely see a mixture of face-to-face and e-meetings.

The ease of e-meetings enables more frequent and ad-hoc engagement thereby improving communication, however they do not replace the intangible benefits gained from in-person dialogue. Both have their place in our future and that of the trusts and families that we look after, and we will all benefit from the greater access to, and use of online reporting and asset management.

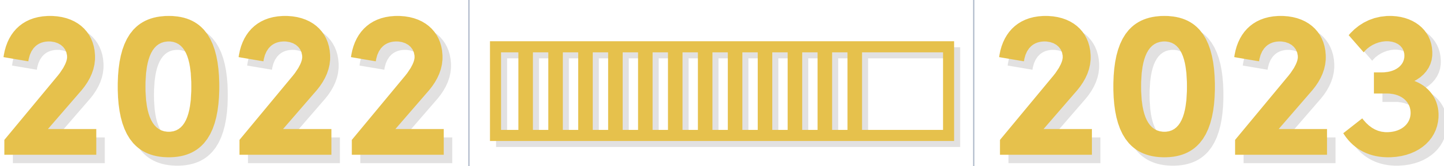
Impact Investing

In 2022 we have seen many of the families that we work with, across the generations, asking us to consider ESG, impact investing and philanthropy, in part at least driven by the fall out of the Covid-19 pandemic and the intensification of the challenges faced by society worldwide. Impact investing, a form of sustainable investing, seeks to generate positive, measurable social and / or environmental impact alongside financial return. The risks can be higher but with greater rewards which extend beyond financial return. Philanthropy, sits at other end of the sustainability spectrum, as there is no desire to generate a financial return from the deployment of capital, capital which is intended to serve a purpose for betterment only.

We have seen increasing numbers of requests to consider the assistance of trust assets to do something positive in a community that could otherwise not afford to do so themselves. On a recent trip to Kenya, we had the privilege of visiting various charities with one of our clients whose family feels very strongly about making a difference in the community that they grew up in as well as internationally. This really brought home the harsh effects of living in impoverished communities where access to water is not a given. For example, drilling a borehole, providing a solar power array to power the pump and ultimately provide a village with running water so that the women and children don't have to walk 40 kilometres a days to water their animals and bring water back to their villages. By providing them with water, the village can plant crops and the children can have an education and a future. As trustee, we have the privilege of being able to assist the families we work with in their endeavours to make the world a better place.

And in 2023…?

As we head in to 2023, we believe that market turbulence will persist, requiring ongoing scrutiny of the assets we hold as to value and suitability, the balancing act of in person versus virtual meetings will continue, and we are likely to see an increasing number of requests to consider impact investing and philanthropy, as the families that we work with try to do their bit in caring for our environment. It's just another year in the life of a trustee!



US EXPATRIATION PART 1

CONSIDERATIONS AND PLANNING OPPORTUNITIES

Authored by: Tahir Mahmood and Todd Cowan - London & Capital, and Oliver Burton - Blick Rothenberg

In this three-part article series, Oliver Burton of Blick Rothenberg, together with Tahir Mahmood and Todd Cowan of London & Capital give a comprehensive overview of expatriation. They discuss the basics of expatriation and who it impacts, all the way through to the planning opportunities available.

What is expatriation?

The term 'expatriation' can be defined as a voluntary departure from the country in which an individual is a citizen – be it from birth or on a naturalised basis.

There is usually a physical departure involved in some way, but when we use the term 'expatriation' we are also referring to the more formal, administrative side of renouncing one's citizenship.

In this article, we discuss expatriation from the US and the associated tax implications. It is not just US citizens that need to be aware of the rules here. As we will see, Green Card holders are often impacted in the same way if they choose to hand back their permanent resident status.

Why do people do it?

There are many reasons why an individual may choose to expatriate from the US or surrender their permanent resident status, but tax is usually one of the driving factors.

The US is one of the only jurisdictions in the world that looks to impose a tax on a citizenship basis. This typically means that a US citizen is held within the scope of US taxation irrespective of where they are located and for how long.

For example, a US citizen who has become a long-term resident of the UK will be obliged to keep up with their US tax obligations for as long as they retain that US citizen status.

Similarly, non-US citizens who hold US Green Cards for extended periods of time will often be subject to those same obligations, even though they may have left the US for good.

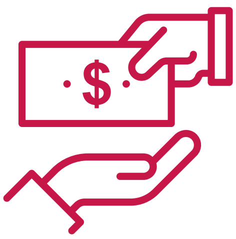
Individuals in that position are of course within the scope of tax legislation in the UK or wherever else they may reside. Managing two tax systems in this way can be an onerous exercise when it comes to both filing obligations and the payment of tax.

What happens to an individual's US tax return obligations?

In the year of expatriation or abandonment of permanent resident status, the individual will need to submit Form 8854 with their US income tax return.

Once the tax return for the year of expatriation or abandonment has been submitted, the individual in question will likely be a non-resident alien for US tax purposes. This generally means that they will only be expected to submit US tax returns in future if they are in receipt of US sourced income, they are engaged in a US trade or business, or if they are spending significant amounts of time in the US.

In some situations, individuals will be required to file Form 8854 on an annual basis after the initial year. This is normally only relevant where there has been a deferral of tax or if the individual has a specifically complex aspect to their affairs.



Are there any costs associated with expatriation and abandonment of permanent resident status?

There can be – and sometimes they can be significant.

To start with, there is the process itself. An individual will need to pay a $2,350 fee to the US Embassy when attending their appointment.

Good tax and immigration advice is always recommended. Individuals

should be mindful of the fact that engaging tax advisors and lawyers will bring in an additional cost, and that cost can vary depending on the complexity of their affairs.

Lastly, some individuals will be required to pay the infamous 'exit tax'.

The second article can be viewed on London & Capital's website.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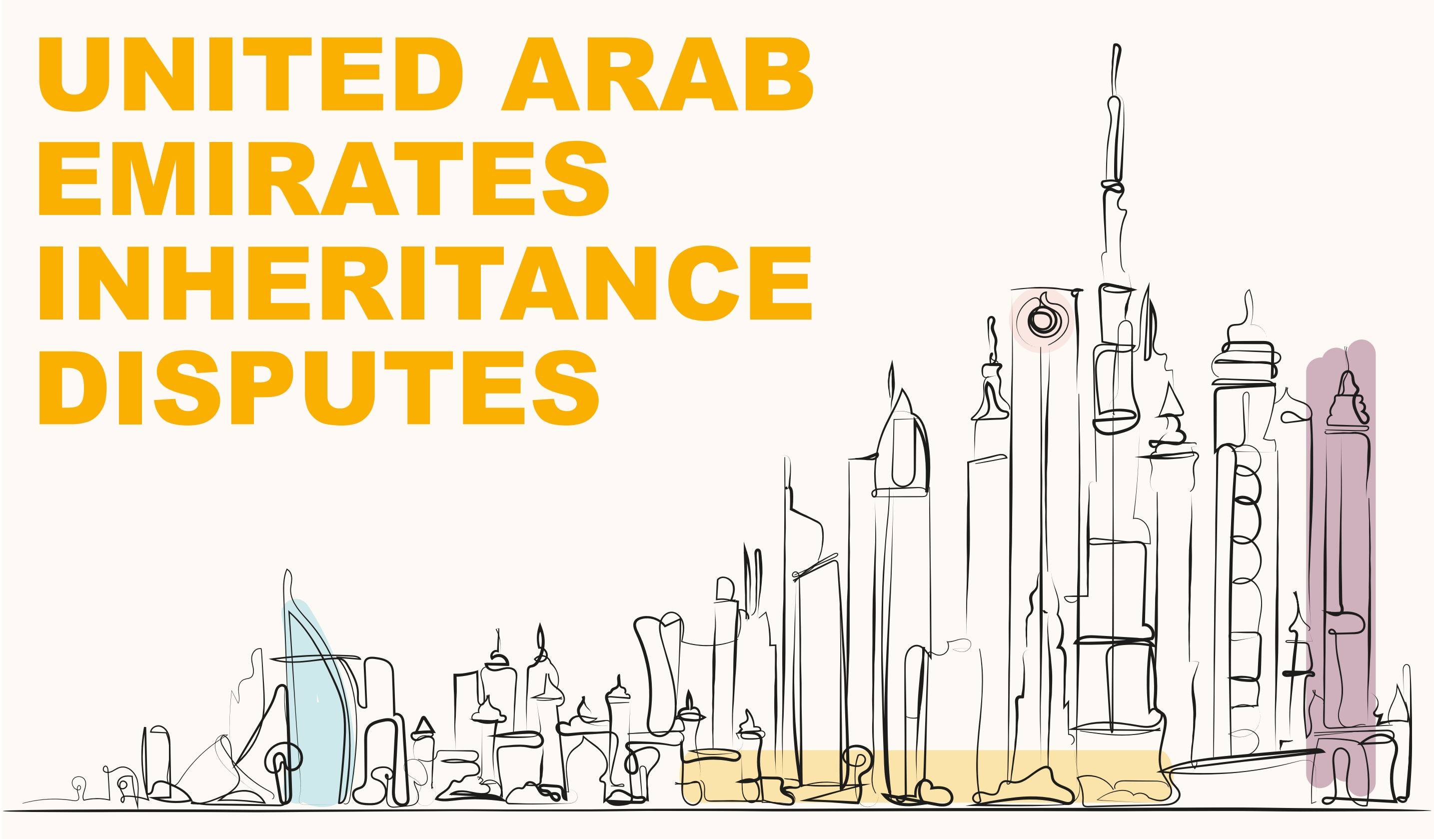
UNITED ARAB EMIRATES INHERITANCE DISPUTES



Authored by: Andrew Reay - Harbottle & Lewis

A new Court in the United Arab Emirates will serve as the single authority to settle inheritance lawsuits. The Court, which will be situated in Dubai and which will be the first of its kind to preside in the Emirates, was announced earlier this year by His Highness Sheikh Maktoum bin Mohammed Al Maktoum as part of an initiative to develop the Emirati judiciary with the ultimate goal of creating 'the best litigation system in the world.'

The laws of inheritance which will apply to an individual in the UAE depend upon whether the deceased was Muslim. Where a non-Muslim foreign national dies with assets in the UAE, then 'the law of the deceased' (which we understand to mean the law of the jurisdiction in which the deceased was a national) will apply to the devolution of their assets. This essentially provides that any Will which they have made will be recognised as materially valid in the UAE on the condition it is valid in their home state. However, the law of the UAE shall apply to Wills made by foreign nationals to the extent that they dispose of real property situated in the UAE. The Courts in the UAE will therefore make a decision on that real property in accordance with Sharia law.

In addition to applying Sharia law in the above circumstances, the rules of inheritance under Sharia law will of course also apply to the succession of Muslims. Broadly, Muslims can make a Will (if they so wish) in which they enjoy testamentary freedom over one third of their assets. The Sharia rules of inheritance will apply to the remaining two thirds, or to the estate as a whole if the deceased had not made a Will.

There are three classes of heirs:

1. Those with fixed shares in the estate of the deceased (known as Ashab Al-Furudh).

These heirs are essentially first in priority to receive a share in the estate of the deceased. The class include the deceased's wife or husband, their father and mother, their grandparents, and several other female relatives or relatives to whom the deceased was related by virtue of their mother.

2. The substitute or residuary heirs (known as Asabat).

To the extent that there are proportions of the estate which have not been distributed to the Ashab Al-Furudh (above), the heirs of the Asabat will inherit. This class includes various male relatives (or relatives to whom the deceased was related by virtue of their father or uncle) and, subject thereto, females who would otherwise have been Ashab Al-Furudh had male relatives not inherited instead.

3. Other blood-related heirs (known as the Dhawu al Arham).

This class includes a number of heirs who may have already inherited as Ashab Al-Furudh or Asabat. The purpose of this class is to deal with any remaining or residuary shares which have not already been claimed or distributed as above. The class includes two males (maternal grandfather and maternal uncle) as well as various relatives including the deceased's daughter, granddaughters, female cousins and aunts.

The heirs, or potential heirs, must put forward their claims to the succession and they must not be precluded from inheriting by virtue of their being a non-Muslim (a Muslim cannot inherit from a non-Muslim and vice versa) or their having been involved in the murder of the deceased.

The new UAE Court will deal with any disputes which arise as to the division of assets, the formal or material validity of Wills, expulsion of heirs and inventory lists, among other inheritance-related issues.

Although the laws of England and Wales enable individuals to leave their property to whomever they so wish on their death, the intestacy rules will naturally apply where someone has died without a Will. The succession of real estate situated in England and Wales will of course always be governed by the laws of England and Wales, irrespective of where the individual has died domiciled.

Where a Muslim dies intestate with real estate in England and Wales, therefore, there will almost invariably be a 'mismatch' between the English intestacy rules and those which would otherwise apply under Sharia law.

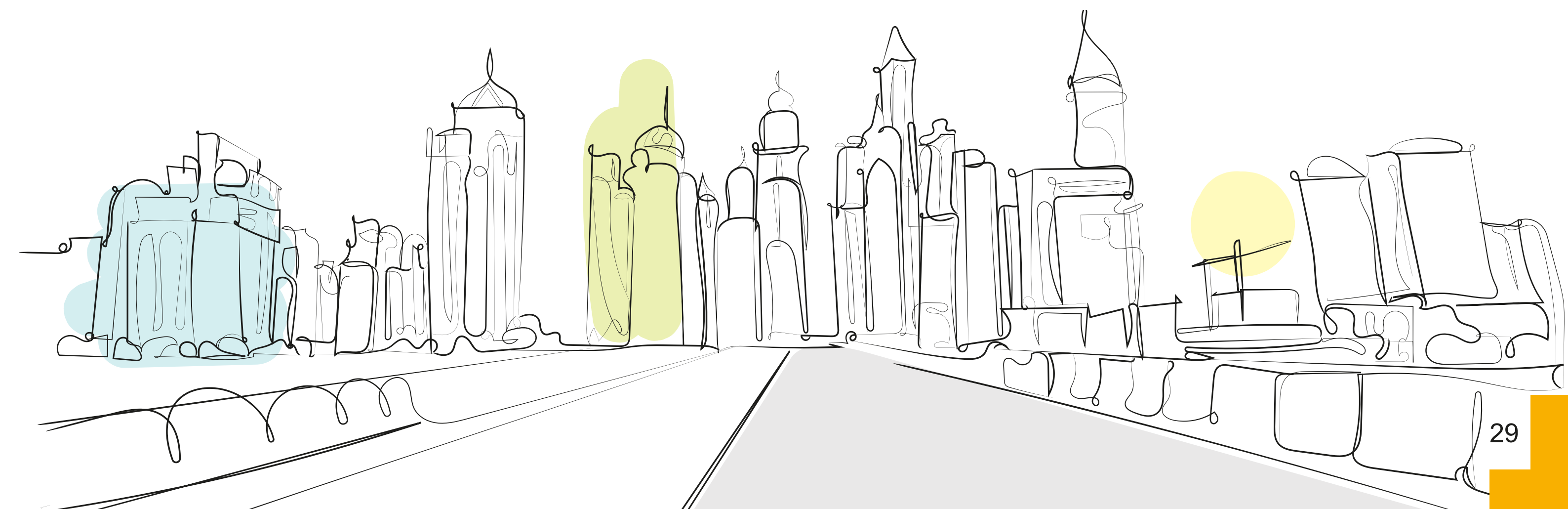
Provided the heirs under both sets of rules are all in agreement, Deeds of Variation can be a simple way of rectifying the position. Where the deceased was a UAE national, and if a Deed of Variation cannot be agreed upon, a question arises as to whether the UAE Courts or the English Courts will be the more favourable forum in which to settle any such dispute. Certainly the English Courts will be competent in determining the proper

devolution of any real estate situated here, but to the extent that Sharia law applies to the estate as a whole (and to Muslims worldwide) the heirs may instead seek to have any such case heard by a Court which will make a ruling in accordance with Sharia law.

Other inheritance disputes may arise in the context of the estate of a Muslim UAE national where, for example, those responsible for administering the estate are considered to have failed in their duties or where there are disagreements as to the identity of the heirs.

In September 2022, the UAE Courts confirmed that they would now be prepared to enforce UK Court judgments.

They had previously been reluctant to do so on the basis that no bilateral treaty exists between the UAE and the UK in relation to the recognition and enforcement of judgments. However, following the recent recognition by the UK Courts of the enforceability of a UAE judgment in the case of Lenkor Energy Trading DMCC v Puri [2020], the UAE is set to recognise UK judgments similarly on the basis of reciprocity. It will be interesting to see whether this revolutionary step will extend to cases heard by the new UAE Court in the context of inheritance cases.




Harbottle & Lewis

60-SECONDS WITH:

AMANDA BAKO
PARTNER
RAWLINSON & HUNTER

Q: What do you like most about your job?

A: Every day brings something new. Working alongside families and the different dynamics and goals they have.

Q: What would you be doing if you weren't in this profession?

A: FBI agent or some type of investigation work although sometimes it feels like I am a double agent!

Q: What's the strangest, most exciting thing you have done in your career?

A: Starting my career in the trust industry in Northwest England, I never envisaged that this would allow me the opportunity to work internationally. I have been lucky enough to live and work in the Cayman Islands, Bermuda and Switzerland and now I am back in Cayman as I enjoyed it so much!

Q: What is one of your greatest work-related achievements?

A: Joining the partnership at R&H.

Q: What has been the most interesting case you have seen in 2022?

A: With the continual innovation in the financial world, there have been a number of cases with unique assets which requires the need to grow and learn constantly to ensure that as Trustee they are effectively managed.

Q: What do you see as the most significant trend in your practice in a year's time?

A: Contentious matters as the fallout from the markets or generational changes occur.

Q: What personality trait do you most attribute to your success?

A: Patience and diplomacy – often needed in bucket loads!

Q: Who has been your biggest role model in the industry?

A: I have been fortunate to work with a number of fantastic CEO's/ Partners from whom I have learnt a great deal. I couldn't possibly choose one.

Q: What is something you think everyone should do at least once in their lives?

A: Parachute jumping, it's amazingly peaceful.

Q: You've been granted a one-way ticket to another country of your choice. Where are you going and why?

A: Somewhere cold, with snow. Perhaps back to Iceland and hopefully this time see the Northern Lights.

Q: What is a book you think everyone should read and why?

A: The Kite Runner by Khaled Hosseini. Emotional but a wonderful story of redemption, friendship and hope.

Q: Reflecting on 2022, what three words would you use to sum up the year?

A: Turmoil, challenge and opportunity.

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ESG INVESTING AND TRUSTS

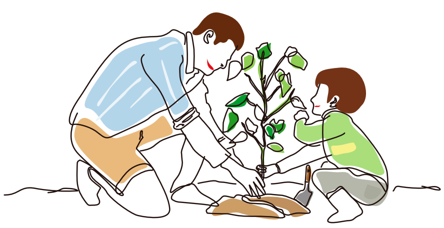
Authored by: Sanmari Crous - Standard Bank

There is no denying that ESG investing is a global trend. It is widely accepted that trustees are increasingly being asked to consider ESG-centric investments by the next generation of beneficiaries, while Forbes recently reported that flows into ESG funds doubled from 2020 to 2021.

Anecdotal stories shared in the industry suggest that the NextGen is particularly interested in ESG investing. This aligns with a recent report by Saltus Wealth Index which found that more than 80% of 25-34 year olds believe that responsible investments make a tangible difference to the environment or society in general, compared to less than 40% of 55-64 year olds.

Whereas investing in ESG strategies, in their various guises, historically meant being willing to sacrifice financial returns in order to "do good", the investment backdrop and investor appetite has evolved, with ESG strategies now delivering competitive returns versus their unconstrained peers. Even with the recent short-term relative downturn in ESG strategies' performance, the weight of regulation on businesses and the impact of government policies around the world should continue to favour ESG-style investing.

With this in mind, most requests from beneficiaries for trustees to consider ESG investments should be relatively simple to accommodate. It is however worth considering that, as with anything, some requests will deviate from the norm. A good example of this is the recent Butler-Sloss case, which relates to two charitable trusts and the trustees' ambition to align the trusts' investments with the Paris Climate Agreement. It was submitted that by doing this the trustees would be excluding over half of the publicly traded companies and many other commercially available investments.



While the trustees' proposed investment policy retained a targeted rate of return of CPI + 4%, the trustees approached the court for its blessing to adopt the investment policy, acknowledging that this may be below their usual targeted rate of return.

If a trustee of a non-charitable trust was to face a similar request from its beneficiaries, what would such a trustee need to consider?

There are several considerations for a trustee –

• A Trustee's duties and powers

A trustee has a fiduciary duty to act in the best interest of the beneficiaries, and, under Jersey law, to enhance and preserve the value of the trust assets as far as possible, subject to the terms of the trust. A trustee might take the view that considering non-financial requests is in the beneficiaries' best interest, but a trustee must generally invest for the maximum financial return, having regard to the trust's risk profile.

• Trust Deed

When a new trust is being set up, it is easy enough to draft powers and duties into the deed to authorise and / or oblige the trustee to take ESG into account when making investment decisions, and to possibly include an anti-bartlett clause and indemnities.

However, with an existing trust, it may not be that simple, especially depending on its proper law and when the deed was drafted. Although a trust deed would generally give wide powers of investment, the trustee should consider the overall objective or purpose of the trust, whether they have the power to make investments on considerations other than financial return, and whether variations of the trust deed are allowed. It may well be necessary in some circumstances to consider a variation of the trust deed to include an express power to make ESG investments, clearly defining what would qualify as an ESG investment, and setting any limitations on such investments. This may, however, be a tricky process.

• Beneficiaries' wishes

A trustee should certainly consider beneficiaries' needs and their cultural and ethical beliefs, however, it should not merely accommodate beneficiaries' requests when making investment decisions, especially if it could have an adverse effect on investment performance. Even with a balanced ESG investment strategy, beneficiaries may become disgruntled with inferior returns over time and seek an explanation as to how it was in their best interest to invest in a lower-performing fund.

A trustee should also consider whether all the beneficiaries are in agreement. With the differing views between older and the next generations, this cannot be taken for granted. Trustees should remember that they are answerable not only to current adult beneficiaries, but also to minors and unborn beneficiaries.

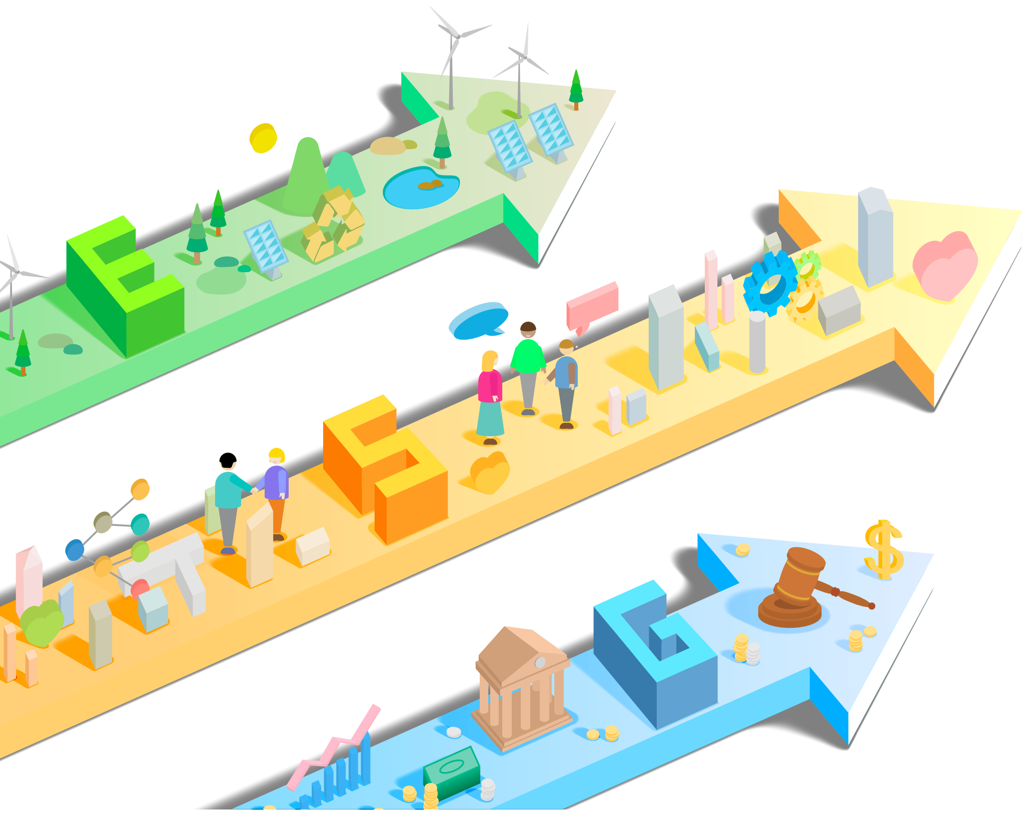
• Investment policy

The investment policy may very well need to be amended if a trustee decides to make ESG-centric investments, especially if the policy pursues best return only.

• ESG experts

As with any investment, it is important to select investment advisors and managers specialising in ESG. Not only is this important from a returns and liability perspective, but to truly meet the needs of the beneficiaries, a trustee will need to be sure that the ESG investment is indeed what it purports to be.

Recent research has found that "… on average, ESG funds pick firms with worse employee treatment and environmental practices than non-ESG funds. Despite this track record, we find that ESG funds charge higher management fees and obtain lower stock returns relative to non-ESG funds run by the same asset managers in the same years."[1] Although this research was limited to the US where, it is suggested, greenwashing is stronger than the rest of the world, it illustrates the need for expert investment managers.



• Impaired investment performance

A trustee will need to consider whether the ESG-directed changes are likely to affect investment performance, and if so, to what extent. As shown in the Butler-Sloss case, the trustee would need to balance the ESG objective with any financial detriment that may be suffered.

• Consent and indemnity

In the Cowan and Scargill case, the court suggested that a trustee may need to obtain the beneficiaries' consent to take into consideration the non-financial benefits that the beneficiaries may wish to obtain. Where consent is obtained, it would be usual for a trustee to also seek indemnity from those giving their consent.

• Court approval

If the investment policy adjustment is far-reaching, as was the case in Butler-Sloss, the trustee may wish to take legal advice on whether the court should be approached for its blessing.

In the Butler-Sloss case, the court decided that the trustees were permitted to adopt the proposed investment policy and that doing so would discharge their duties in respect of the proper exercise of their powers of investments. Although the case pertains to charitable trusts, many of the principles discussed are relevant to non-charitable trusts.

As always, communication with the family is key. Having an open dialogue, making sure all the beneficiaries are heard and that a true understanding is reached on what the beneficiaries' wishes and expectations are, will go a long way to facilitate the changes that a trustee may need to make. The tides are changing, and trustees need to change with it.

1 Raghunandan, Aneesh and Rajgopal, Shivaram, Do ESG Funds Make Stakeholder-Friendly Investments? (May 27, 2022). Review of Accounting Studies, forthcoming, Available at SSRN: https://ssrn.com/abstract=3826357 or http://dx.doi.org/10.2139/ssrn.3826357

NEW ITALIAN ADMINISTRATIVE GUIDELINES ON TAXATION OF TRUSTS

Authored by: Nicola Saccardo and Gabriele Colombaioni - Charles Russell Speechlys

Introduction

On 20 October 2022, the Italian Revenue issued the Circular Letter No. 34/E setting out new guidelines on the taxation of trusts (the "**Circular Letter**"). The Circular Letter provides clarifications but also raises some uncertainties due to inconsistencies with previous rulings (for example in relation to disregarded trusts) and to some ambiguous wording (for example, in relation to reporting obligations of resident discretionary beneficiaries). Trustees, settlors and beneficiaries of existing trusts with a potential exposure to Italian taxes should take advice on the impact of the guidelines.

Inheritance And Gift Tax ("Igt")

In the Circular Letter, the Revenue withdraws its past approach of applying IGT on trust additions and accepts the interpretation that IGT is due only on distributions to beneficiaries. The Revenue further clarifies that IGT is due on distributions of capital only and that the applicable rate and exempt amount depends on the family relationship, at the time of the distribution, between the settlor and the beneficiary of the distribution.

The new position of the tax authorities will allow for a deferral of the payment of IGT but could expose the trust assets to the application of higher IGT rates in the case of their future increase.

The Circular Letter states that the above general principle is not valid if a trust is to be considered as disregarded vis-à-vis its settlor for income tax purposes. In such a case, upon the demise of the settlor, IGT should be applied on the trust assets as if they were part of the estate of the settlor and the trust did not exist. Furthermore, during the lifetime of the settlor, distributions made by the trustee to the settlor should not be in the scope of IGT while distributions made to the beneficiaries (other than the settlor) should be subject to IGT for their entire amount (that is, not just for the component that qualifies as distribution of the trust capital) as if they were gifts made by the settlor. This position from the Revenue is rather surprising as it is inconsistent with its previous precedents where it stated that the disregarded characterisation of a trust for income tax purposes did not impact its IGT treatment. Based on the new approach, the IGT consequences of the demise of the settlor of a disregarded trust will depend on the impact of such demise on the characterisation of the trust. In such an event, a trust could become either (i) disregarded vis-à-vis a beneficiary or (ii) non-disregarded. In the case (i), IGT should be levied on the taxable value of the trust assets determined at the time of demise with rates and exempt amounts based on the family relationship between the settlor and the beneficiary as if such beneficiary had inherited the trust assets from the settlor. The case (ii) should be treated like an addition of assets to a trust upon the demise of its settlor and, therefore, under the new approach of the Revenue, no IGT should be due on addition as any IGT liability could arise only upon distribution to the beneficiaries. The Circular Letter only addresses the IGT treatment of trusts that are disregarded vis-à-vis their settlors, but the same consequences should materialise when the trust is disregarded vis-à-vis a beneficiary. So that, if a settlor settles a trust that characterises as disregarded vis-à-vis a beneficiary, IGT should be due on settlement as if the settlor had made a gift to such beneficiary.

Moreover, the Circular Letter:

- Clarifies that the territoriality rules of IGT should be applied in relation to trust distributions making reference to the residence of the settlor and to the situs of the assets at the time of settlement of the trust. Under this rule, if the settlor was not resident in Italy at the time of settlement and if he did not settle into the trust any Italian situs asset, no IGT should be due on trust distributions even if, upon distribution, the settlor had relocated to Italy and the distributed assets were to include Italian situs assets;
- Suggests that distributions made to the settlor should not be subject to IGT (this is stated in relation to trusts settled for the satisfaction of the settlor's creditors, but should apply to any trusts);
- Clarifies how to deal with trusts that were funded through settlements already subjected to inheritance and gift tax according to the past approach. Depending on the circumstances, the taxpayer may claim a refund of the IGT paid on trust additions, be exempt from IGT on trust distributions or benefit from a credit, for the IGT paid on additions, against the IGT on distributions.

Income Tax

The Circular Letter provides guidance on several important aspects concerning the income tax treatment of trusts.

When a trust is disregarded – typically vis-à-vis its settlor or a beneficiary – the income and gains from the trust assets are treated as income and gains of the settlor or beneficiary and subject to income tax in his/her hands as if the trust did not exist and the said settlor or beneficiary had realised the income and gains directly. An implicit consequence of the disregarded characterisation of a trust was that a distribution from a disregarded trust was to be treated like a gift from an income tax perspective and, as such, would be outside the scope of income tax. In the Circular Letter, the Revenue takes the view that trust distributions made by a disregarded trust do not qualify as taxable income for the recipient on condition that the distributions are made out of trust income that, due to the disregarded characterisation of the trust, had been previously imputed to a resident person and subject to tax. This condition required by the Revenue is highly debatable.

In relation to trusts that are not disregarded, the Circular Letter comments on the 2019 provisions that stipulate that (i) distributions of "income" from trusts established in "low-tax jurisdictions" are taxable income for the recipient, and (ii) trust distributions qualify as distributions of income, unless there is adequate evidence that capital is being distributed. On this point, the Revenue:

- Takes the view that these provisions are interpretative, rather than innovative, so that trust distributions to resident beneficiaries may have been subject to income tax even prior to the change in law. The position of the Revenue is highly disputable;
- Provides clarifications on the notion of "low tax jurisdiction". A trust should be considered as established in a "low-tax jurisdiction" if the income of the trust is subject to an income tax in its jurisdiction of establishment that is lower than 50% of the nominal tax rate applicable in Italy (either 26% or 24%, depending on the circumstances). The nominal tax rate of the foreign jurisdiction should be determined taking into account any special tax regime applicable in the foreign jurisdiction. Unfortunately, the Circular Letter does not clarify how this test should be applied if, in the jurisdiction of establishment of the trust, the income of the trust is imputed and taxed in the hands of the settlor and/or beneficiaries as it accrues at trust level. Based on the precedents of the Revenue in relation to Italian CFC legislation, the tax rate applicable on the settlor or beneficiaries in relation to the trust income should be taken into account;
- States that income consists of income and gains (even if accumulated) while capital consists of the original settlement and subsequent additions, and that income must be computed on the basis of Italian tax rules;
- Confirms that the trustee may freely decide whether to distribute income or capital from an Italian tax standpoint. However, to this purpose, the trustee must keep adequate supporting evidence on the computation of income and capital and must properly formalise the distribution resolutions.

Reporting Obligations

In the Ruling no. 693 of 8 October 2021, the Revenue took the view that all resident beneficiaries, including discretionary beneficiaries, have reporting obligations – in their capacity of beneficial owners of the trust – on trust assets. This position of the Revenue was widely criticised by practitioners. The Revenue seems to have reviewed such approach stating that while non-discretionary beneficiaries should always fulfil reporting obligations in relation to the trust assets, discretionary beneficiaries have reporting obligations only on the basis of the information available to them such as when the trustee communicates to the beneficiary the decision to distribute in his/her favour a certain trust income or capital. Unfortunately, the wording of the statement of the Revenue leaves it unclear whether reporting obligations of discretionary beneficiaries are triggered by the mere availability of information (e.g., if the trustee makes an annual reporting on the value of the assets in trust and sends it out to all the discretionary beneficiaries) or by the existence of a right of the beneficiary over the assets held in trust.

The Circular Letter takes the view that no reporting obligations on the trust assets apply to individuals that have a second tier interest ("titolari di interessi successivi") on the condition that no clauses in the trust deed nor in any other governing document of the trust allow them to receive any distribution until the demise of another individual.

HOW CAN INTERNATIONAL GIVING BE STRENGTHENED TO DELIVER THE UN SDGS?

THE FINANCING GAP BETWEEN THE SDGS AND WHERE PROGRESS STANDS ALMOST DOUBLED DURING THE COVID-19 PANDEMIC.

HOW CAN INDIVIDUALS AND ORGANISATIONS HELP BRIDGE THE GAP?

Authored by: Derek Ray-Hill - Charities Aid Foundation

For the first time in over 30 years, the UN's Human Development Index[1] declined this year. It is a measure of average achievement in key dimensions of human development: a long and healthy life, being knowledgeable and have a decent standard of living. A decline in this measure indicates a regression in terms of human progress – and without progress, it will be impossible to achieve the UN's Sustainable Development Goals (SDGs), especially by the target of 2030.

Achieving the goals is particularly affected by the financing gap between the SDGs and where progress stands, which almost doubled during the pandemic, as governments around the world grapple with post-Covid recovery, increasing demands for social services and rising inflation.

Last month, we held a side-event focusing on the SDGs at the UN General Assembly, and it was pointed out that the challenge is not a lack of money, but rather that the money is not moving around in a way that enables the global community to meet the goals by 2030.

However, by strengthening the tools and frameworks through which money and resources are given internationally, individual and organisational philanthropy can play a larger role in progressing towards the SDGs.

The role of cross-border giving

While the financing gap for meeting the SDGs appears enormous at an estimated US$4.2trn, this figure still accounts for less than 1% of global wealth (US$430trn). In the context of global interest rates, US$4.2trn is fundable on an ongoing basis. Encouragingly, meeting the SDGs through targeted funding and philanthropy is therefore achievable.

Cross-border giving – a term describing any donation that qualifies for tax relief in one country and is given directly to a foreign charity – is not new. Yet as more disasters and crises occur, it has become an increasingly popular way to give. Moreover, much of the world's wealth is concentrated in countries where humanitarian need is less than elsewhere, so this wealth must be distributed more effectively across borders to progress towards the SDGs.

Impediments to cross-border giving

Despite cross-border philanthropy's massive potential, this means of

1 Human Development Report

giving is often limited by restrictive global frameworks, with national policy decisions and tax systems varying from country to country. The Global Philanthropy Environment Index[2] notes that many countries continue to report regulatory burdens that limit cross-border donations.

Even in the UK, which has a relatively liberal system, there are considerable administrative burdens and complex rules that can make giving difficult for individual donors. Organisations such as CAF need to collect information to ensure fund recipients fulfil national definitions of charitable causes, while also minimising the risk of contravening AML (Anti-Money Laundering) & CFT (Counter the Financing of Terrorism) regulations. When sending charitable funds and fulfilling these requirements across multiple jurisdictions and in various languages, costs grow substantially and, in some instances, act as a barrier to operating in certain geographies altogether.

What can be done?

The good news is that individuals show an appetite to give. Charitable giving is well-established in the UK and research such as CAF's World Giving Index 2022[3] has found that even against a backdrop of various ongoing crises, record numbers of people gave to charity last year worldwide.

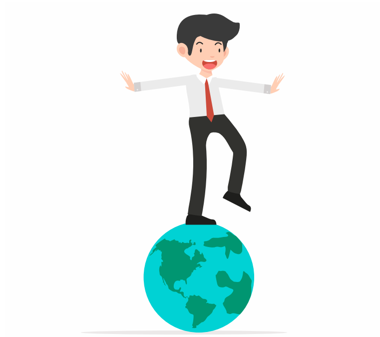
According to the Index, more people than ever donated in 2021, and in high-income countries, the rate of donations increased by 10%.

Two moving examples of how resilient local philanthropy can be are Myanmar, which ranks 6th overall and 2nd for giving to a charity; and Ukraine, which is the only European Country in the top 10.

To take advantage of the opportunities which philanthropy provides, we need to improve and leverage existing frameworks and structures that could enable further cross-border giving.

We need to invest in frameworks that help all kinds of donors to give – the general public, high-net-worth donors, institutional funders, and businesses. Such investment could also involve growing a global centre of excellence for philanthropy and social investment, to attract others to move their giving activity to the UK and make the most of the internal and cross-border giving opportunities here.

Another practical step to take is to encourage more – and more successful – partnerships between corporates and charities. A powerful element of non-profit/corporate partnerships is that they can have long-term scale and impact: charities and corporates can grow together, test different strategies, and eventually get them right, in a way that may not always be possible for more risk-averse bodies such as governments.



How could US regulation inform UK practices?

To help money move more effectively to reach the SDGs, revisiting regulation can be useful. The UK has an opportunity to position itself as a global frontrunner in cross-border giving and can take inspiration from observing our neighbours across the Atlantic.

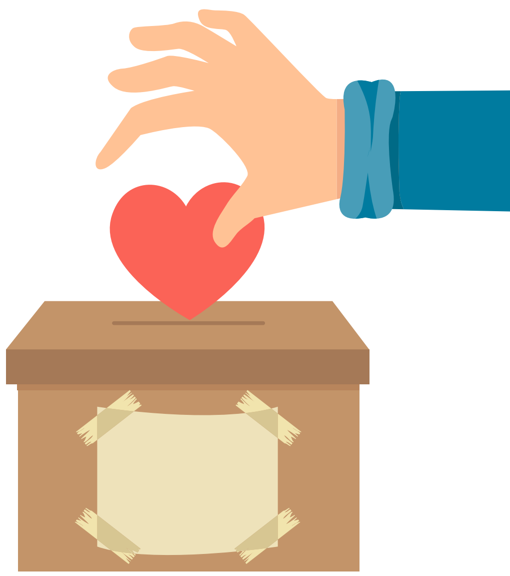
US regulation provides a potential template for considering how to facilitate donors' ability to grant funding internationally. The American tax authorities formally endorse cross-border philanthropy via two schemes: Equivalency Determination and Expenditure Responsibility.

- Expenditure Responsibility requires a review and funding of a specific charitable project and calls for annual reports on the expenditure of granted funds.
- Equivalency Determination is the process through which a US foundation makes a good-faith determination that a non-US grantee would meet the requirements of a US Public Charity registered under IRC Section 509(a). This scheme allows for unrestricted grants without the legal requirement to collect grant reports.

These existing and well-tested mechanisms can serve as valuable reference points that could help to deliver more effective methods for philanthropy to fund charities across borders. In particular, a tailored version of equivalency qualification could be introduced in the UK, inspired by the US system.

Knowledge-sharing, collaboration and partnerships are all vital tools for developing existing frameworks to encourage greater global philanthropy and help to progress towards the SDGs. As the events even just of this year have shown – with famines, floods, and wars generating philanthropic responses – there is strong desire from many individuals and organisations to help people in need. What is critical is that systems are crafted to enable aid to get to where it is needed most, and to arrive swiftly and securely.

One of the universal benefits of giving – according to our partners on the World Giving Index, Gallup – is that it gives the donor a powerful sense of wellbeing and empowerment, boosting self-esteem. If we can create a world in which giving is borderless, it will help all of us.



2 The Global Philanthropy Environment Index 2022

3 CAF World Giving Index 2022

THE RISE OF THE LITTLE RED DOT

A STORY OF TRIUMPH OVER ADVERSITY

Authored by: Suzanne Johnston and Clare Chan - Stephenson Harwood (Singapore) Alliance*

Almost 10 years ago, I announced to friends and colleagues in London that I was moving to Singapore. I was met with mixed reactions. People didn't know where Singapore was. They conflated it with Hong Kong or China. Others exclaimed about the humidity and its small size. "You will be bored" they said. "I give you two years" they said.

Thankfully, I wasn't deterred. Not only is Singapore the place I met my husband and had my two children. It turns out, it is an incredible jurisdiction in which to practice as a private wealth lawyer. In what follows we explore how a country that was formed only 57 years ago in post-war Asia has risen to third in the Global Financial Centres Index, trumped only by New York and London. Not bad, for the little Red Dot.

The popularity of the Single Family Office (SFO)

Wealth in Asia has seen a stupendous growth. According to Wealth-X's 2021 Billionaire Census, Asia's billionaire population increased by 16.5 per cent last year. By 2023, Asia is projected to account for one-third of the world's billionaires.

Singapore has seen a tremendous growth in wealth over the decade.

In 2020 during the COVID-19 pandemic, Singapore's assets under management (AUM) grew 17% to US$3.5 trillion and billionaire wealth managed in the country saw a spike of 30% to US$102.6 billion.

Singapore is, therefore, well positioned as a family office hub for families across Asia looking to engage professional help to preserve their wealth. Today, there are almost 700 family offices in Singapore, up from fewer than 100 just five years ago.[1]

Tax incentives and residency

Tax planning is a key concern for many family offices. On top of having one of the most competitive corporate and personal income tax regimes, Singapore has introduced tax incentive schemes to attract family office investments in Singapore. These include the Section 13O and Section 13U tax incentives, which allow family fund vehicles to enjoy a Singapore tax exemption on all specified income derived from "designated investments".

A competitive tax regime is important to the families we work with but so is the option of residing in Singapore. To attract families to set up shop in Singapore, the Singapore Government has introduced residency schemes to facilitate the migration of UHNW families to Singapore.

1 Speech by Mr Lawrence Wong, Deputy Prime Minister and Minister for Finance, and Deputy Chairman of the Monetary Authority of Singapore, at The Owner's Symposium of The Global-Asia Family Office Summit on 29 September 2022 (mas.gov.sg)

The Global Investor Programme (GIP) grants Singapore Permanent Resident (PR) status to eligible global investors who intend to drive their business and investment growth from Singapore. Under GIP Option C, investors who place at least S$2.5 million in a new or existing Singapore-based SFO with AUM of at least S$200 million may be granted PR status subject to the satisfaction of various milestones. The expectation is that, to qualify for PR status under Option C, UHNWIs and their families should establish SFOs with substance.

As the wealth management space expands and grows in sophistication, the Singapore Government is keeping pace with the changes. Just this year, the Monetary Authority of Singapore (MAS) tightened eligibility conditions for key tax incentives utilised by Singapore family offices. The changes are welcomed as a step towards improving the quality of family offices in Singapore and professionalising the family office industry.

Further, MAS, together with other stakeholders, launched programmes to grow and strengthen the pool of family office executives, management and advisors in Singapore. One such programme is the "skills map" for family office advisors designed to deepen specialist skillsets to better serve the growing numbers of family offices in Singapore. Singapore acknowledges the need for a unique skill set to serve and engage family offices more effectively.[2]

In line with attracting UHNW families to Singapore, Singapore also aims to solidify its position as a global talent hub. In August 2022, Singapore announced plans to introduce the Overseas Networks and Expertise Pass, a new five-year visa for talents. Unlike a regular employment pass which is tied to a specific job, the new pass allows holders to work for multiple companies and grants spouses eligibility to work. To be eligible for the new pass, applicants must earn a minimum of S$30,000 per month. If this salary criteria isn't met, individuals with "outstanding achievements" across arts and culture, sports, science, technology, research and academia may qualify. This is a clear signal to investors that Singapore is committed to positioning itself as a talent hub to meet diverse business needs.

Sustainability and SFOs

Deputy Prime Minister, the Minister for Finance in Singapore and the Deputy Chairman of MAS, Mr Lawrence Wong, at The Owner's Symposium of the Global-Asia Family Office Summit said that the Singapore Government sees substantial opportunities to play a key role in helping Singapore achieve its environmental and sustainable goals, and net-zero plan.

Mr Wong highlighted that family offices play a key role in supporting innovation. He cited the example of Next Gen Food, a start-up focusing on creating alternative protein that raised $100 million in funding (the largest amount by any plant-based protein company in the world). Amongst its investors, a Singapore-based family office.

Mr Wong explained that there are opportunities in Singapore for family offices to scale up blended finance structures to finance climate transition projects. Here, he gave the example of Gunung Capital, a SFO based in Singapore which has committed $500 million to ESG assets. Its focus is on clean energy infrastructure, industrial transition and carbon mitigation.

He concluded by encouraging family offices to set up a philanthropic arm or foundation to do good, as Singapore intends to be at the forefront of philanthropy in Asia. The message, that the Singapore Government will provide support to family offices that choose to build their philanthropic base in Singapore.

Hong Kong has an SFO regime too

Of course, Singapore is not the only player in the region competing to attract UHNW families, Hong Kong is also doing its best to court family offices. Since 2020, the Hong Kong Government has introduced a series of measures and initiatives aimed at promoting growth in family offices.

Hong Kong has set up the Family Office Association Hong Kong, an independent family office industry body, and a dedicated government team in the InvestHK department to promote Hong Kong as a family office hub. Recent legislative changes have been designed to attract family offices, in particular the introduction of Limited Partnership Funds and changes to the taxation of offshore funds. So, watch this space…

Singapore's stability is its strength

The Singapore Government have worked hard to create an environment in which family offices can thrive. However, ultimately, what gives Singapore the edge is its stable economic and political environment and strong rule of law. Singapore is ranked first in the world in political and operational stability.[3] In today's world of flux and turmoil, Singapore is perceived as a safe haven and I am very happy to call it home.

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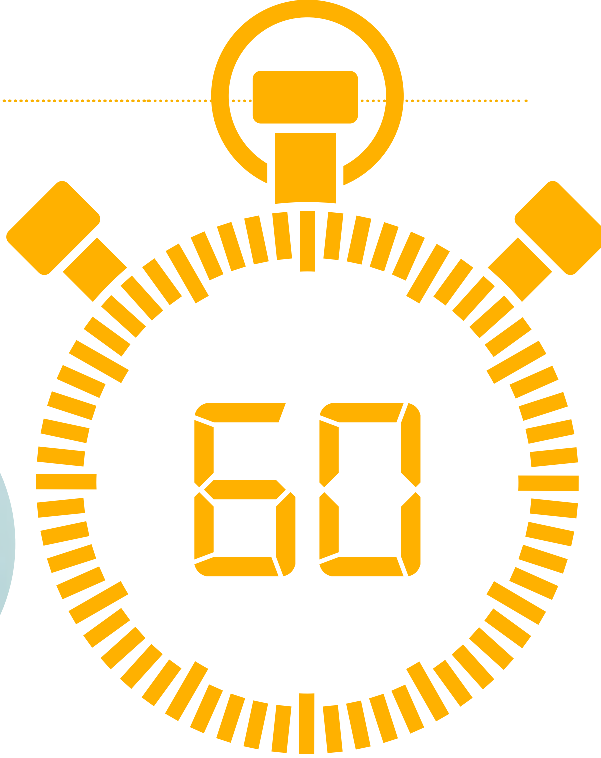
2 IBF and MAS Launch Skills Map to Enhance Capabilities of Family Office Advisors

3 Cornell University, INSEAD and World Intellectual Property Organization, Global Innovation Index 2019



60-SECONDS WITH:

CHARLES RICHARDSON PARTNER KINGSLEY NAPLEY

Q What do you like most about your job?

A Having the chance to work with so many interesting and high achieving people, and being trusted by them to play a key role in their most personal and important affairs.

Q What would you be doing if you weren't in this profession?

A An English wine-maker.

Q What's the strangest, most exciting thing you have done in your career?

A As a landed estates lawyer with a curious mindset it is always fascinating to see where client visits will take you. 'Getting to know your client' time has included visits to some of the oldest topiary gardens in Europe, site visits in national parks, lunch in historic halls surrounded by priceless paintings, and even sampling the produce at an English vineyard and gin distillery.

Q What is one of your greatest work-related achievements?

A Becoming a partner at 6 yrs PQE.

Q What has been the most interesting case you have seen in 2022?

A I prepared a Will for an English artist whose wife is Japanese. It was interesting to work with a lawyer in Tokyo and to find common ground through our working practices. The work also required solutions to significant mismatches in the UK and Japan tax codes. The revisions woven into the UK Will were lauded by independent Japanese experts and, apparently, introduced an entirely new strategy for Japanese estate planning.

Q What do you see as the most significant trend in your practice in a year's time?

A A recent trend has been to see greater engagement of younger people with private client legal affairs. They seem increasingly knowledgeable and engaged with their legal needs, and understand the importance of having their affairs in good shape. While uncertainties remain in the world I can see this trend continuing. It's fantastic to work with next generation clients to understand their needs better and the challenges they may face, as well as how we as legal advisors can help them.

Q What personality trait do you most attribute to your success?

A Being cool, calm and collected!

Q Who has been your biggest role model in the industry?

A Alexandra Sarkis - former partner and head of private client at Hunters Law LLP. I admire her for her legal brain, but also her ability to manage numerous fantastic and demanding clients simultaneously over a long period of time.

Q What is something you think everyone should do at least once in their lives?

A Cryotherapy. It's great.

Q You've been granted a one-way ticket to another country of your choice. Where are you going and why?

A Italy - it isn't too far away and it has all the variety that a private client lawyer likes.

Q What is a book you think everyone should read and why?

A The Maddaddam Trilogy Series by Margaret Atwood. She described the books as speculative fiction when she wrote them fifteen or so years ago, but the stories now feel eerily real.

Q Reflecting on 2022, what three words would you use to sum up the year?

A Hot; challenging; eventful.

KEY DEVELOPMENTS 2022 2023 THIS YEAR AND NEXT

Authored by: Alicea Castellanos - Global Taxes

This year has brought a slew of tax changes for international investors. Many of these changes will have ripple effects far into 2023.

Beneficial ownership transparency.

The U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) issued a final rule[1] establishing a beneficial ownership information reporting requirement pursuant to the bipartisan Corporate Transparency Act. The rule, Jan. 1, 2024, requires most corporations, limited liability companies, and other entities created in or registered to do business in the U.S. to report information about their beneficial owners – the individuals who ultimately own or control the company – to FinCEN. Reporting companies created or registered before Jan. 1, 2024, will have until Jan. 1, 2025, to file their initial reports. Reporting companies created or registered after Jan. 1, 2024, will have 30 days to file initial reports.

FTC regulations

New final foreign tax credit (FTC) regulations were set at the end of 2021 and published early this year in the Federal Register. Effective beginning with the 2022 tax year, these regs can potentially make foreign income taxes that were creditable become non-creditable for U.S. purposes.

The regs address, among other issues, foreign income tax and a tax in lieu of an income tax; disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a Sec. 245A deduction; the allocation and apportionment of interest expense, foreign income tax expense and certain deductions of life insurance companies; foreign branch category income; and when foreign taxes accrue and can be claimed as a credit.

Strengthened crypto enforcement

The federal Inflation Reduction Act (IRA), passed in August, pumped $80 billion to the Internal Revenue Service over the next 10 years, more than half of that money for intensified enforcement, including of cryptocurrency transactions.

Also this year, a federal court gave the IRS authorization for a John Doe summons on a Los Angeles-based crypto dealer for information about U.S. taxpayers who conducted at least $20,000 in crypto transactions between 2016 and 2021.

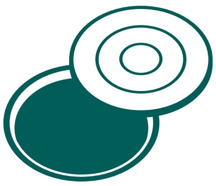
1 Federal Register

New schedules

IRS Schedule K2 and Schedule K3 kicked in for the 2021 tax year for foreign transaction information formerly reported on Form 1065, Schedule K. The K2 reports items of international tax relevance for certain businesses. Schedule K3 breaks down an individual's share of global income, credits and deductions. These forms both introduced in 2020 and later revised, aim to make federal income tax liability more transparent for partners and shareholders who share ownership in companies.

FBAR penalties

This fall, the U.S. Supreme Court plans to hear Bittner v. U.S., a case that presents a conflict over statues under the Bank Secrecy Act (BSA). At issue will be whether a "violation" under the BSA is the failure to file an annual FBAR no matter the number of foreign accounts or whether there is a separate violation for each account not properly reported.



Offshore loophole slammed

Investigation by the U.S. Senate Finance Committee uncovered that the "shell bank" loophole in the Foreign Account Tax Compliance Act (FATCA) allows banks offshore to accept funds from U.S. persons without reporting them to the IRS.

The loophole was exploited by the late billionaire Robert Brockman, who evaded taxes on more than $2 billion in income. (Brockman, 81, was indicted in a tax-evasion case before he died in August.) In the eight countries where entities linked to Brockman were established, there are more than 128,000 entities registered with the IRS as financial institutions under FATCA, said Committee Chair Ron Wyden (D-OR).

Wyden added that he's working on legislation to close this loophole.

Falling short

A provision in the Tax Cuts and Jobs Act of 2017 that was to raise hundreds of billions of dollars in taxes on deferred earnings from multinational companies and their shareholders is only bringing in less than a third of the projected revenue, according to a report by the Treasury Inspector General for Tax Administration.

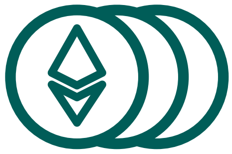
The repatriation tax provision (Sec. 965 of the Tax Code) aimed to generate $338.8 billion for the federal government for FY 2018 through 2027. Companies and their shareholders have only paid about $94 billion in taxes to the government on the taxes owed by foreign subsidiaries and their shareholders on the profits previously stockpiled abroad. Companies reported $251 billion in tax liability but $157 billion of that was deferred to be paid in installments.

Before passage of the TCJA, taxpayers could defer their U.S. on certain foreign sourced net income by keeping the assets in a foreign jurisdiction. Section 965 removed that option and required taxpayers to pay this new tax on their previously untaxed post-1986 earnings and profits.

Ahead in 2023

Foreign currency delay.

The IRS and the U.S. Treasury plan to defer for one year the effective date of final regulations pertaining to foreign currency used by multinational companies' business units abroad (Notice 2022-34).



Crypto development.

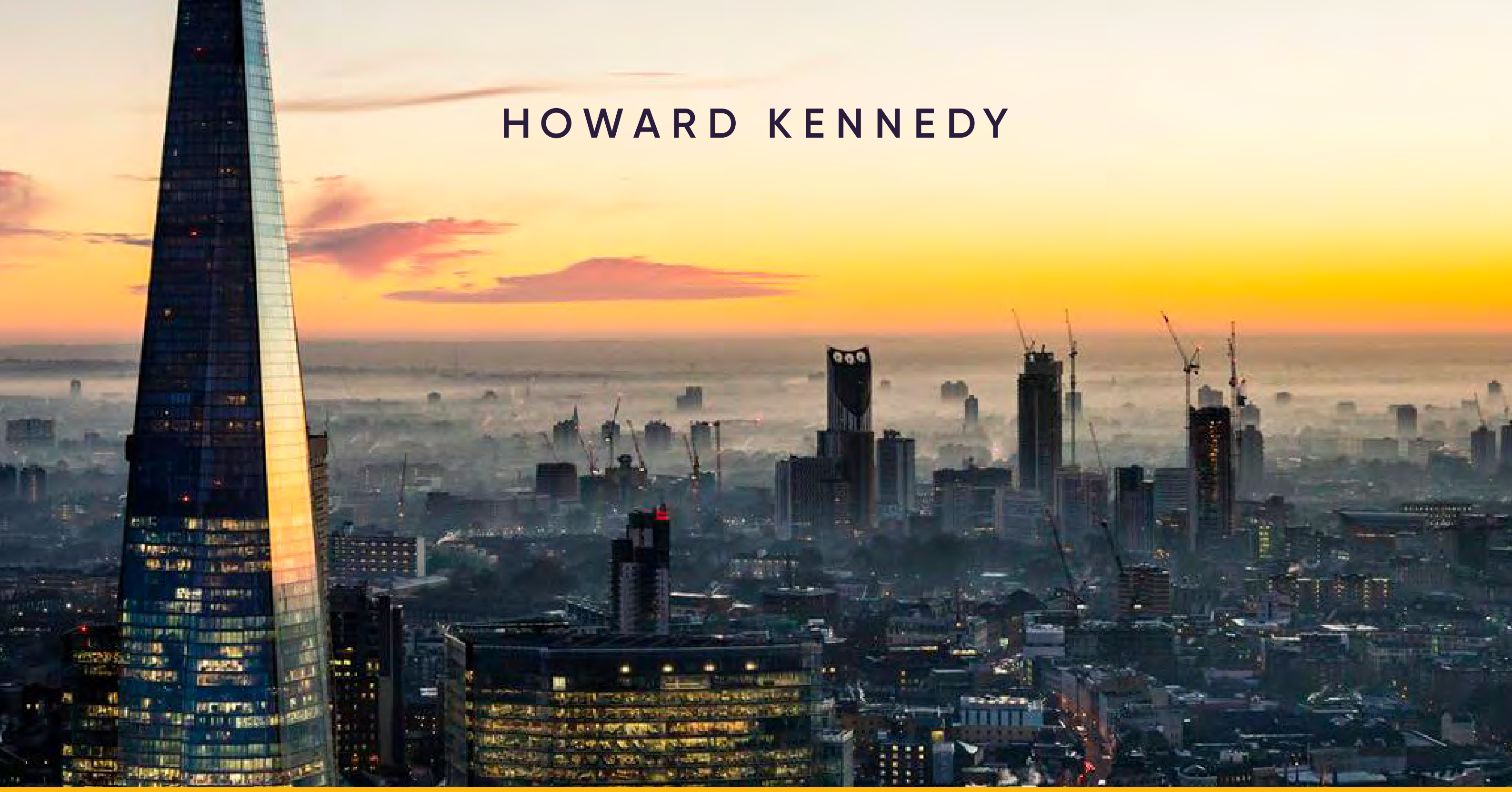
The U.S. has committed multiple agencies to a framework for engagement with foreign counterparts regarding development of digital assets. President Biden's Executive Order earlier in 2022 also directs development of digital asset and central bank digital currencies technologies.

The Organization for Economic Cooperation and Development has a new global tax transparency framework to provide for the reporting and exchange of information with respect to crypto-assets. The framework aims for transparency in crypto-asset transactions through automatically exchanging information with the jurisdictions of residence of taxpayers annually. Entities or individuals that provide services effectuating exchange transactions in crypto-assets for will have to report under the framework.

Anti-laundering.

U.S. lawmakers have introduced a bill to expand anti-money laundering due diligence by finance pros. Authorities claim the "Establishing New Authorities for Businesses Laundering and Enabling Risks to Security (ENABLERS) Act" could combat money laundering and other crimes similar to the Pandora Papers.

Your tax specialist needs to be able to field these and many other questions in an ever-changing tax environment. If we can help, please let us know.



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A MORE REALISTIC VIEW

THE ENGLISH COURTS RESPOND TO GLOBALISATION

Authored by: Hannah Southon and Amy Williams - Sinclair Gibson

Whilst a discussion of technical points on jurisdiction is not the reason why Jules Vernes' Around the World in Eighty Days is considered a classic, nevertheless the issue of jurisdiction does play a key role in the story. Detective Fix supports Phileas Fogg on his return journey, keen to return him to British soil and so to the jurisdiction of the English courts, so that he can be arrested for a bank robbery carried out by a villain bearing a passing resemblance to the adventurer. Now however, certainly in matters of civil law, the attitude of the English courts to the question of jurisdiction is changing.

"In days gone by the assertion of extra-territorial jurisdiction was described as 'exorbitant'. But following the globalisation (and digitisation) of the world economy that attitude can now be seen as out of date."

Thus said Lord Justice Lewison in the Court of Appeal in 2018[1] and in 2022, two significant developments have occurred which reflect this changing attitude and policy towards the jurisdiction of the English courts.

Both developments concern the rules which govern whether a claim or other application issued in England and Wales can be served on a defendant or respondent outside the jurisdiction – i.e., whether the English courts will take jurisdiction over that person. In general, service on a party outside the United Kingdom requires the permission of the court.

To obtain that permission, the claimant or applicant must satisfy three criteria:

(i) that there is a good arguable case that the claim falls within one of grounds set out in Practice Direction 6B of the Civil Procedural Rules 1998 ("CPR");

(ii) that England and Wales is the appropriate forum to hear the claim; and

(iii) that there is a serious issue to be tried.

The rules concerning the service of documents in England and Wales are governed by CPR 6 and the associated Practice Directions ("PDs"). PD 6B regulates the service of claim forms and other documents out of the United Kingdom. It contains a list of circumstances or grounds, commonly referred to as 'jurisdictional gateways' in which the court will have jurisdiction over a foreign defendant or respondent and will therefore be able to grant permission for a claimant or applicant to serve a claim form or application notice out of the jurisdiction (subject to it being

1 Orexim Trading Ltd v Mahavir Port & Terminal Pte Ltd [2018] EWCA Civ 1660, [2018] 1 WLR 4847

satisfied as to the second and third criteria set out above). The gateways identify relevant connections with England, which define the maximum extent of the jurisdiction which the English court is permitted to exercise .

The first significant development was the 30 September 2022 decision of the Court of Appeal in Gorbachev v Guriev and Others , which held that the court had the jurisdiction under gateway (20) of PD 6B to permit service on a defendant outside of England and Wales of an application for third-party disclosure under section 34(2) of the Senior Courts Act ("SCA") 1981 of documents which belonged to foreign entities (two Cypriot trust companies) who were not party to the ongoing proceedings in England, in connection with which the disclosure of the documents was sought. Gateway (20) provides for service out of the jurisdiction with permission where,

"(20) a claim is made – (a) under an enactment which allows proceedings to be brought and those proceedings are not covered by any of the other grounds referred to in [PD 6B]."

The Respondents had argued that s.34 of the SCA 1981 did not allow proceedings to be brought against defendants not within the jurisdiction because, in the absence of express wording in the statute to the contrary, the long-established presumption against extra-territorial effect (also known as the principle of territoriality) applied. On this basis, so they said, the proper course of action for the claimant/applicant was to have asked the English court to issue letters of request to the court in Cyprus. Having examined the history and purpose of the principle of territoriality, the court found that in this case, the principle was not offended because although the respondents were based in Cyprus, the documents in question were present in England and Wales, having been generated in the context of transactions carried out within the jurisdiction. This being so, they were capable of forming the subject matter of a third-party disclosure application, albeit that the respondent itself was outside of the jurisdiction. Whilst this was a preliminary decision as to jurisdiction, and did not amount to an order for the disclosure of the documents in question, the potential ramifications for private clients and their advisers whose matters span multiple jurisdictions are obvious.

The second significant development came just a day later when on 1 October 2022, legislation amending the existing PD 6B jurisdictional gateways and adding new ones came into force.

Of particular interest to private client practitioners are the following new gateways:

- Paragraph 3.1 (12B) to (12E) and (15A) to (15D) for claims relating to trusts, breaches of trust, accessory liability for breaches of trust and breach of fiduciary duty (previously causes of action which lacked their own gateways); and
- Paragraph 3.1(25) for claims or applications for disclosure to obtain information regarding the true identity of a defendant or potential defendant and or what has become of the property of the claimant/applicant (thus making it possible to serve Norwich Pharmacal and Bankers Trust orders outside of the jurisdiction).

These recent developments demonstrate that the English legal system is responding robustly to the increasing global fluidity of people and assets, and bring with them challenges and opportunities. They will certainly be welcomed by those seeking to trace assets, enforce judgments or pursue international fraud claims, and it will be interesting to see whether this new procedural robustness translates into equally robust judgments.

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CULTURES AND MODERN FAMILIES IN 2022

Authored by: Tsitsi Mutendi - African Family Firms

Understanding cultures and how they impact families and their decision-making are one of the most critical tools for an advisor today. The globe has become a melting pot of oneness surrounded by dynamically shifting narratives. Moreso, the family's identity has played out on the global stage and in private. Moreover, in each set-up, genuine emotions and decisions have been made because of it.

Let us take, for example, the story of the Duke and Duchess of Sussex. This is a fascinating story which carries with it a diverse range of complex parts which have left the greater world wondering what is next whilst at the same time learning that change is necessary. As we all know, the Duchess is of Canadian origin and is now an American resident. She comes from a bi-racial union and has had conflict with her father, which played out just before her marriage to Prince Harry. We can assume from this that the conflict in her family has had its toll on her relations with a majority of family members, and her success and financial success have also caused its fair share of conflict. Turning to Prince Harry, he is the son of one of the most prolific women to have ever lived, Princess Diana of Wales. His father is now King of England, and his childhood has had its fair share of challenges that have also played out publicly. Finding each other and finding love is always beautiful; their wedding was a celebration of love, and although a lot of press fodder emanated from it, the couple managed to chart their own course. This course ultimately led them to decide to resign from active royal duty and instead choose a private life where they focus on what they believe is important to them. Including moving to America and letting go of some of the privileges of their title and family wealth.

The above paragraph is already a whole minefield for any advisor. Let us unpack some of the issues the couple may have faced that an advisor would need to guide them through.

1. **Childhood traumas leading to life choices**
   We all saw the trauma Prince Harry endured during his mother's lifetime. Headlines questioning his paternity and his mother being hounded by the press led to her eventual death.

   The divorce of his mother from his father, then seeing his father remarry the woman who was seemingly at the centre of his parent's marital problems, as well as being brought up in a family that was consistently in the spotlight and sometimes being caught in the media storm due to bad choices. The Prince has addressed all these issues in various ways; however, behind closed doors, the actual impact and responses are those only the individual and family can know. This may have led to his decision to take his family away from active royal duty, abandon many years of tradition, and instead focus on family over duty. As we already know, the royal family has put their duty above all things, and HRH Queen Elizabeth was a leading example of this value. It must have been a barrel of emotions for the family and the advisors who helped navigate this time. Also, looking at the Duchess's history and family dynamics, it is understandable that the family chose a private life, primarily focusing on his immediate family nucleus.

2. **No interest in being involved in the family business**
At some point, when the Sussexes announced that they would be withdrawing from public life, the world took a gasp of horror. How can the young Prince Harry, who has been the centre of interest for many years, suddenly decide to break with tradition and leave the family business? There was conflict on the horizon. The feeling that the new wife brought this change and the resistance and hurdles put in the way to make it something of less interest. Nevertheless, the couple chose a different path and continued to do so. For an advisor to help a family navigate, this may be intense as emotions will be mixed in with business decisions. All in the same melting pot. Helping the family see these differences may be critical to this hurdle.

3. **Strained family relations**
With all change comes strained relationships. Sometimes the world may read into a situation that does not exist, and family members may fuel conflict by choosing sides and seeing change as a point of conflict instead of a point of transformation. If differences in culture, age, geographic location or way of living occur, it is crucial to focus on the similarities and find amicable points to start negotiating the differences.

4. **Conflict because of new spouses bringing new values and traditions**
As we already know, every family is different and unique. Important life milestones bring with them the most significant difference. Some of these may be marriages, births, deaths, adoptions and blended families with stepchildren. All these moving parts require advisors to ensure that the business and legal systems are in place. Ignoring the family system and its myriad of issues only causes grounds for dismantling or even fighting legalities and business system procedures and contracts in future. It is equally essential to ensure the family system is coping with the strain and to determine what can be done to support it.

5. **Different jurisdictions and the legalities of decisions made**
This is a big issue, especially with the ever-changing financial rules and jurisdictions creating safe havens for families. Understanding familial and legal obligations and ensuring the right plans and processes are considered and put in place is the role of the diligent advisor and the advisory team. It helps avoid blank spots the family may not have known. It becomes imperative to ensure future relations between families and advisors are strengthened by the depth of knowledge and work the advisory team has done for the family at the highest level of integrity and diligence. In the example we started with, the move to the USA may have its own implications for the Sussexes family. Knowing these implications is crucial for the parents and the next generation.

6. **Family history and its impact on the family psyche**
Families are a group of people bound by blood and unity, legacy and stories. Although a stumbling block for many, the past can be a source of strength. As we know, Prince Harry's Great Grandfather found himself on the throne after his brother abdicated and instead chose to marry a divorcee from America. This history impacted the family, and the seeming repetition in the case of Prince Harry may have awakened ghosts from the past. It is vital as advisors to know family triggers and help the next generations navigate what may seem like an unfathomable or impossible situation. Instead, they focus on how they can heal wounds and create their own unique pathway.

Prince Harry and Meghan Markle are individuals who come from diverse backgrounds. To answer the cultural difference or similarity, Dr Dennis Jaffe and Dr James Grubman wrote about the different cultures spread across the world and how each impacts how we deal with people and situations.

It is important to understand that family cultures are different and that individuals come and create their own new imprint on culture.

Understanding the histories of the family members is also important because it weighs in on the decision-making. Also appreciating that not all conflicts are a stalemate, but they are an opportunity to learn from each other and, at times, agree to disagree.

The modern family faces a harsher challenge than previous generations, where the world was a lot bigger, and intercultural exchanges were not as intimate or impactful. Engaging the next generation that comes from such families is highly important as they are the future culture creators. For advisors, creating solid teams around our families is also important. Most importantly, creating teams that are culturally diverse and geographically diverse. As intermarriages happen and families relocate to newer geographic areas, having strong networks that continue to serve the family with our support and assistance has become not just a need but a necessity.

60-SECONDS WITH:

HELEN MCGHEE PARTNER JOSEPH HAGE AARONSON

Q What do you like most about your job?

A I get to meet lots of interesting people with some interesting stories to tell.

Q What would you be doing if you weren't in this profession?

A Maybe a doctor- I remember getting halfway through law school and telling my dad I wanted to go to medical school- he wasn't best pleased! Or a newsreader. Or a kids TV presenter.

Q What's the strangest, most exciting thing you have done in your career?

A Strangest…I am not sure most exciting(!)… by kind invitation- watching 4 hours of the late great Sir Ken Dodd in action and coming away with a tickle stick!

Q What is one of your greatest work-related achievements?

A Sitting in the Supreme Court with Robert Gaines-Cooper in my first year as a qualified lawyer was pretty great! I am also pretty chuffed to have been ranked Band 2 In Chambers this year in the HNW category!

More than all of this what I strive to achieve is to have a positive impact on those around me- I love to see others fly and be able to attribute just a tiny part of their success to my influence! I am pretty invested at the moment in helping mums on their re-integration post maternity leave. It is tough and if I can make someone else's road a little loess rocky than mine was then I am glad to.

Q What has been the most interesting case you have seen in 2022?

A I was pretty captivated the other day reading Skinner v HMRC wherein the Court of Appeal granted the trustees of a settlement access to s169J(4) Entrepreneurs relief (now BADR) on the disposal of some shares despite the beneficiaries not satisfying the requisite holding period as I read the legislation. No need to go into the intricacies of the case but I just found the judgement surprising and it is just evidence that you can never quite tell which way some of these cases are going to go.

Q hat do you see as the most significant trend in your practice in a year's time?

A Who on earth can tell?!? Given the events of the last month fiscal policy like the wild west and I have absolutely no idea where it will land. One thing is for sure is that increasing taxes on the wealthy will not be enough- there will need to be a broader tax base. And with tax increases come some very risky strategies towards planning and avoidance so from my side as and when HMRC object I will be here to help resolve disputes! HMRC will also continue to be busy as global transparency increases and privacy gives way to the greater good of preventing financial crime by showcasing integrity amidst scrutiny.

Q What personality trait do you most attribute to your success?

A I am analytical, super organized and a perfectionist over achiever!!!!!! Eeeek!

I am also compassionate. It is a real responsibility navigating people through a very stressful period of their life (a high value and complex tax investigation).

Q Who has been your biggest role model in the industry?

A I have been so lucky to ride the coat tails of some phenomenal tax professionals over the years- there was certainly a special place at my wedding for my mentors and friends Peter Vaines and Ray McCann.

Q What is something you think everyone should do at least once in their lives?

A Sky dive. Or more importantly push yourself outside of your comfort zone as often as you can- that is where the magic happens.

Q You've been granted a one-way ticket to another country of your choice. Where are you going and why?

A The Netherlands. I went to university there and just loved it and it is close enough that my friends and family will come and visit if I am not allowed to come back!

Q What is a book you think everyone should read and why?

A I work full time and have 2 small kids I don't have much time to read!! But I have always been a fan of Malcolm Gladwell- Outliers is super interesting and worth a read! I took away from it that it isn't my fault I am not an NBA player, it is just because I wasn't born in September (the relative age effect)!

Q Reflecting on 2022, what three words would you use to sum up the year?

A Unpredictable, chaotic, warm.

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ART FINANCE FOR ESTATES AND INHERITANCE TAX

Authored by: Tristan Dollie - Brown Rudnick

"Nothing is certain except death and taxes".

Whilst the author of this quote applied it in a slightly more historic context, it is equally relevant to high-net-worth individuals and, in particular, the trustees of their estates when assessing inheritance tax liabilities. This article provides an overview of how art finance arrangements can be utilised to generate liquidity where UK inheritance tax ("IHT") is due in respect of estates which largely comprise of high value but illiquid assets.

IHT

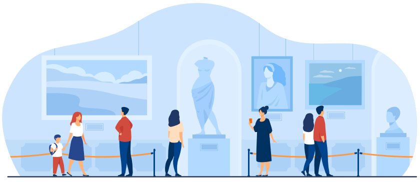
Liability to IHT arises when UK domiciled individuals die and applies to the deceased's worldwide estate. IHT is calculated on the value of assets that form part of the deceased's estate and often include real estate, investments, and, of course, art. IHT liability also arises when non-UK domiciled individuals die and applies to the deceased's assets that are situated within the UK.

Currently, IHT is charged at a standard rate of 40 per cent. in England and Wales on the proportion of a deceased's estate that is valued above the tax-free nil rate band of £325,000. The value of an estate of a deceased high-net-worth individual will exceed this threshold quite considerably (including where any unused nil rate allowances of a spouse or civil partner are taken into account). Following the deceased's death, IHT falls due within six months, after which HM Revenue & Customs start to charge interest on any due but unpaid IHT, regardless of the status of the deceased's estate in respect of probate.

When settling IHT that is due and payable, some estates often have sufficient liquidity, allowing a payment to be made directly from the deceased's bank account(s) (via the Direct Payment Scheme) to HM Revenue & Customs.

Where liquidity within the estate is insufficient to discharge the total amount of IHT due and payable, however, assets of a sufficient value may need to be sold in order to raise funds to be applied in settlement of the IHT. If interest charges are to be avoided, this will need to be done within the six-month period following death.

Problems can therefore arise where a period of more than six months is necessary to make the required disposals due to certain estate assets being of an illiquid nature (owing to their size, value, or other characteristics). In some limited cases, HM Revenue & Customs can offer the option to pay IHT in instalments, however, this benefit may not apply for estates with significant art collections or real estate assets. (It appears that HM Revenue & Customs is less sympathetic to high-net-worth individuals!).



Art finance - a preferred option for illiquid estates

Commonly, where there is insufficient liquidity, a bridging loan may be obtained and secured against the real estate assets of the estate to settle the IHT payable. However, due to the nature of bridging loans (in particular, their relatively short loan term), high interest rates, arrangement fees, prepayment and other fees, conventional real estate bridging loans can be unattractive as finance costs can notably reduce the residual value of the estate's assets available for distribution to the beneficiaries. The benefits of art finance mean that where an estate includes valuable artworks, it can be an attractive alternative method of raising the capital required to settle IHT payments. Attractive features of art finance arrangements usually include (but are not limited to):

- quick execution and funding (similar to many bridging loans);
- a reduced scope of due diligence (the artworks provided as collateral are often the sole recourse and credit focus for lenders);
- flexible and highly negotiable terms and structures; and
- depending on the artworks provided as collateral, comparatively attractive interest rates and finance costs.

Whilst loan terms are usually for periods of between six months and two years (although often documentation can provide options for extension) the loan terms and repayment structures will vary depending on the requirements of the relevant borrower, the relevant lender's credit criteria and the artwork(s) subject to security.

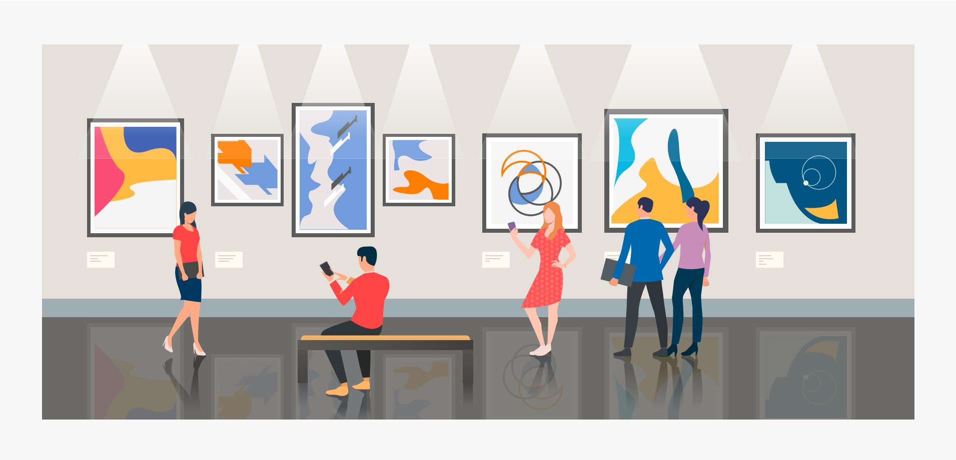
With regards to repayment structure, this is often also bespoke but can include interest only payments (which can capitalise or be on a "cash pay" basis), bullet repayments at the end of the loan term or amortisation payments (or a combination). Importantly, the flexibility of art finance and the comprehensive understanding that art lenders often have of the art market, means that artworks are not required to be sold by trustees of estates at unfavourable times or at inappropriate venues in order to raise capital for the settlement of IHT. This benefit should not be underestimated as the nature of the relevant artwork itself will often determine the optimal season and location of its sale (by way of example, auctions of fine art – including contemporary paintings – which take place in London tend to take place between September and December each year). It is fundamental for trustees considering the sale of artworks in the open market to take advice as to the most appropriate time and location to sell an artwork as any departure from these customs may result in a material and adverse impact on the sale price an artwork achieves. Most experienced art lenders and art finance lawyers are familiar with such nuances in the art market and can assist trustees with obtaining the necessary guidance they require. Art finance is, however, an effective tool to provide temporary liquidity needed to pay IHT (or other expenses), bridging the gap between when such payments are due and the ideal time to list an artwork for sale.

What happens to the artwork during the loan term?

Due to the moveable nature of artworks and the risks associated with unauthorised disposal or accidental damage, trustees of estates need to be aware that, other than in certain exceptional circumstances, art lenders will require physical possession of the artworks being provided as security for their loan. Resultantly, each artwork that is provided as security for the loan will need to be transferred to a secure third-party storage facility which may be located in various jurisdictions around the world (including Hong Kong, Switzerland, the United States and the United Kingdom) in order to perfect the lenders' security. However, such transfer is usually less problematic than is often envisaged, as the artworks that form part of estates of high-net-worth individuals are often already located in third-party storage facilities (such as museums, galleries, freeports as well as fine art warehouses) rather than on the walls of a family home (although this can, of course, be the case). Where artworks are already located in a third-party storage facility the artworks may remain in situ and the art lender will enter into a tripartite agreement with the borrower (trustees of an estate or otherwise) and the third-party storage facility operator which acknowledges that the artworks have been provided to the art lender as collateral.

Final thoughts

Given the comparatively favourable finance costs involved and market stability, in relation to traditional real estate bridging finance, as well as the flexibility of available loan terms, the speed at which funding can be provided and the potential value stored in fine art, it is advisable for trustees of high net worth individuals' estates to consider using the art assets forming part of an estate as an alternative source of liquidity and capital, in order to settle estate costs such as IHT and preserve the residual value of the estate for its beneficiaries.



Supporting Durrell & Jersey Zoo

Jersey Zoo is the heartbeat of the Durrell Wildlife Conservation Trust. All of their conservation work around the globe is underpinned by the zoo. Despite their hardest efforts, the present pandemic is having a devastating effect on the income of Durrell.

When they wrote to inform us that their global conservation program and 61-year history of saving species and habitats from the brink of extinction was in real danger due to the financial impact of the pandemic on Jersey Zoo, we asked how we could help.

After discussions with Durrell, we are delighted that ARC is now the proud sponsor of their Blue Poison Dart Frogs display.

Find out more about the Durrell Wildlife Conservation Trust, their work and the frogs on their website **www.durrell.org**

The Blue Poison Dart Frog

(dendrobates tinctorius azureus)

Native to Suriname

The poison frogs of Central and South America are famous for their toxic secretions, used by native communities when hunting. The poisons are not made by the frogs themselves, but are taken up from their diet of invertebrates, which have in turn ingested plant chemicals. However, in captivity the poison decreases considerably in strength as the food chain needed to supply them with their raw materials does not exist.

The frogs' bright colours advertise their poisonous nature. The blue poison frog's pattern of black spots on a blue background is particularly striking and varies from individual to individual. After they metamorphose into tadpoles, the male carries the young on his back to a small pool, water trapped in a hole or a bromeliad, where they develop into frogs after 10-12 weeks.

With the world's amphibians in crisis, captive populations are vital to conservation efforts.

Extremely sensitive to environmental change, amphibians give us early warning of problems that might be due to global warming, pollution and so on. The blue poison frog, like many others, is threatened with extinction.

Durrell has successfully bred this species, and their biosecure facilities at the Trust's headquarters in Jersey will enable them to continue studying and breeding the blue poison dart frog and other threatened amphibians in captivity, developing techniques to help slow their decline.

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WHY MANAGING VOLATILITY MATTERS

(EVEN FOR LONG TERM INVESTORS)

Authored by: Investment Team - CapGen

> ***"The pen is in our hands. A happy ending is ours to write."***
>
> ***Hilary Mantel***

If you're a regular reader of financial commentaries, then by now, having been through months of extraordinary market and geopolitical activity, you may have read plenty of variations on the phrase, "time in the market is more important than timing the market". It's a well-worn message, sometimes used to comfort the consumers of financial products and enrich the people that make them. The problem is, it's not strictly true, even if you're a long-term investor.

The truth is that shorter term volatility does matter. Ten years ago, we wrote a piece of research that looked the effect of volatility and spending on multi asset portfolios. As we wrote then, the problem with volatility is twofold; for one, it can rob you of the opportunity to compound capital on the upside, and for another, the impact of the losses is asymmetric to the gains. If you lose 20% in one year you need to make 25% the following year to recoup your losses, and if you're in the unfortunate position of having lost 50%, then you need to make an eye-watering 100% to get back to square one.

So much for the problem, what of the solution? And, for those that have protected capital this year, what opportunities might we see on the other side of these difficult times? Here, we explore some of the ways in which we've been managing volatility, as well as the assets that we have our sights set on to capture the rebound.

Managing currencies

While equity and bond markets have certainly offered their fair share of drama in 2022, extreme moves in currencies have been one of the major drivers of investment performance. The most obvious way to manage this risk is to diversify your exposure into other currencies that look cheap. The UK, Europe, China, and Japan all look relatively cheap right now but – crucially – for slightly different reasons, which supports portfolio diversification. Another way to manage currency risk in the longer term is to invest in solid businesses with quality earnings; in the UK there are plenty of good companies with dollar earnings and sterling cost bases, which are still incredibly cheap thanks to the pessimism surrounding UK politics.

Seeking uncorrelated returns

Currency volatility has also been a major boon to one particular type of strategy; macro-CTA hedge funds. Interestingly, even though the environment we're in is clearly providing rich pickings for these kinds of strategies, they're still not that popular. That may well be because many were poor performers in 2008 (a very different kind of crisis) or because of the lack of visibility you have on the underlying holdings compared to long-only strategies, but with the right levels of due diligence, these can be extremely useful tools in a portfolio, providing alpha as well as diversification.

Keeping your options open

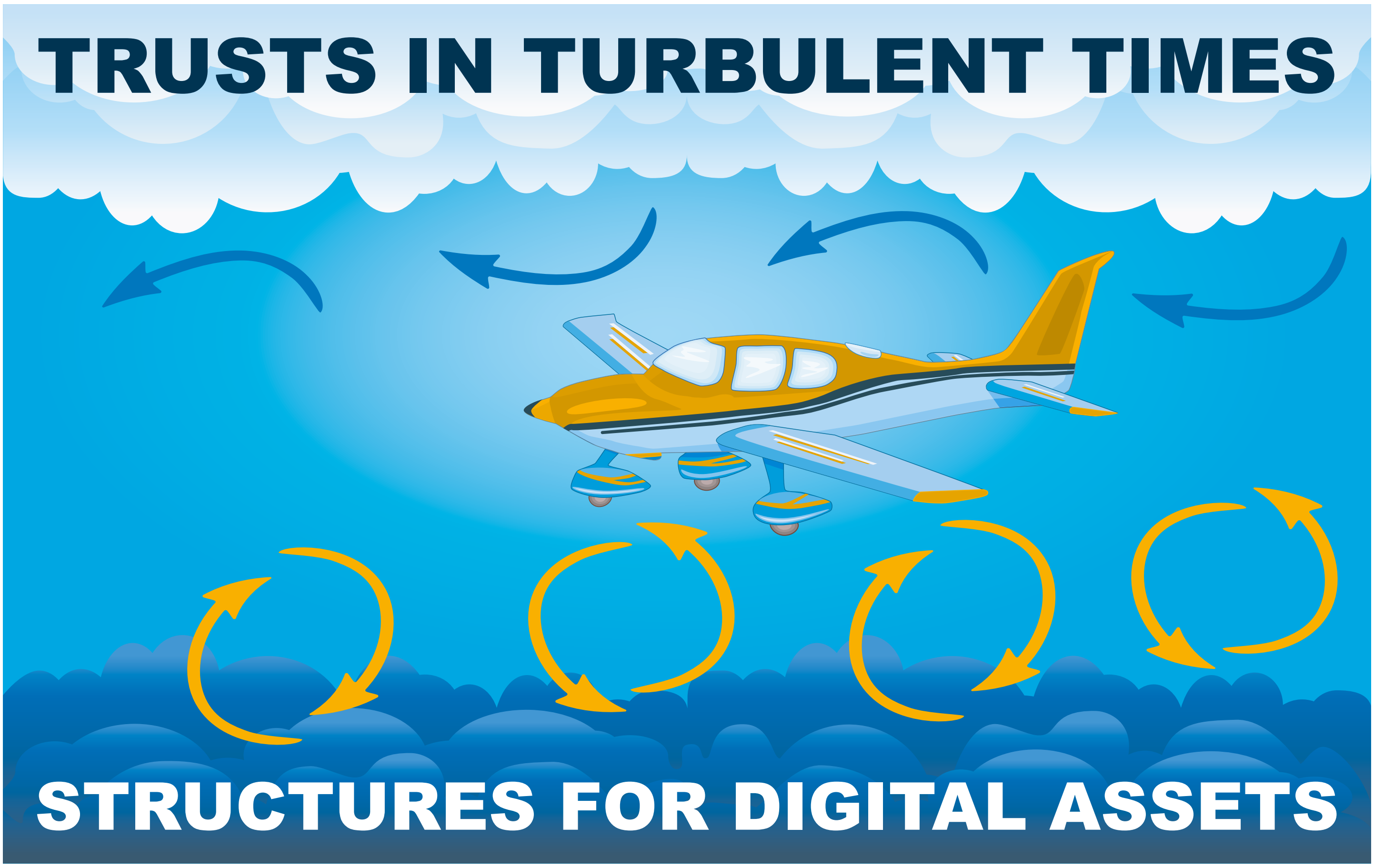
Options do what they say on the tin in a portfolio: they provide optionality. That's useful in volatile times for several reasons. Put options allow you to manage your downside risk, as a form of portfolio insurance, while call options give you the opportunity to tap into sporadic market upsides (like bear market bounces) without taking on the additional risk of holding those assets directly. But perhaps their most interesting use right now – when investors are waiting both to see the market reach its depths and to capture the subsequent upside – is that they can provide liquidity when markets tank. That gives you the opportunity to both protect capital, and to deploy it at distressed levels.

Identifying opportunities

The antidote to the pervasive bad news out there is that as assets get cheaper, they also provide the potential for greater returns. Yes, this involves a degree of market timing, but the opportunity set is broad, deep, and driven by several different factors. That means we are unlikely to see a single, linear market rebound; it will happen in stages, across different asset classes. For example, at the moment there are idiosyncratic opportunities to buy quality assets from forced sellers with liabilities to meet; we're seeing secondary LP stakes trade at 20%, 30% and even 40% discounts. Thinking slightly further ahead, assets like CLOs, private debt and some REITs are reaching attractive valuations as sellers try and shore up liquidity. On a macro level, credit spreads are beginning to look interesting for the first time in years (if not decades), while the distortion between value and growth equity valuations is still extraordinarily wide, even after the weakness of growth equities throughout this year.

There is no denying that investing during turbulent times can be stressful, but careful management of volatility gives you the time, the liquidity, and the emotional resilience to be selective as opportunities arise.

Investment markets can be fickle and turbulent, but a solid strategy lets you chart your own course through them. As the late Hilary Mantel rightly pointed out, we needn't be held to the whims of wider fortune; we have agency even in trying times, and active investors would be remiss not to make the most of it.



Authored by: Philip Radford - Saffery Champness

The last year has seen significant developments in the world of digital assets. After bursting into the mainstream in 2021, NFTs came of age, partly driven by the growing interest in commercialisation of the 'metaverse'. At the same time, 2022 witnessed what has been called by many a 'crypto winter' with a number of digital currencies plummeting in value.

Despite the turbulence, though, 2022 has also seen major institutions begin to wrap their arms around the Decentralised Finance ('De-Fi' vs Traditional Finance or 'TradFi') space. This, if nothing else, evidences that this new asset class, and its associated financial and technological underpinning, is here to stay.

In response to this emerging asset class, the global regulatory landscape is evolving fast.

An IMF paper published earlier this year[1], acknowledged that crypto assets are "no longer on the fringe" of the financial system. In July the EU became one of the first major political institutions to legislate for crypto assets with its Markets in Crypto-assets (Mica) regulation[2], while September saw the OECD launch a new transparency framework[3] for compliance and reporting of crypto assets.

In the UK, the House of Commons recently voted in favour of amendments[4] to the Financial Services and Markets Bill recognising crypto assets as regulated financial instruments, and signalling the evolution of a more crypto-friendly environment.

While smart, sensible regulation is welcome, the race to regulate around the globe is creating a complex terrain for investors trying to navigate the reconciliation of gains made in the digital world with traditional, fiat systems and laws.

With this in mind, there is a strong case for using structures to hold digital assets to enable owners to have the confidentiality, mobility and wealth protection they want, while easing the administrative and compliance burden.

The effective use of trusts can also help to insulate investors against rapidly changing global regulation and market or political volatility – delivering peace of mind in the process.

The power of trusts

Holding digital wealth and assets in a structure, such as a trust, can have significant benefits.

Specialist trustees have extensive experience in administering structures

1 IMF
2 Consilium
3 OECD
4 Publications Parliament

containing volatile and high-risk assets and some are now coupling this approach with an in-depth understanding of digital assets and the developing framework of systems, processes, tools and advisor community which is growing around them.

Assets held in trusts provide greater surety over which regulations and laws apply, limiting exposure to global regulatory headwinds and the current patchwork of ambiguous international rules which are still being written.

This can be especially beneficial for 'digital nomads' and those with a globally mobile lifestyle.

There may also be wider factors that can make a trust a suitable solution for digital asset investors –concerns about confidentiality being upheld; bridging between the 'DeFi' and 'TradFi' or fiat world of banks, including for compliance purposes; planning for and meeting tax liabilities on digitally derived gains; or planning for worst-case scenarios – death, incapacitation, or loss of data control and portfolio access.

Lastly (but probably most importantly), trusts are attractive because they can remove friction for investors, leaving them free to focus on other pursuits.

Trusts around the world

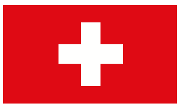
In the absence of a harmonised approach to digital asset regulation, choosing to structure a 'crypto estate' in a well-regarded jurisdiction which understands and supports the Web3 technologies is especially important.

Several offshore jurisdictions took steps in 2022 to establish themselves as leading jurisdictions for digital assets. For instance, this year Dubai issued its Virtual Assets Law and established the Virtual Assets Regulatory Authority[5] – positioning itself as the world's first virtual assets regulator. Singapore, meanwhile, announced plans to tighten up its regulatory approach, to encourage innovation and reduce speculation.

Other jurisdictions, notably including Guernsey, Switzerland, and the Cayman Islands, have embedded themselves early as locations of choice.

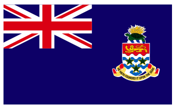
Guernsey

Guernsey has long held a well-deserved reputation as a beacon of transparency and international co-operation as a leading global finance centre. It appeared on the OECD's original 'white list' of those committing to adhere to internationally agreed tax standards, and the Guernsey Financial Services Commission (GFSC) provides robust oversight. A highly permissive framework for establishing trusts or foundations exists via the Trusts (Guernsey) Law 2007 and a thriving community of top-tier professional advisers has evolved over many years. Guernsey law is amenable to digital assets, including a provision that any type of property may be held in trust. The island is also a crypto trail-blazer, with the GFSC having approved the launch of Guernsey's first cryptocurrency fund and the world's first Tier 1 Bitcoin ETF[6] this year. Its legal, fiscal and administrative systems are independent and therefore insulated from volatility or uncertainty emanating from the UK, EU or elsewhere in the world.



Switzerland

Boasting one of the most stable political and financial systems in the world, Switzerland is a signatory to the Hague Convention on the law applying to trusts and their recognition, and has recently introduced a new and specific licensing system for trustees. Its approach to blockchain adoption and innovation is progressive, for example, it passed the 'Blockchain Act' in 2020[7] and licenses various crypto banks and exchanges. Moreover, cryptocurrency is accepted as legal tender in certain circumstances, such as for tax payments in specific regions. The government is currently in the process of testing a digital currency system and 'Crypto Valley'[8] is a hotbed of innovation.



The Cayman Islands

With its stable economic and political environment, robust judicial system, sophisticated advisory ecosystem and links to the UK, the Cayman Islands is an established and highly regarded global financial centre. While its law on trusts is derived from English common law, its independence has allowed it to innovate. A prime example is the Special Trusts (Alternative Regime) Law, under which a special purpose 'STAR' trust can be created, providing significant flexibility to hold and manage higher risk assets. Another example is Foundation Companies, which are flexible hybrids between a trust and a company and are often used in digital assets structures. The Cayman Island's recent adoption of the Virtual Asset Service Providers (VASP) framework[9] has succeeded in making it an even more prominent location of choice for digital asset investors.

Decisions on whether to establish a structure and where to base it will vary, depending on investors' personal and professional situations, their future plans, and the maturity of their digital portfolio, as well as being influenced by developments in the global race for regulation.

When evaluating the options, it is important to remember that not all jurisdictions are created equal – far from it. At the same time, technological advancement is so fast, and much of the regulation so reactionary, that it is difficult to know what is around the next corner.

2022 has seen significant developments, both in the digital assets market and to the global regulatory landscape. Taken together, and looking to the future, trusts are becoming an increasingly attractive option for digital asset owners.

5 VARA
6 We are Guernsey
7 Sif
8 Crypto Valley
9 Cima

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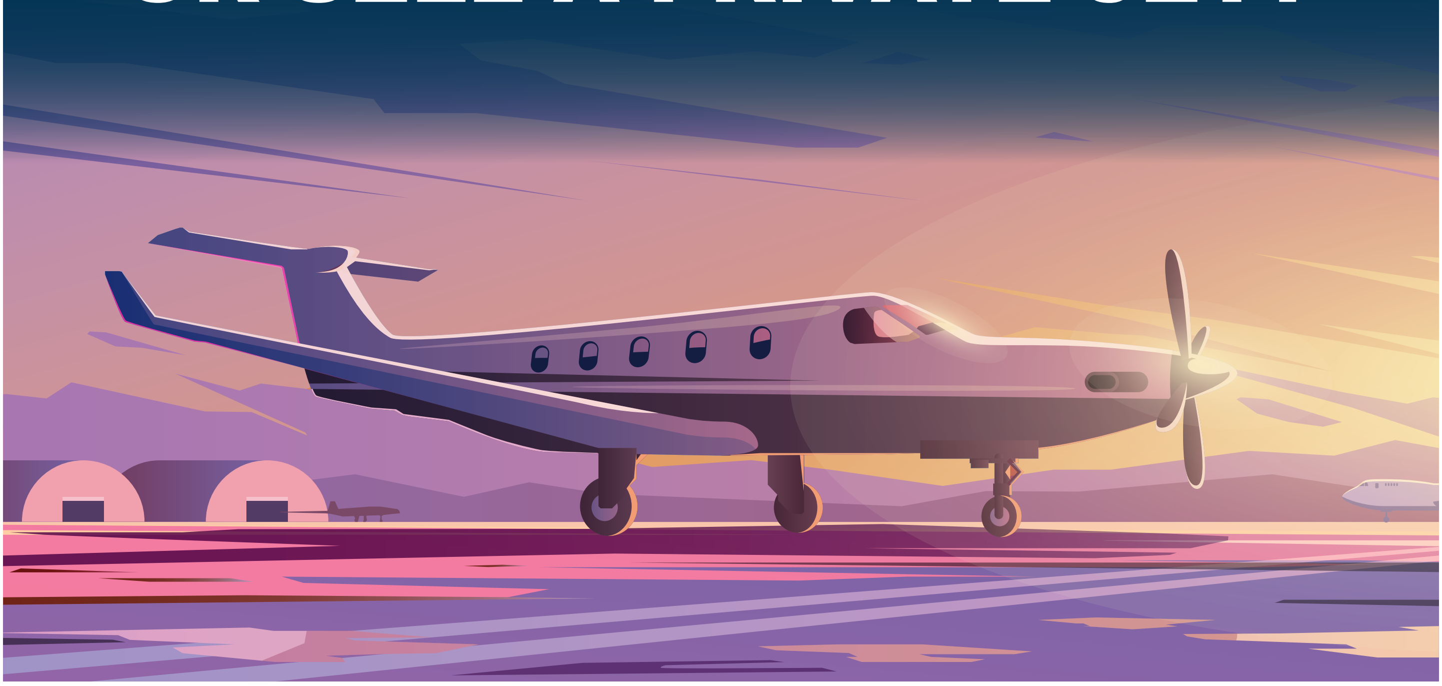


Authored by: Tim Barber - Duncan Aviation Aircraft Sales & Acquisitions

After thoughtful consideration, you decided it is time to purchase a private jet. Or, you decided that your Citation no longer meets your mission and it's time to upgrade to a Global or Gulfstream, requiring the sale AND acquisition of a business aircraft. You may think you know your aircraft well enough, or think you've thoroughly researched the market enough to handle the transaction yourself. Maybe you will even have your pilot, engineer, or director of maintenance help you. After all, it is a seller's market. How difficult could it possibly be? What could go wrong?

Well, the sales and acquisition process is far more complicated and time-consuming than most realize.

Going At It Alone

Those who try to sell their aircraft on their own are shocked to discover how much time they spend and how much they didn't know.

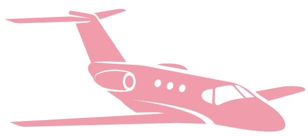
Be prepared to spend countless hours discussing the aircraft with prospects, some of whom will ultimately prove to have merely wasted your valuable time.

In many cases, an owner will realize the sales process is beyond what he or she has time to support and will belatedly hire a professional after wasting time and possibly missing lucrative opportunities.

You often hear of buyers who thought they, "bagged a bargain" only to realize they have a $1M maintenance bill soon after purchase, or that the cost of ownership is well beyond expectations. At the lower end of the market, there are plenty of buyers who are disappointed to discover that their new acquisition can't perform in line with their expectations – having to choose between passengers or fuel, but not both!

One time I came a cross an owner who purchased an aircraft after what they believed was a comprehensive PPE (pre-purchase evaluation) only to find out a year later when they wanted to sell the aircraft, that there were different levels of PPE. They had bought the aircraft with a low-level inspection but their buyer wanted something more comprehensive. With costs of remedying this approaching 50% of the purchase price, they were stuck with the choice of a non-airworthy aircraft or a sale that realized far lower proceeds than anticipated. Either way, they had a huge bill to pay.

This all could have all been avoided with expert guidance.



How to Hire a Professional

Save yourself time and trouble and hire a professional Aircraft Sales and Acquisition expert to help you navigate the process.

There appear to be hundreds of brokers advertising on the main sales portals, so how do you tell them apart? How do you know which ones are truly global and which ones have merely great websites with few resources to back them up? There are many things to consider in the selection process. Ask yourself: Is there any merit in choosing someone who can promote the sale but also arrange your yacht charter for next summer, or get you a great deal on a Lamborghini? What about an individual compared to a corporation? Is the trade organization that the prospective partner references actually credible and serving to differentiate industry professionals? Are the biggest players the best ones to go with? Are you better having many parties trying to sell the aircraft rather than just one? The questions just keep coming….

It's important to understand what your broker is going to be doing to market the aircraft and make it visible. Are they actually investing money in the most high-profile advertising or merely using free-of-charge services that have far lower visibility?

Probably the biggest decision to make, though, is whether you appoint an exclusive partner for your sale or leave it to a multitude of individuals to pursue your objectives. The latter may sound like a great option but be warned, once you've opted to go non-exclusive you are opening the door to countless individuals, of varying credibility, to be representing your aircraft in the marketplace, most of whom you will never know anything about. This can lead to the aircraft being offered at a price below your expectations simply because someone wants to be seen to present a Letter of Intent to the owner. What's more, you're opening the doors to misrepresentation of your aircraft as invariably the parties that become involved have no real knowledge of understanding of your aircraft or its maintenance and flight history.

When you choose to sign an exclusive agreement, the broker is able to commit a huge number of resources to the transaction. If you are selling an aircraft, the broker will invest heavily in marketing both online and in print media to make it visible. In addition, research teams will keep on top of current market conditions and make hundreds of phone calls in an effort to find you the right deal. For aircraft acquisitions, they will spend many hours researching the market and leveraging industry contacts to find the best options, looking well beyond those that are being openly marketed.

Broker Reputation and Ethics

Once you decide to sign an exclusive agreement, working with a company that is committed to operating at an ethical level is paramount.

At Duncan Aviation, our commitment to our core values and ethical standards form the cornerstones of thousands of clients and industry relationships. Being part of an organization with a 66-year legacy of buying, selling, and supporting business aircraft opens doors to hundreds of off-market opportunities, as people prefer to do business with people they trust.

Duncan Aviation is also a founding member of the International Aircraft Dealers Association (IADA). IADA has around 50 aircraft sales organizations as members and accreditation of these members is carefully controlled. What's more, the organization has introduced the first professional qualifications for individuals, the first time that this has been done within the sector. Duncan Aviation is proud to be an IADA Accredited Dealer.

Off-Market Opportunities

Perhaps most important, though, is potential access to aircraft that are not openly marketed that come along with signing an exclusive mandate with a world-renowned company.

With more than 2,500 Duncan Aviation team members are in the field who have daily interaction with owners and operators, we offer unparalleled, off-market intelligence. This makes it possible to identify aircraft that aren't openly marketed. Duncan Aviation was founded as an Aircraft Sales company 66 years ago and is currently the world's largest family-owned business jet support facility. Over those 66 years we have secured a network of contacts throughout the world. We provide service to more than 4,000 aircraft every year and maintain relationships with nearly 60,000 aircraft owners, operators, and industry sources worldwide. Our Aircraft Sales & Acquisitions team has first-hand historical market information from more than 3,500 transactions.

It's a minefield out there, and the stakes are high. Buying/selling an aircraft requires extreme attention to detail. Speak to people who have had good and bad experiences and learn from them. Speak to a number of prospective partners and make sure that you really get to understand the service you're buying.

Good luck and happy selling.

ThoughtLeaders Private Client

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