STEP JOURNAL

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REGIONAL FOCUS: EUROPE
From the tax treatment of US trusts in France to reserved heirship in Spain

TECHNOLOGY AND DIGITAL ASSETS
Including the rise in crypto fraud and the potential use of trusts for data stewardship

SOCIETY NEWS
The latest STEP publications, upcoming events, CPD updates and more

The digital playground

THE METAVERSE HAS ARRIVED, SO HOW CAN ADVISORS PLAN FOR NEW CLASSES OF VIRTUAL-ONLY ASSETS?

STEP
ADVISING FAMILIES ACROSS GENERATIONS

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COVER ILLUSTRATION

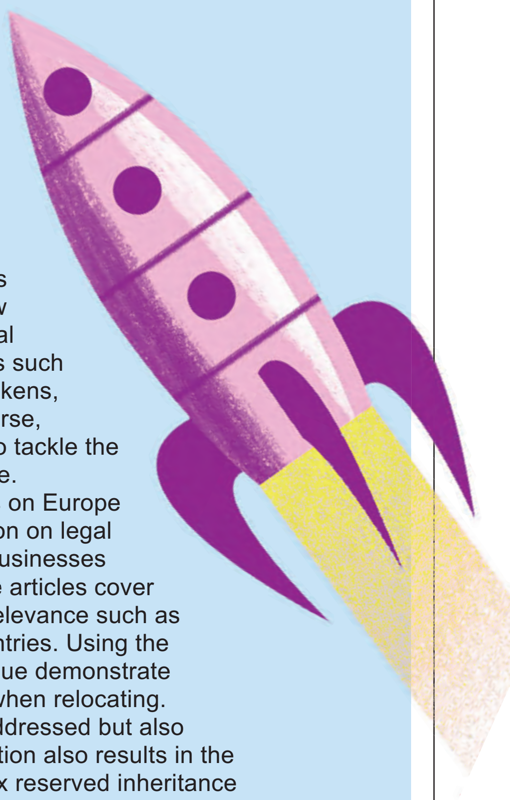
Ben Kirchner

The *STEP Journal* and its wrapper are produced on paper from European mills meeting the highest quality and environmental standards. Both the magazine and the paper wrapper are fully recyclable. Printed by Acorn.

Digital revolution

In these turbulent times, where change is the only constant in life, we see ourselves amid a digital revolution that is reshaping our world. This revolution is transforming every aspect of our lives – how we communicate, work, learn, do business with each other and entertain ourselves. However, new opportunities are also associated with new risks. How can we ensure that our data, privacy and the fundamental rights our ancestors fought for are protected in the digital age? How can we keep, preserve and pass on to our heirs the digital assets we acquire?

The legal challenges posed by the digital revolution are both complex and multifaceted. In this issue of the *STEP Journal*, we focus on the intersection of technology and digital assets. Given the fact that every estate will eventually include digital assets, it is of paramount importance that we gain an understanding of the new legal challenges and opportunities posed by emerging technologies.



This issue features insights from experts, practitioners and innovators who are addressing the future of law in the digital era. We look at the legal world's reaction to new technologies such as cryptocurrencies, non-fungible tokens, artificial intelligence and the metaverse, exploring thought-provoking ideas to tackle the new challenges such advances raise.

The regional focus of this issue is on Europe and brings you up-to-date information on legal matters that affect individuals and businesses in major European jurisdictions. The articles cover a wide range of topics of practical relevance such as living and working in European countries. Using the example of Spain, articles in this issue demonstrate the importance of careful planning when relocating. Not only must tax implications be addressed but also civil-law considerations if the relocation also results in the unwanted application of the complex reserved inheritance rights applicable in the country.

Enjoy reading these thoughtful articles, written (I hope) by human authors and stay tuned for the digital revolution.

__Gian Andri Töndury TEP__ is a Partner at Umbricht Attorneys in Zurich, Switzerland and a member of the STEP Journal *Editorial Board*

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NEW PUBLICATIONS FROM STEP

STEP STANDARD PROVISIONS, THIRD EDITION

The *STEP Standard Provisions* were first published in 1992, with a second edition published in 2011, reflecting changes in the law and practice since 1992. The new third edition reflects further changes in both the law and practice that have occurred since 2011 and should only be used in relation to wills and trusts subject to the law of England and Wales.

James Kessler KC TEP originally drafted *STEP Standard Provisions*. A STEP working party, chaired by Amanda Simmonds TEP, undertook amendments, additions and guidance to this latest edition.

On 26 September 2023, the practice direction was approved by the Chief Chancery Master of the Family Division. This allowed the *STEP Standard Provisions, 3rd Edition* to be incorporated into wills by reference.

Since they were first published, the standard provisions have become an important element in drafting wills, with practitioners incorporating them into countless wills and settlements.

WHAT HAS CHANGED?

In drafting this third edition, the working party aimed to keep as close to the structure of the second edition as possible, given most practitioners' familiarity with it. As with the second edition, the third edition is divided into two parts: the standard provisions, which might reasonably apply to all wills and trusts; and the special provisions, which may be beneficial in the administration of some wills and trusts, but not all.

The most significant amendment in the new edition is the standardisation of the clauses on trust corporations, which take into account wording from the terms and conditions of trust corporations.

WHICH EDITION SHOULD PRACTITIONERS USE?

You can continue to use either the first or second edition, but it is expected that the third edition will be the usual version used.

The standard provisions are not a replacement for competence in will drafting. Practitioners, settlors and testators should consider carefully the powers to be incorporated. In particular, the appropriateness of any special provisions to a client's circumstances should always be considered.

To assist practitioners, STEP has developed a toolkit, FAQs and an overview for clients, available at **www.step.org/step-standard-provisions**

MODERN FAMILIES: A PRIVATE CLIENT PERSPECTIVE

STEP has launched a new publication, *Modern Families: A Private Client Perspective*, kindly sponsored by TMF Group. This follows STEP's 2021 research report on modern families and brings together articles and resources we have since produced on this important topic, furthering the conversation and providing resources to help support family advisors.

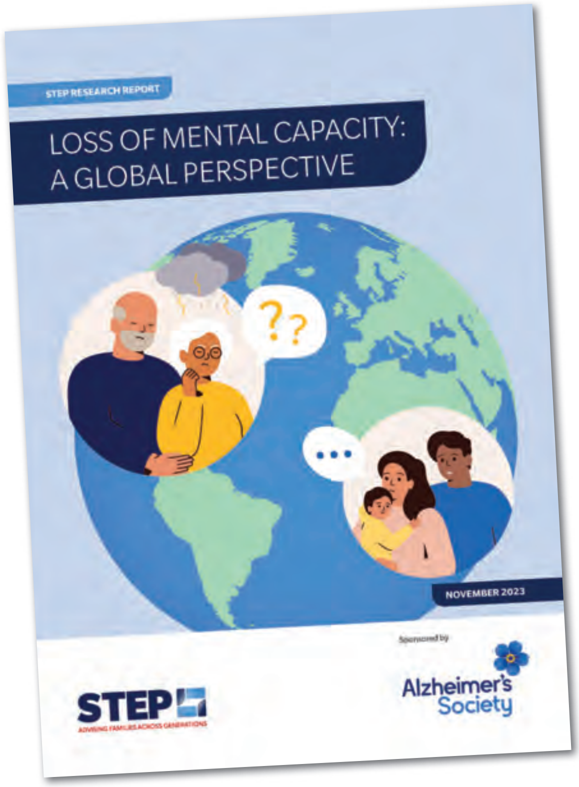
Read or download the supplement at **www.step.org/knowledge-hub/modern-families-supplement**

LOSS OF MENTAL CAPACITY – A GLOBAL PERSPECTIVE

In November, STEP released a report outlining the findings of a survey of 756 practitioners globally on loss of mental capacity. The report, *Loss of Mental Capacity – A Global Perspective*, found that capacity issues and requests for advice on the issues have been increasing and respondents believe this trend will continue.

Alongside this, financial abuse is increasing and is most prevalent when there is uncertainty about whether a person lacks the mental capacity to make a decision or when a representative is exercising their authority on behalf of the incapable person. Several findings demonstrated the complexity of capacity for all stakeholders and the need for more education and guidance in this area. The findings also highlight the importance of powers of representation (i.e., lasting powers of attorney and equivalents) and associated barriers and issues that must be addressed through policy and legislation. These include cross-border portability and recognition, which STEP is looking to address through the launch of its Global Representative Power (GRP). Information on the GRP can be found at **www.step.org/GRP**

Download the report at **www.step.org/research-reports/mental-capacity**



WILLS REPORT

In September, STEP published a report, *Wills and Trusts: Buyer Beware*, on the impact of unqualified advisors in the estate-planning sector. It draws on the experience of 329 STEP members, mainly in England and Wales. The report found that:

- Over half (54 per cent) have concerns about rogue firms making false claims about wills leading to increased tax bills.
- The majority (63 per cent) have come across cases where a will-writing company has quoted a fee for writing a will but then charged additional costs not covered within the terms of business.
- Just over half of those surveyed (54 per cent) have come across firms making false claims about the wills they are selling to clients. Of those, 71 people mentioned that advisors had wrongly told their clients that they could avoid care-home fees by putting their home and other assets into a trust during their lifetime. Some clients have been advised to gift their house during their lifetime. Both of these are considered to be deliberate deprivation of assets.
- A third of respondents have come across cases where incompetence has led to significant tax bills.

Download your copy at **www.step.org/research-reports/wills-and-trusts**

High-net-worth clients should consider the advantages of independent banks

AS THE BANKING SECTOR EVOLVES, BOUTIQUE INDEPENDENT BANKS STAND OUT AS A STRATEGIC CHOICE FOR EFFECTIVE WEALTH MANAGEMENT AND PLANNING

By George Croutier

The convenience that technology has brought to the banking sector over the past few decades has undeniably made managing one's finances easier, faster and more inclusive. Transfers are instantaneous, cards have become virtual and contactless payments have led to the thinning, or outright shedding, of wallets.

These advances have also gradually transformed the industry into a more generic and faceless one. Once dominated by white-glove service and a high level of personalisation, the banking sector in its current state fails to address and adequately serve the unique demands of many clients, and in some cases even to provide basic banking services.

Emerging issues

The industry has lost its personal touch. The old-fashioned model of banking has been replaced with a cookie-cutter model that often leaves clients feeling more like an account number than an esteemed client. Bank managers used to know the clients that walked through their doors and would greet them accordingly. Now relationship managers seem to appear and disappear through a revolving door, further complicating a less-than-ideal setup.

Dogmatic bank policies extend well beyond the intention of banking regulations, laws and industry standards. Onboarding teams take several months to open new accounts. Call centres and automated communications have become the primary avenue of communication, even for delicate and serious matters like account closures. Certain jurisdictions are not permitted, unless a client has a portfolio of eight figures or more. Any professional who works with high-net-worth clients and their structures can probably relate to some of these examples, and more likely than not, can add similar experiences with large, impersonal banks.

These challenges, inconveniences and delays present a unique opportunity for nimble and less bureaucratic independent banks to offer an alternative solution for high-net-worth clients and the professionals who advise them. Boutique banks are naturally smaller and focused on fostering strong relationships with their clients and their advisors. In more recent years, various fintech solutions have sprung up in several jurisdictions as a similar solution, offering a quick and easy option for transferring funds.

While these tech-based financial solutions promise efficiency and convenience, they are often ill-equipped to adequately meet the needs of more sophisticated clients. Furthermore, the regulatory landscape for the industry is still developing and can expose clients to unforeseen risks, so one should act with caution and prudence when working with or advising clients to work with these institutions.

Direct access

A solid relationship with a boutique bank can prove invaluable for high-net-worth clients. Since these institutions are smaller organisations, there is often more direct access to decision makers. Clients that require a more detailed understanding of their affairs or speed on a particular deal may benefit from working with a more agile independent bank that is better equipped to address their complex needs.

Many large institutions may not have the ability to move as quickly as some clients require, nor do their relationship managers have the independence to make decisions. Independent banks often place more focus on building strong, long-standing relationships as each client relationship is naturally more significant given their smaller size. Considering these benefits, clients with multiple companies or substantial assets could gain from integrating an independent banking partner into their strategic planning.

Establishing a relationship with an independent bank has its own nuances that are important to understand, and it is recommended to keep in mind some high-level considerations, including: which are the bank's main correspondent banks; what activities are permitted in its licence; the jurisdiction's current and potential reputational risks; the strength of the local banking and anti-money laundering regulation; and the bank's financials and capital requirements.

Banking in the 21st century continues to evolve quickly, but there are still boutique independent banks that can provide clients with a credible alternative to their larger, impersonal competitors. Modern problems require old-school solutions for banking, and independent banks are gaining ground by providing a more traditional client-focused service.

George Croutier is Head of Operations and Business Development at Fairwinds International Bank, Puerto Rico

SAVE THE DATE

STEP BENELUX CONFERENCE 2024

The STEP Benelux Conference 2024 will take place on 14–15 March 2024 in Amsterdam, the Netherlands. Watch this space for more information.

STEP CAYMAN CONFERENCE 2024

The STEP Cayman Conference 2024 will take place on 18–19 January 2024 at the Ritz-Carlton Hotel, Grand Cayman. Agenda topics include: international wealth and succession planning from a cultural perspective; how to resolve issues caused by problematic trusts and structural vulnerabilities; and the meaning of 'issue' where modern families are concerned. View the full agenda and book your place at **bit.ly/3Sn5DKu**

OBITUARY: **DONOVAN WM WATERS KC**

Donovan WM Waters passed away on 9 September 2023, aged 95, after a long life of personal happiness and professional fulfilment. Donovan was born in Brighton, England. He studied law at Oxford University and the University of London. He pursued a career as a professor of law and a legal scholar at universities in England and Canada, including McGill University and the University of Victoria.

After retirement as emeritus professor, he practised law for more than two decades as counsel for firms in Vancouver and Victoria. He combined great scholarship with a love and flair for teaching, garnering a devoted contingent of students over the years who still remember his lectures and laugh at his jokes.

Donovan's legacy as a legal scholar remains in the many articles and books he authored, in particular his landmark book, *Waters' Law of Trusts in Canada*. First published in 1970, it raised Canada's profile as an important jurisdiction in trusts law and made Donovan a recognised international expert. Donovan's academic achievement was recognised with two honorary doctorates and a DCL from Oxford University, as well as a Lifetime Achievement Award from STEP.

Donovan had a happy family life and was married for 57 years to his late beloved wife Maryla. He is survived by their three children, Catherine, Anne-Marie and Alastair, and their four much-loved grandchildren, Jonah, Alex, Benjy and Claire. He was a loving, gentle and generous father and grandfather, who could talk to his family about esoteric subjects and then burst into song.

Although Donovan's family and friends mourn his passing, we celebrate his long and happy life and his legacy of love, friendship and scholarship.

By Catherine Waters

iStock

STEP SUCCESS AT AWARDS

In September, STEP had a successful night at the Memcom Excellence Awards, which focuses on the membership sector. STEP won four awards, including Best Public Awareness Campaign for our Protect Your Digital Memories campaign and the EDI Award. STEP was also highly commended in two categories: Best Professional Membership Organisation and Best Celebration Event of the Year for last year's Private Client Awards.

Finally, STEP won the Grand Prix Award for being the biggest winner of the night. See the full results at **bit.ly/3FCHw2Z**

STEP also collected three awards at the Association Excellence Awards in London on 3 November. We were delighted to win Best Awareness Campaign for our Protect Your Digital Memories campaign. We also won Silver for International Association of the Year and Bronze for Best Marketing Project.

CODES OF CONDUCT

Our codes of conduct and other standards guidance have moved to the members' section of the STEP website. This includes a video providing an overview of the *Code of Professional Conduct* and links to other resources. Find out more at **www.step.org/members/code-conduct**

CPD AUDIT 2023

In October, STEP launched its annual continuing professional development (CPD) audit. Members have been notified if they have been selected to submit their CPD records for review. STEP is auditing 2 per cent of our membership who are not in active study, retired or on long-term leave.

Members have until 11 December 2023 to submit their CPD records for audit review. Members may receive queries from branch members regarding the CPD audit.

Please direct any queries to Megan Jones, CPD Audit Manager, at **cpd@step.org**

UPDATED CPD HUB

Coinciding with this year's CPD audit, we have updated the CPD pages on the STEP website to bring together all the important resources in one place. We have added video topics on reflective practice and ethics, along with updated guides and information about how members can plan and record their CPD.

Explore the CPD hub at **www.step.org/members/cpd**

Connect with us

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STEP – Advising Families Across Generations

@SocietyofTrustandEstatePractitioners

PDC MEMBER VACANCIES

We are looking for STEP members from European and Latin American jurisdictions to join the STEP Professional Development Committee (the Committee) from January 2024. The Committee is responsible for overseeing STEP's professional development programmes on behalf of the Board. The Committee's role is to promote high-quality professional development for existing and potential members, in line with STEP's strategy. The Committee meets five times a year, working closely with the Professions Directorate and collaborating with other STEP committees to ensure that the STEP professional development strategy is consistent with and delivers objectives as set by the Board.

If you are interested, please email **pd@step.org** with your CV.

STEP moves

- **Jessica Lyle TEP** has replaced **Robbie Brown TEP** as Chair of STEP Atlantic.
- **Tanya Butler TEP** has replaced **Jessica Lyle TEP** as Vice Chair of STEP Atlantic.
- **Sarah Wood TEP** has replaced **Lisa Whitehouse TEP** as Chair STEP Birmingham.
- **Carol Sadler TEP** has replaced **Kenneth Keung TEP** as Chair of STEP Calgary.
- **Victoria Schneider TEP** has replaced **Carol Sadler TEP** as Vice Chair of STEP Calgary.
- **Anthony Whittaker TEP** has replaced **Gillian Knowles TEP** as Deputy Chair of STEP Cheshire.
- **Peter Ni TEP** has been appointed Vice Chair of STEP China.
- **Michelle Coleman TEP** has replaced **Salvatore Amelio TEP** as Chair of STEP Edmonton.
- **Michelle Millard TEP** has replaced **Michelle Coleman TEP** as Vice Chair of STEP Edmonton.
- **Daniel Tribaldos TEP** has replaced **Grant Osborne-Smith TEP** as Chair of STEP Lucerne/Zug Centre.
- **Ada Colomb TEP** has replaced **Elizabeth Connelly TEP** as Vice Chair of STEP New England.
- **Angela Rae TEP** has replaced **Jeffrey Otto TEP** as Chair of STEP Queensland.
- **Helen Cheng TEP** has replaced **Sara Pike TEP** as Chair of STEP San Diego.
- **Amanda Doucette TEP** has replaced **Faisal Khorshid TEP** as Chair of STEP Saskatchewan.
- **Lane Zabolotney TEP** has replaced **Amanda Doucette TEP** as Vice Chair of STEP Saskatchewan.
- **Ian Lebane TEP** has replaced **Corina Weigl TEP** as Chair of STEP Toronto.
- **Eric Hoffstein TEP** has replaced **Ian Lebane TEP** as Vice Chair of STEP Toronto.
- **Laura West TEP** has replaced **Yogesh Bhathella TEP** as Chair of STEP Vancouver.
- **Dwight Dee TEP** has replaced **Laura West TEP** as Vice Chair of STEP Vancouver.
- **Roderick Strobl TEP** has replaced **Filippo Turato TEP** as Chair of STEP Verein.
- **Daniel Tribaldos TEP** has replaced **Grant Osborne-Smith TEP** as Deputy Chair of STEP Verein.
- **Mariska Loeppky TEP** has replaced **Harmanjit Mavi TEP** as Chair of STEP Winnipeg.
- **Krista Clendenning TEP** has replaced **Daniel Watts TEP** as Vice Chair of STEP Winnipeg.

MPI Q3 2023 REPORTS RELEASED

The Managed Portfolio Indices Reports for the period ending 30 September 2023 are now available at **www.mpindices.com/performance-reports**

Perspectives

News report

Regulation in review

HELEN BRADFORD-SWIRE ROUNDS UP GLOBAL REGULATORY NEWS FROM 2023 AND LOOKS AT WHAT PROGRESS MIGHT BE MADE IN 2024

With the instability that overshadowed 2022 and countries globally implementing sanctions measures, there has been much for practitioners to contend with in the regulation and compliance space over the course of 2023.

Although the EU sanctions against Russian individuals have been extended until 15 March 2024, these measures have largely bedded in and become part of practitioners' day-to-day business.

'Over time, new sanctions could be expected in the form of additional designated people and entities being targeted,' says Paolo Panico TEP, Adjunct Professor,[1] who authored STEP's Position Paper on the EU sanctions packages.[2] 'But "technical" sanctions in relation to professional services, companies and trusts appear to have reached a comprehensive status in the EU, UK and US. I do not think that any significant change can be expected in 2024.'

Nonetheless, with sanctions compliance now on the list of ever-increasing transparency and reporting, practitioners and their clients have had to continue to evolve.

Robert Reymond TEP[3] observes that many families he works with in Latin America have 'accepted that the world is more transparent' and are planning their asset management accordingly to ensure compliance.

'Brazil is proposing significant new rules on taxing individuals on their income gains from foreign structures, which could lead to some families reconsidering their residency,' he acknowledges. 'However, across the region any motivation to move jurisdiction is far often more tied to political shifts than to regulation and transparency agendas.'

PROGRESS REPORTS

This trend is supported by the OECD report *Tax Transparency in Latin America 2023*,[4] which noted the 'major achievements' made by 16 Latin American countries in transparency and the automatic exchange of information (AEOI) for tax purposes.

On a broader international basis, the OECD has also released its fifth annual peer-review report[5] examining how countries are addressing base erosion and profit-shifting (BEPS). The particular focus is on the implementation of the Action 6 minimum standard, relating to the prevention of treaty abuse under the OECD/G20 BEPS Project. The report found that most of the reviewed jurisdictions 'are respecting their commitment to implement the minimum standard … [and] also highlights that the BEPS MLI [multilateral instrument], which has been the main tool used to implement the minimum standard, has continued to have a significant and increased effect …

***Helen Bradford-Swire** is News Editor at STEP*

Moreover, this year's peer review shows progress made by jurisdictions to develop and give effect to plans to implement the minimum standard where one was called for.'

Despite the progress that the OECD has seen, the Financial Action Task Force (FATF) and EU so-called 'grey lists' still show areas that need to be addressed. The EU list of non-cooperative jurisdictions for tax purposes comprised 16 jurisdictions as of February 2023. As of June 2023, 26 jurisdictions remained under FATF increased monitoring, with three on its list of high-risk jurisdictions subject to a call for action. At its plenary meeting the same month, FATF also warned that several jurisdictions had not yet met the agreed deadlines for tightening their anti-money laundering (AML) regulations.

Nonetheless, many countries have taken steps to improve their AML measures over the course of 2023. Some are even asking for industry opinion on new measures. In March and April respectively, New Zealand and Australia both consulted on expanding their AML and counter-terrorism financing (CTF) regimes. In August, Switzerland's government consulted on proposals that would impose due-diligence obligations on professionals giving legal advice. Most recently, the UK treasury consulted on reforms to its AML and CTF supervision rules and regulatory bodies. STEP responded to this consultation in September 2023.[6]

Other countries have already implemented changes. Jersey now requires all private trust companies (PTCs) and other corporate bodies acting as trustees of an express trust to register the jurisdiction's AML regime. India has also widened the scope of its regulation to include more professional service providers. The Bahamas, meanwhile, has updated its regulatory framework on the economic presence of corporate entities.

REGISTERING A CHANGE

Another key AML focus of many countries in meeting international standards has been the implementation of registers of beneficial ownership.

South Africa and Australia's beneficial ownership registers came into force in April and July 2023 respectively, compelling recording of trust and company beneficial ownership information and foreign ownership of assets. At the beginning of the year, Germany expanded its transparency register to include foreign companies that already hold property in the country. The Cayman Islands is also proposing legislation to enhance and consolidate its existing beneficial ownership legislative framework. Other countries are just now embarking on the journey: regulations for the creation and operation of Spain's central public beneficial ownership registry have been gazetted and the US regime comes into force from January 2024.

Although this shows great progress in international regulation, the move has not been without controversy. 'A milestone in the area of beneficial ownership registers was the November 2022 decision by the Court of Justice of the European Union,[7] which stated that unrestricted public access to such registers is illegal as it breaches the fundamental right to privacy,' says Panico.

'This decision was an important assertion of the rule of law and of the necessity to balance any increased appetite for transparency with the respect of some fundamental rights of the individuals,' he adds. 'This landmark decision has affected the policies of many jurisdictions around the world, as well as EU member states, with many countries taking their registers offline as a result. Some harmonisation will be required, possibly in the form of an EU regulation.

'The question now is whether the EU will move forward with further proposals that give access to people who have a legitimate interest,' asks Reymond. 'In 2024, will the definition of "legitimate interest" itself be broadened?'

SETTING NEW STANDARDS

Countries are making a concerted effort to keep their regulation in line with ever-evolving international standards on ownership registers and economic substance requirements. However, there is still a way to go with regulation in the far newer area of virtual assets.

'This year has seen the adoption of the Crypto-Asset Reporting Framework (CARF) as a new international standard alongside the updated CRS,'[8] notes Philip Kerfs, Head of the International Cooperation Unit at the OECD Centre for Tax Policy and Administration. 'Now that most of the technical work is completed, the focus will be on ensuring its widespread implementation.'

The OECD consulted with governments and professional bodies including STEP on CARF, which sets out a plan for tax administrations to collect and exchange information about persons engaging in crypto-asset transactions and aims to ensure that entities providing such assets apply standard due-diligence procedures. At the same time, the EU Council of Ministers has reached agreement on the draft Directive for Administrative Cooperation in taxation (*Directive 2011/16/EU*, DAC8), amending it to require reporting and AEOI on revenues from crypto-asset transactions.

However, as late as July 2023, FATF was reporting that three-quarters of its member countries either do not comply with its Recommendation 15 on regulation of virtual asset service providers or are only partially compliant with it.

This will surely be a significant focus of 2024. Nonetheless, other regulatory areas are also on the agenda. Kerfs gives one such example: 'The G20 has asked the OECD to look into possible approaches for enhancing transparency in connection with the legal and beneficial ownership of real estate, so we will be scoping potential further work in this area.'

Reymond, meanwhile, points to a continued EU push on transparency through its Securing the Activity Framework of Enablers policy, which seeks to regulate non-EU enablers who assist on EU-related structures and tax advice. A directive on this, he says, is expected later in 2023 or in early 2024.

As regulatory requirements show no sign of slowing down, compliance becomes ever-more onerous for clients and advisors. Panico believes that professional bodies have a vital role in driving the transparency agenda in 2024 and beyond.

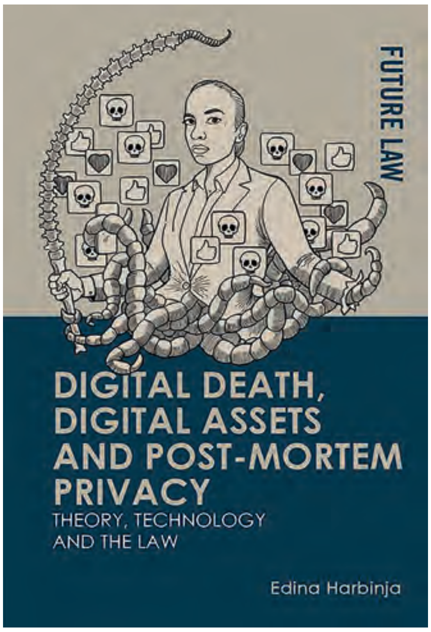
#DIGITAL ASSETS #LEGISLATION #PUBLIC POLICY #REGULATION AND COMPLIANCE #TRUSTS

1 Paolo Panico TEP, Adjunct Professor, is Chair of STEP Europe, a member of the STEP Board of Directors, a member of the *STEP Journal* Editorial Board and Managing Director of Private Trustees SA. **2** bit.ly/3QhlEwP **3** Robert Reymond TEP is Partner at Charles Russell Speechlys. **4** bit.ly/3ScwJUt **5** bit.ly/3McBV77 **6** bit.ly/47oTvwD **7** bit.ly/3SebFNC **8** Common Reporting Standard

Book review
Digital Death, Digital Assets and Post-Mortem Privacy

Edited by: Edina Harbinja
Reviewed by: Niklas Schmidt

Price: GBP85
Publisher: Edinburgh University Press
ISBN: 978-1474485364



Digital assets are increasingly showing up in deceased persons' estates. This, of course, concerns digital natives, being individuals who have grown up with the internet, computers, smartphones and other digital devices. Such people are native to social media, cloud storage services, blogging, running YouTube channels and holding crypto.

However, it also concerns digital immigrants, being older adults who may find it more challenging to adapt to new digital platforms or technologies and who may prefer more traditional methods of communication but will nevertheless have email accounts and digital photo collections.

Private client advisors need to be able to deal with digital assets in the context of death. This book, *Digital Death, Digital Assets and Post-Mortem Privacy*, might well be a good place to start for those unfamiliar with the terrain.

The book starts by noting that the issue of digital assets and death was first discussed in the media about 20 years ago. Nevertheless, although a lot of time has passed, there is still little clarity in the law in most jurisdictions. The court decisions handed down in this area during the past two decades show the manifold social and ethical issues involved with digital assets and certain legal dilemmas stemming from concepts of property, privacy, succession, copyright and contract law.

The studiously researched cases described in this book illustrate several points. First, how transitory and ethereal many digital assets are in reality. Although a layperson will see no big difference between a physical book and an e-book or between a letter and an email, from a legal perspective they are very different.

Second, how strong the position is of big tech companies on whose servers many of these digital assets are hosted and whose terms and conditions govern their usage. These companies have slowly understood the role they play and are increasingly offering software solutions for the event of a user's death.

Although this book will not give the practitioner who is in a hurry definitive answers to a case they have to solve, it does give interesting food for thought, as well as helpful arguments.

#CAREER AND PERSONAL DEVELOPMENT
#DIGITAL ASSETS #TECHNOLOGY

***Niklas Schmidt TEP** is a Partner at Wolf Theiss*

THIRD EDITION OF *FAMILY OFFICES: THE STEP HANDBOOK FOR ADVISERS* PUBLISHED

We are pleased to announce the publication of the third edition of *Family Offices: The STEP Handbook for Advisers*. This practical guide steers readers through the family office model, from its inception to the final stage in its life cycle.

New chapters cover family office relevancy, the importance of the family owner's manual, reputation in the digital age, diversity and inclusion in estate planning, and building and caring for family art collections. In addition, the book explores the increasing number of important jurisdictions, and features chapters on Australia, Bermuda, Canada, Greater China, the Gulf states, Hong Kong, Israel, Italy, Luxembourg, the Netherlands, Singapore, Switzerland, the UK and the US.

It is edited by Barbara R Hauser and Nicola Saccardo TEP, and is co-published by STEP and Globe Law and Business.

STEP members can get a 20 per cent discount code at **www.step.org/books/family-offices-step-handbook-advisers-third-edition**

Policy column

Prime mover

BEN BELL HIGHLIGHTS STEP'S RECENT WORK TO TAME THE RUGGED DIGITAL LANDSCAPE

STEP has been working to raise awareness of the importance of making plans for one's digital assets in estate planning, which is an increasingly necessary step that advisors must consider in this ever-evolving digital age.

We first highlighted the importance of digital assets succession planning through our Protect Your Digital Memories campaign, launched in 2022.[1] STEP's online toolkit offers guidance on securing social media accounts and cloud platforms, including how to update your legacy settings across various platforms. The campaign serves as a reminder that we need to take steps to protect our digital footprint if we want to ensure our loved ones have access to our photos, videos and cloud files upon incapacity or death.

Also stemming from this work came the STEP Digital Legacy Scorecard, which reviews the legacy tools and terms of service policies of ten leading social media platforms and cloud services providers, ranking them from bronze to gold in terms of suitability. Our findings from this work, including the individual ratings of our selected providers, were published in September 2023. These results were stark, showing that all platforms have much work to do in strengthening their legacy tools to allow provisions for nominated persons of a loved one to access their account in the appropriate circumstances.

OPEN DIALOGUE

Throughout this process, STEP has sought to engage with the various platforms we identified in our legacy scorecard project. Some of these providers, while disappointed in their own ranking (none achieved gold standard), have appreciated the insights provided by STEP and have agreed to address improvements to their terms of service. We have been grateful to open dialogue with both LinkedIn and X (formerly Twitter) during this process, and we hope to collaborate with these providers individually to seek comprehensive improvements to their platforms.

The challenges of accessing a loved one's digital information can be even more complicated in the instance of digital financial assets. Cryptocurrency remains a relatively low-regulation area. With the added complexities of passkey requirements and two-factor authentication of crypto accounts, many families may feel they are hitting a brick wall when trying to access the crypto funds left by a beloved member of their family.

STEP's work in this area so far has focused on awareness, such as highlighting the variations in the digital assets landscape, and has encompassed assets both sentimental and financial. It is clear that cross-border collaboration, as has been achieved in other areas of succession planning, would go some distance in bringing consistent standards to planning for digital assets. The US *Revised Uniform Fiduciary Access to Digital Assets Act* and EU *Markets in Crypto-Assets Regulation* reforms will be important developments to observe as the implementation of similar legislation is considered more widely around the globe.

UK: NEW POLICY CONSULTATIONS

A working group comprised of members of STEP's UK Technical Committee and England and Wales Regional Committee will be responding to the Law Commission of England and Wales' (the Commission's) consultation on reforming wills. This consultation will run until 8 December 2023 and will explore two main issues: electronic wills and the rule that a marriage or civil partnership revokes an existing will. The Commission published an original consultation in 2017 that aimed to update capacity testing to account for factors such as dementia and provide statutory guidance to medical and legal practitioners on assessing mental capacity. These consultations are part of an overall project that has sought to adapt will laws into modern times, as the original legislation was passed in 1837.

QUESTIONS WITHOUT ANSWERS

Although this is important, we do acknowledge that practitioners are extremely limited with regards to tools on digital assets, with little to no guidance at their disposal. The nuances and complexities of crypto-assets in particular continue to pose new challenges and many questions, with few answers in case law and statute books. A range of concerns, including cybersecurity, privacy and operational and market risks, amplified by the fast-paced developments of artificial intelligence, demand that practitioners have the best tools at hand to assist clients. For this reason, we will be continuing our efforts to form collaborative relationships with industry groups to share knowledge and develop guidance tools for STEP members where we can.

#DIGITAL ASSETS #LEGISLATION #TECHNOLOGY #THOUGHT LEADERSHIP

1 memories.step.org

***Ben Bell** is Government Affairs Manager at STEP*

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Securing the future: Electronic wills and safeguarding vulnerable individuals

By Mary Elliott and Louise Garrett

Vulnerable clients are a key area of concern for solicitors. This particularly applies to the preparation of wills, where risk factors include age, disability, illness and cognitive impairment. The Law Commission of England and Wales (the Commission) has long argued that existing legislation – primarily the *Wills Act 1837* – needs a comprehensive review.

In 2017, the Commission published a consultation, 'Making a Will', but this was subsequently paused while the Commission worked on a project on the law governing weddings, which it reported on in 2022 and after which the wills project recommenced. In October 2023 a supplementary consultation was published, inviting views on two issues: electronic wills and the rule that a subsequent marriage or civil partnership revokes a will. The latter rule is topical because of the increase in predatory marriages: where a person marries someone, who may be elderly or lacking mental capacity, as a form of financial abuse.

In summary, the specific questions raised by the supplementary consultation are:

- Should provision be made for electronic wills to be valid under the law? If so, how and when should the new legislation, introducing bespoke formality requirements, be implemented, and what should the formality requirements be?
- Should marriage or civil partnership automatically revoke a previous will?

Electronic wills

The supplementary consultation paper defines an electronic will as an 'electronically executed will' or a 'fully electronic will'. An electronically executed will is 'a will executed (or the formalities completed) using electronic means'. A fully electronic will is 'an electronically executed will which is then stored and admitted to probate solely as an electronic document'.

The Commission has expressed doubt as to whether electronic wills are currently capable of meeting the formality requirements in the *Wills Act 1837*, and seeks clarification, proposing that the Act should be amended to exclude the possibility of the current formality requirements in s.9 being interpreted to allow electronic wills to be valid. Instead, the Commission argues, bespoke requirements should be introduced allowing electronic wills to be valid. The formality requirements for an electronic will may be different to those required for a paper document, and may include additional formalities (such as registration) or requirements that take advantage of modern technology.

The supplementary consultation does not seek to determine what the new formalities should be. Instead, it focuses on what the formalities need to achieve and considers when and how such bespoke requirements should be introduced: whether under a new Wills Act, with any detailed requirements set out in subsequent secondary legislation, or alternatively by the introduction of a new Wills Act containing an enabling power allowing electronic wills to be recognised as valid in the future, at a point when the specific requirements have been determined.

The experience of other jurisdictions that have permanently amended their laws to recognise electronic wills as formally valid is relatively limited. The *Uniform Electronic Wills Act 2019* in the US provides model legislation for states to adopt, but has only been adopted to date by a handful of states. The Act still requires that electronic wills be in writing (not in audio or video form), signed, attested and witnessed either in person or virtually.

Notably, under Nevada legislation, an electronic will may, as an alternative to an electronic signature by a notary or two electronic signatures by witnesses, be authenticated using a method of authentication unique to the testator, such as 'a fingerprint, a retinal scan, voice recognition, facial recognition, video recording, a digitized signature or other commercially reasonable authentication using a unique characteristic of the person'.

Within the private client industry, opinion on the use of electronic wills is divided. Supporters point to technological and behavioural changes during the COVID-19 pandemic, which have led to electronic signatures becoming much more commonplace for other legal documents. For some, the argument centres on convenience, and on the inevitable march of digitalisation across all aspects of society: online banking replacing signed cheques is cited as an obvious example. As with other digital alternatives to signed paper documents, cost savings, simplicity and efficiency are advantages that might be afforded by the adoption of electronic wills. Equally, such wills would be adaptable and convenient: in theory, the testator could more easily update or amend their will. All of these benefits could lead

> 'Neither the potential adoption of electronic wills nor the proposed abolition of the marriage revocation rule can be easily reduced to a simple binary choice'

HUNTERS

to an increased number of wills being proved, and a reduction in the number of intestacies.

However, reservations about electronic wills are numerous. Fraud and forgery are obvious concerns, especially for vulnerable testators. The use of electronic signing software is increasingly prevalent in commercial transactions, but it is not clear that this is appropriate for the signing of wills. Quite apart from the entirely different nature of a will as compared, for example, to a tenancy agreement, many testators are elderly, and reliant on assistance from family, friends or carers when using modern technology. The scope for abuse or fraud is self-evident.

The Commission suggests that fully electronic wills could be created using electronic signatures and stored electronically without any paper version. Although storage and security issues might be overcome by mandatory filing on the National Will Register, a number of questions remain, particularly with regard to any period during which a dual (paper and electronic) system is in effect.

The increasing prevalence of online will-writing services may foreshadow an enthusiastic adoption of electronic wills, if they were to become legally valid. Conversely, anecdotal evidence that the witnessing of wills using videoconferencing (which was introduced in 2020 in response to the COVID-19 pandemic) has seen relatively limited take-up may point the other way to an innate reluctance on the part of testators and advisors to embrace modern technology in the field of wills.

Predatory marriages

Having recognised the increase in predatory marriages – in part, as a result of effective campaigning by affected families – the Commission seeks to revisit the question of whether a new marriage or civil partnership should revoke a will. The supplementary consultation paper suggests that abolishing the current rule (that a subsequent marriage or civil partnership automatically revokes a will) could be seen as rebalancing the interests of various potential beneficiaries.

Many otherwise sophisticated testators are unaware of the existing rule, and if a testator has made a well-thought-out will (which may include provision for charities or other beneficiaries), automatic revocation can have unintended detrimental effects.

Conversely, it can be argued that a marriage or civil partnership creates a new family unit, and that it is entirely appropriate that a surviving spouse should be provided for, whether by the operation of the intestacy rules (notwithstanding their limitations) or by the making of a new will, in either case consequent on the automatic revocation of the old will.

It is interesting to consider the law in Scotland, where marriage does not automatically revoke a will. Instead, legal rights allow a surviving spouse to claim a proportion of the deceased's estate, regardless of the provisions of the will, and without the need for a court application. Legal rights are, however, limited in scope and only apply to the moveable estate and not to real property, which is arguably what will often be most needed to provide for the widow/er.

In considering the abolition of the rule, the Commission highlights the protection afforded by the *Inheritance (Provision for Family and Dependants) Act 1975*. It follows that the abolition of the rule may increase the number of family provision claims. The supplementary consultation paper speculates that any increase in such litigation may only be modest, since the mere possibility of a successful claim may operate to encourage settlements out of court. However, even the pre-action processes involved in such negotiations will inevitably be distressing to the parties.

The victim of a predatory marriage may lack testamentary capacity and the automatic revocation of a will on marriage may benefit the predator who will inherit on intestacy. Either way, it will often be the case that a sophisticated predator will have a sufficient understanding of the law to be able to circumnavigate any legal safeguards.

Conclusion

Neither the potential adoption of electronic wills nor the proposed abolition of the marriage revocation rule can be easily reduced to a simple binary choice. Caveats and concerns invariably apply in both cases. Manifestly, a balance needs to be struck between embracing technology and safeguarding against abuse. Crucially, this needs to be in conjunction with better public education to help individuals understand the importance of making a will, why formalities and safeguards are necessary, the legal implications of marriage and how to recognise the signs of vulnerability to predatory marriage. Professional advice will be more important than ever to help clients (especially vulnerable clients) navigate the new framework.

What the Commission will ultimately choose to recommend following its consultation is hard to predict, particularly since there is a notable polarity of views on both issues. But protecting the interests of vulnerable individuals must remain the paramount concern in implementing changes to the status quo.

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KEY POINTS

What is the issue?
Spain has no testamentary freedom and there is no uniform law in Spain for succession and family matters.

What does it mean for me?
The concept of reserved heirship in Spain is in need of reform.

What can I take away?
Disowning a reserved heir in Spain is possible, but not easy. Before embarking on this journey, specialist advice should be sought to consider other alternatives.

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Cracking the Code

ÁLVARO AZNAR AZCÁRATE DETAILS RESERVED HEIRSHIPS AND THE PROCESS OF DISOWNING A RESERVED HEIR IN SPAIN

Álvaro Aznar Azcárate TEP *is a Partner at Buckles, UK*

Spain, like many civil-law systems, has forced or reserved heirs. This author personally prefers to refer to them as reserved heirs rather than forced heirs, because a forced heir can always disclaim an inheritance if they want to. Reserved heirs are a series of individuals who have an automatic entitlement to the deceased estate. Those rights or shares, as well as other aspects involving the succession of the individual, vary between the different regions into which Spain is divided.[1] There is no uniform law in Spain that governs family and succession. On the one hand, there is Spanish general law that applies to a large part of the country (*derecho común*) and, on the other, regional law that applies in Aragón, the Balearic Islands, Basque Country, Catalonia, Galicia, Navarra and Valencia, among others.

Under Spanish general law, the following individuals are considered reserved heirs. First, the linear descendants, being children, followed by grandchildren and more remote descendants. If there are no descendants, then linear ascendants will have priority, being parents and grandparents. Last, but not least, comes the surviving spouse. This may come as a shock to some, but if the deceased is survived by a parent and a spouse, the parent has priority over the spouse to inherit if there are no children. In such cases, the parent will receive one-third and the surviving spouse will receive a *usufructo*, which is similar to the England and Wales interest in possession (IIP).

It is worth mentioning that the *Civil Code of Spain* (the Code) only refers to married spouses, therefore by 'surviving spouse' it should be understood that the spouses were married at the time of the demise of one of them. Registered couples[2] or cohabitating couples are not considered spouses for succession rights. Another important aspect to mention is that if the married couple are de facto separated (not divorced),[3] there will be no inheritance rights for the surviving spouse.

If there are descendants, they are entitled to two-thirds of the estate as follows: one-third divided equally

among the descendants (this is commonly known as the *Legitima Estricta*); one-third known as betterment (*mejora*), which can be left to some of the descendants or to all of them (this is commonly used when the testator wishes to leave a larger share in the estate to one of their children); and finally, one-third as free disposition that can be left to an unrelated party. If the deceased is survived by a spouse and children, the spouse will be entitled to an IIP on the one-third of betterment. However, testators with both a spouse and descendants sometimes opt for applying what is known as '*Cautela Socini*', in which the testator appoints the surviving spouse life tenant of the entire estate and the descendants as universal beneficiaries.

In cases of *Cautela Socini*, the descendants will not have access to the estate until the surviving spouse dies, similar to an IIP trust on first death. If any of the descendants were to protest or complain, their entitlement would be reduced to the strict reserved-heirship provision, which is one-third. Many unhappy beneficiaries will think twice before issuing a claim in this scenario.

Evidently, Spain is a far cry from testamentary freedom and is distinct from common-law systems where the surviving spouse has priority over children. It is also worth mentioning that in Spain no asset passes automatically by virtue of survivorship; therefore, joint assets are treated as the deceased holding a fixed share in the asset and so, on death, this asset will be part of the estate.

Spain does have matrimonial property regimes; however, under the community of property, on the death of one of the spouses the community is dissolved and assets (and liabilities) are split in equal shares between the surviving spouse and the deceased's estate. In this case, the surviving spouse will have certain assets protected. However, not everyone is married under a community of assets regime.

CAN YOU DISOWN A RESERVED HEIR?

The answer is yes, but it is not an easy task and one may want to think twice before embarking on such a journey. The conditions to disown a reserved heir are contained in detail in arts.848–856 of the Code. It is worth mentioning that, as these clauses are more than 200 years old, they are outdated and in clear need of an overhaul. To disown a reserved heir it will have to be stated in a will, not verbally. There are a small number of grounds that can be considered abuse, including an attempt to murder a parent or spouse, failure to comply with marital duties or denial of maintenance. The Code also states that if the parties reconcile their differences then the act of disowning will be considered revoked.

'Spain is a far cry from testamentary freedom and is distinct from common-law systems where the surviving spouse has priority over children'

It is also worth noting that when a reserved heir is disowned, their linear descendants take their place. For example, if a father disowns his child, the children of the disowned child will take their parent's place.

The Supreme Court of Spain (the Court) is trying to modernise the Code and has issued a series of decisions where the lack of contact between the child and their parent can be considered abuse. These rulings are fairly recent (2014 and 2015) and have become one of the few possibilities for testators intending to disown their children when contact between testator and children is lost. One of the issues is that the testator will have to include in the will a detailed explanation as to why they are disowning a reserved heir to reinforce their grounds in case of a claim from the unhappy heir. This can sound like exposing private issues as the grounds will be included in the will, not in a side letter or letter of wishes as happens in many common-law systems. The grounds will remain in a notarial deed. In many of these cases, the testator wishes to remove one of their children from the succession to benefit any other children or family members who, for example, may have been looking after the testator. Sadly, in many cases, this ends up being stressful for the benefited heir.

Another interesting ruling of the Court was one in which a testator disowned his daughter in his will.[4] The testator in this case did not include the grounds for disowning but did incorporate into the will a series of documents supporting his decision. In fact, after making the will, the testator and his daughter regained contact. The testator did not amend his will and the daughter challenged it on the basis that family relationships were re-established and the causes were no longer valid.

CONCLUSION

In essence, the Code is in dire need of reform when it comes to modernising succession rights. Clearly, it is more important to grant higher protection to the surviving spouse who may have been financially dependent or an important contributor to the family finances, rather than the adult children, who most likely will have their own finances sorted.

Until such reform comes (if it comes at all), professional advice should always be sought when drafting a will. In some cases, rather than taking the drastic approach of disowning a reserved heir, one should take a more pragmatic approach and leave the bare minimum to a reserved heir to avoid any potential legal actions that the disappointed reserved heir may bring against the beneficiary of the will.

#CONTENTIOUS TRUSTS AND ESTATES #ESTATE PLANNING #MATRIMONIAL #SPAIN

1 Spain is divided into 17 regions and two autonomous cities in North Africa. **2** *Pareja de hecho*: a registered couple under Spanish general law. Each region regulates the treatment of *Parejas de hecho*. **3** A de facto separation generally occurs when two spouses agree to cease living together. **4** Ruling of the Supreme Court of 27 June 2018

SPONSORED CONTENT

Unlocking the power of investment policy statements for trustees

Equiom

By Graham Marsh

Trustees have long since demonstrated their purpose in protecting and enhancing the entrusted or settled assets. However, to what extent do trustees carry out their responsibility? This is a subject that is increasingly scrutinised in a world with complex technical asset classes and beneficiaries demanding transparency.

When trustees are challenged as to whether they are acting in the best interests of the beneficiaries, it is important for trustees to have auditable evidence of robust decision making. We often refer to the matter of *Harvard College and Massachusetts General* v *Francis Amory* in 1830, where on appeal Justice Samuel Putnam delivered the famous opinion:

> *'All that can be required of a trustee is, that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of the capital to be invested ... Do what you will, the capital is at hazard.'*

This opinion still holds value today.

Why prepare an IPS?

Whether a trustee delegates investment powers or not, there must be a process that takes account of all investment considerations and the subsequent decisions executed. This is unless the settlor has reserved investment powers, which in some ways exonerates the trustee, although not entirely. Trustees of discretionary trusts where there are financial assets, such as investment portfolios, bank deposits, listed securities, private equity, etc., rather than only non-financial assets, such as jewellery, art collections, yachts, aircraft, etc., should at the earliest opportunity construct an investment policy statement (IPS) that is in the best interests of the wider beneficiary class.

The IPS is designed to record the trustees' or directors' overall policy in relation to the investment of the financial assets within the structure. It forms part of the permanent record of the structure and should be reviewed regularly for ongoing suitability and accuracy, based on the changing circumstances of the structure and those of the beneficiaries, during its life cycle of administration.

Where the trustee does not hold investment powers (reserved powers), it is important that an IPS is not completed, as there is a risk that the trustee would be regarded as proactively involved with investment matters.

The IPS will capture relevant information including risk appetite, investment restrictions and liquidity requirements, along with many other important factors, in order to obtain a clear understanding of the investment's objectives. Nevertheless, an IPS is only of value if it is regularly reviewed and amended to ensure that it remains fit for purpose.

Regulated trust company businesses will be expected by their jurisdictional financial services regulator to have a process that evidences investment risk within trust structures. The process should be comprehensive and proportionate to satisfy the fiduciary risk and beneficiary expectations. The process should be consistent and include ongoing regular reviews of the individual IPS.

Accountability

Beneficiaries, particularly those in the 'next gen' category, are increasingly aware of their rights to hold trustees accountable for their actions, whether by questioning the actions and decisions of the trustee or resorting to bringing a complaint before the courts. Although the bar is set high for beneficiaries to prove a breach of trust for gross negligence, there are other considerations. For example, when a trustee does not exercise its investment powers appropriately, the trustee then becomes open to criticism by the court and possible cost orders. There may well be additional scrutiny and possible regulatory fines by the jurisdictional regulator for the trustee, not forgetting the inevitable press coverage and potential of reputational damage.

In conclusion, trustees play a pivotal role in protecting and enhancing entrusted or settled assets. In an increasingly complex financial landscape, trustees face numerous challenges that demand a high level of professionalism and expertise. By adhering to a comprehensive IPS and conducting regular reviews, trustees can effectively manage financial assets and fulfil their fiduciary duty to beneficiaries.

Graham Marsh is Director – Private Wealth at Equiom

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Building blocks

JULIEN DIF SETS OUT THE SWISS CRYPTOCURRENCY RULES

Switzerland has displayed a progressive attitude towards blockchain and distributed ledger technology (DLT). Government, lawmakers and the Swiss Financial Market Supervisory Authority (FINMA) explicitly recognise the potential for the financial services industry and the economy at large.

CRYPTO-BASED ASSETS AND TOKENS

Under Swiss law, there is no definition of 'virtual currency'. However, the revised banking rules equate 'crypto-based assets' to assets that were issued with the primary objective to substantially serve as a payment instrument for the acquisition of goods or services or an instrument for money or value transfers.[1] Moreover, FINMA distinguishes between the following three types of tokens (while acknowledging that 'hybrid tokens' may fall into more than one of these categories):[2]

- Payment tokens (synonymous with 'cryptocurrencies') are used as a means of payment for acquiring goods or services or as a means of money or value transfer (e.g., Bitcoin, Ethereum).
- Utility tokens are intended to provide access digitally to an application through a DLT-based infrastructure.
- Asset tokens represent assets such as a debt or an equity claim against the issuer (e.g., the promise of a share in future company earnings or future capital flows).

NO CRYPTOCURRENCY REGULATION

Switzerland does not have specific rules on cryptocurrencies. Although it refuses to consider them legal tender, the Swiss National Bank remains open to potential uses of virtual money,[3] as exemplified in the canton of Zug where the tax authorities have accepted Bitcoin and Ethereum for tax payments since 2021.[4]

Notwithstanding the absence of regulations, the offer and sale of tokens may be subject to certain rules in the event that they constitute securities within the meaning of Swiss law. To determine if such is the case, each token must undergo an assessment on a case-by-case basis. In this context, FINMA has adopted the following overall approach: unlike cryptocurrencies, utility tokens (unless their only purpose is to confer digital access rights to an application), asset tokens and stablecoins[5] should generally be treated as securities.[6]

In cases where tokens qualify as securities, the related sales activities may give rise to the following obligations:

- Swiss securities firm licence requirements under the *Financial Institutions Act* (FinIA);
- the Swiss trading platform regulations under the *Financial Market Infrastructure Act* (FinMIA); and
- Swiss prospectus requirements and further rules in relation to financial services, pursuant to the *Financial Services Act*.

DLT-SECURITIES

In 2021, the *Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology* introduced DLT-Securities as a new type of negotiable securities. They permit the tokenisation of rights, claims and financial tools (bonds, shares, derivatives, etc). These instruments allow for the issuance and transfer of rights directly on a DLT-based register. Such rights include contractual claims, especially those based on debt instruments, and certain membership rights (e.g., shares in a company).

DLT-Securities require a registration agreement between two parties: e.g., the issuer of a financial instrument (as debtor) and the holders of the financial instrument (as creditors). Under such contract, the rights at issue are entered into a so-called 'register of uncertificated securities' through which they are subsequently asserted and transferred.

ANTI-MONEY LAUNDERING

In Switzerland, both issuing and trading virtual currencies are subject to anti-money laundering (AML) rules. In this regard, an essential criterion is whether the person engaging in such activities constitutes a financial intermediary within the meaning of the *Swiss Anti-Money Laundering Act*. Financial intermediaries may either get affiliated with a self-regulatory organisation or be directly supervised by FINMA for AML purposes.

Depending on the nature of the asset and business activity, persons are required to obtain the following licences from FINMA:

- a banking licence for providers of custody or trading activities with payment tokens and providers holding payment tokens from several clients in their wallets; and
- a fintech licence for companies accepting public deposits of up to CHF100 million or crypto-based assets, provided that these are not invested and no interest is paid on them.

For business models that involve securities trading, companies may also be required to get authorised under the FinIA or the FinMIA. Companies using DLT must obtain a licence as a DLT trading facility if their purpose is simultaneous exchange of bids between several participants and the conclusion of contracts based on non-discretionary rules and either:

- admits participants in accordance with FinMIA ('retail customers');
- holds DLT-Securities in central custody based on uniform rules and procedures; or
- clears and settles transactions in DLT-Securities based on uniform rules and procedures.[7]

#DIGITAL ASSETS #LEGISLATION #REGULATION AND COMPLIANCE #SWITZERLAND #TECHNOLOGY

1 art.5a(1), *Federal Ordinance on Banks and Savings Institutions* **2** FINMA ICO Guidelines of 16 February 2018, p.3 **3** Thomas J Jordan, 'Currencies, Money and Digital Tokens', Swiss National Bank, speech given in German (2019) **4** bit.ly/3RUtmkP **5** Stablecoins are cryptocurrencies, the value of which is pegged, or tied, to that of another currency, commodity or financial instrument. **6** FINMA ICO Guidelines, p.4 *et seq* **7** bit.ly/3LVn9RY

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KEY POINTS

What is the issue?
The cooperative compliance regime in the Italian tax delegation Bill for high-net-worth individuals is set to radically redefine the relationship between tax authorities and taxpayers.

What does it mean for me?
Through prior disclosure and assessment of tax risks, individuals who choose the cooperative compliance programmes will get various benefits including reduced penalties for tax violations.

What can I take away?
Knowledge of how best to navigate the incoming changes.

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Simplifying tax in Italy

ANTONIO LONGO AND ANGELA DULCETTI ANALYSE THE IMPLEMENTATION OF A COOPERATIVE COMPLIANCE REGIME FOR HNWIs, INTRODUCED BY THE ITALIAN TAX DELEGATION BILL

***Antonio Longo** TEP is a Partner and **Angela Dulcetti TEP** is a Lawyer at DLA Piper, Milan*

Cooperative tax compliance in Italy will be extended to newly resident high-net-worth individuals (HNWIs).

Advance tax agreements were originally introduced by *Legislative Decree no. 128/2015* for multinationals with a business turnover or revenues not less than EUR1 billion (the initial threshold was EUR10 billion). This has now been extended to HNWIs.

The changes are expected to establish a new relationship between taxpayers and authorities, providing greater certainty for those who choose Italy as their country of residence and investment.

HNWIs have recently been in the global spotlight due to the complexity of their affairs, especially in comparison to other taxpayer groups. HNWIs are more likely to move around the globe, often raising questions about their residence for tax purposes. At the same time, many jurisdictions try to attract HNWIs as they contribute to local economies and create new opportunities for growth, especially for peripheral/smaller countries and territories.

TAX COMPLIANCE PROGRAMMES

The OECD looked into tax compliance for HNWIs in its 2009 report *Engaging with High-Net-Worth Individuals on Tax Compliance*.[1] It argued for a common approach to tax compliance based

on taxpayers' transparency and tax authorities' impartiality, proportionality and open dialogue. The OECD identified the challenges brought by the complexity of HNWIs' affairs, their taxes and their greater opportunities for engaging in aggressive tax planning. The OECD also addressed the prevention and response strategies that tax administrations can use.

Regarding the complexity of HNWIs' affairs, the OECD mentioned that this derives from their increased mobility, often resulting in difficulties when it comes to determining their tax residence, the application of tax treaties and the classification of foreign entities.

HNWIs contribute to local revenue due to the considerable amount of taxes they pay, even in jurisdictions imposing no personal income tax, since they end up paying other taxes such as value-added tax. However, the OECD recognises that HNWIs benefit from more possibilities to engage in tax-planning schemes, since they often have several income sources and hold more tax structures with international features.

In line with OECD recommendations, an increasing number of jurisdictions have been setting up tax compliance programmes for HNWIs.[2]

Australia established an office specifically dedicated to HNWIs as early as 1996. In the US, the Internal Revenue Service has a specific office named the Global High Wealth Unit. In the UK, the HNWI unit is coordinated by His Majesty's Revenue and Customs and its remit is individuals with a total annual income of more than GBP200,000 or assets of more than GBP2 million.

CRITERIA AND IMPLICATIONS IN THE BILL

With its new tax delegation Bill (the Bill), the time has come for Italy to implement its own compliance programme for HNWIs. The main purpose of the scheme provided by the Bill is to establish a structured framework for HNWIs who fulfil specific criteria.[3]

The regime is for individuals who transfer their residence to Italy, including those benefiting from the EUR100,000 flat tax on foreign income. It also applies to individuals who maintain their residence abroad but have a total income of EUR1 million or more in Italy, which may include income held through third-party entities or trusts. Income subject to substitute tax or withholding tax will also be considered for this threshold.

The extension of cooperative compliance to HNWIs provides an opportunity for Italy, from an international perspective, to reduce uncertainty and potential tax disputes in advance, and increase confidence in Italian institutions.

The goal fits within the framework of recommendations drawn up at international level, and in the special tax regimes already present in the system, which are aimed at attracting individuals with high tax-paying capacity. This makes it possible to simplify Italian tax regulations, the complexity of which could be an obstacle to investment in Italy.

During the next steps, the implementing decrees will define the specific implications of adhering to the cooperative compliance regime.

Article 17 of *Law no. 111/2023* provided some advantages that will also be introduced for cooperative compliance programmes addressed to companies. Such measures should simplify tax compliance procedures. They should also allow for better communication and dialogue with Italian tax authorities, who will be better placed to collaborate with clients' representatives to address intricate cases involving foreign trusts, inheritance and gift taxes, double taxation issues and cryptocurrencies.

'The extension of cooperative compliance to HNWIs provides an opportunity for Italy ... to reduce uncertainty and potential tax disputes in advance'

A further benefit could be the reduction (up to the possible exclusion, in certain cases) of administrative tax penalties and of the statute of limitations (according to the Bill, this should be at least two years) for the assessment of taxpayers who have engaged qualified professionals to design compliance models to identify and control tax risks.

The government, entrusted with implementing the framework, may make it possible to handle matters relating to tax periods before admission to the regime. It may also introduce specific forms of preventive consultation through quick responses to ruling requests regarding tax residency matters.

Based on similar experiences in other countries, the implementing decrees may explore the idea of establishing an office specifically dedicated to HNWIs in the Italian Revenue Agency. This office could help with international double taxation issues and support HNWIs in the tax returns submission process.

CONCLUSION

The cooperative compliance regime will amend the criteria for establishing the tax residency of individuals under Italian tax law to make them more aligned with the criteria in international tax law.

The next few months will be crucial, since the criteria and benefits that taxpayers will get from the regime will be better defined when the implementing decrees are enacted.

#ITALY #LEGISLATION #REGULATION AND COMPLIANCE #RESIDENCY OR DOMICILE #TAXATION

1 bit.ly/4580NU0 **2** R Botelho Moniz and R Offermanns, 'Special Tax Regimes for High-Net-Worth Individuals', *European Taxation* (2020) **3** Per art.17(g)(3) of *Law no. 111/2023*

KEY POINTS

What is the issue?
German law provides a wide range of challenges to individuals wishing to move to Germany. A conscious examination of the main issues presented will help to avoid unpleasant surprises.

What does it mean for me?
Without planning ahead, relocation to Germany may give rise to unforeseen challenges.

What can I take away?
After reading this guidance, advisors will be able to identify the key issues when immigrating to Germany and so be better positioned to assist their clients.

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Immigrating to Germany

ERIK MUSCHEITES AND MARCUS NIERMANN OUTLINE ISSUES TO BEAR IN MIND WHEN RELOCATING

Erik Muscheites *and* ***Marcus Niermann*** *are Counsel at POELLATH, Germany*

Whether for private or work reasons, moving to Germany and potentially establishing German tax residence may give rise to a number of issues. This article is a brief overview of the issues to be borne in mind when considering a relocation to Germany.

RESIDENCE

As a German tax resident, one will be subject to both income tax on one's worldwide income and inheritance and gift tax (IGT) on worldwide assets. An individual will be deemed to be a German tax resident (for both taxes) if they have a dwelling that they use or is at least available to them (e.g., they have possession of a key) or if they have a habitual abode in Germany. Citizenship or a domicile (as understood under common law) are not, in themselves, criteria for residency. German tax law stipulates a low threshold for the finding of a dwelling (see s.8 of the *German Fiscal Code*). This may also apply in cases where, for example, there is only a vacation home. The German tax authorities have the necessary instruments to determine these facts. Without certainty on whether there is an unlimited tax liability due to a residence in Germany, there is always a risk of unrecognised tax liability. Particularly in the arena of IGT, this can lead to a rude (if late) awakening.

NECESSARY VISA

EU citizens generally do not require any documentation to move to Germany. Non-EU citizens generally need a visa or residence permit if they intend to work or stay for a longer period of time. A visa programme specifically targeted at high-net-worth individuals does not exist in Germany. This means one must fulfil the necessary immigration requirements.

BANKS IN GERMANY

In Germany, many banks may require German residence in order to open a bank account. Especially for persons who are still a resident or citizen of the US, it may be hard to find a German bank because of banks' fear of the associated compliance requirements (e.g., the *Foreign Account Tax Compliance Act*). Having a non-German bank and brokerage account, on the other hand, may result in additional compliance efforts for German tax purposes. German tax law provides for rules that may require a recalculation of income, especially when it comes to investment funds or capital gains tax (CGT). A German bank would provide the applicant with an annual tax certificate, which already forms the basis for German tax reporting.

INVESTMENT FUNDS

Germany applies a deemed distribution regime on investment funds. That means even if one's investment fund does not pay out any distributions, a portion of the increase in value may be subject to German taxation annually. Such deemed distribution may be credited in case of a sale of the investment fund; if one has already left Germany at that point of time, however, a portion of the capital gain might be double taxed if the foreign country does not provide a credit or allow a step-up in basis.

TRUSTS AND FOUNDATIONS

Settlors and beneficiaries of trusts or foundations may be subject to adverse tax rules in Germany. Additional tax reporting obligations may be applicable. Further, the income of the trust or foundation might be attributed to German beneficiaries or remaindermen, regardless of actual distributions being made. Practitioners advising clients moving to Germany should review existing trust or foundation agreements.

NO STEP-UP IN BASIS

The assets held when moving to Germany are not normally revalued with regard to their acquisition costs. Special rules may apply if the individual was subject to an exit tax before relocation. Consequently, a so-called step-up in basis does not typically apply. This can lead to CGT if assets are sold while the individual is tax resident in Germany. It may be recommendable to step up the basis in the assets to the current market value before moving to Germany if the tax rate in the home country is below the German tax rate. One way of achieving this result is to sell the assets and then repurchase them at market value. The repurchase price would then form the basis for German taxation. It should be noted that compliance with any applicable foreign law, such as US 'wash sale' rules, should be secured and, if in doubt, appropriate advice should be sought.

HOLDING COMPANIES AND CFC RULES

In Germany, controlled foreign corporation (CFC) rules (*Hinzurechnungsbesteuerung*) exist, which can cause income of a foreign corporation (without distribution) to be taxable for a German shareholder. Advisors should be aware of these rules if their clients own holding companies. Whereas holding companies may have tax benefits in certain tax jurisdictions, such rules can become a major disadvantage under these circumstances. Therefore, if a client holds assets through a holding company, the issue should be tackled in more detail with individual German tax advice.

> *'If a client holds assets through a holding company, the issue should be tackled in more detail with individual German tax advice'*

PLACE OF MANAGEMENT

A corporation may be subject to German corporate tax if the company has a fixed place of business or a place of management in Germany. Working for a foreign business while residing in Germany may result in adverse tax consequences for the company. This is because, in addition to the possibly higher tax burden, German tax declaration obligations and a separate determination of profits for permanent establishment apply. If the individual moving to Germany holds the position of a director of a holding company, there is a risk that the company itself acquires German residency for corporate income tax purposes due to the establishment of a place of management in Germany.

INCOME TAX

Income (e.g., wages, capital income) is in principle taxable when it is paid to the taxpayer. This, in turn, means that the time of receipt (and so the time of taxation) can be controlled to a certain extent. This will also be relevant, for example, when determining the progressive income tax rate. However, timely planning in every case is absolutely necessary.

EXIT TAX

Individuals who have been subject to unlimited tax liability in Germany for a total of at least seven years within the previous 12 years and who have held an interest of at least 1 per cent during the past five years in a corporation will be subject to an exit tax when leaving Germany. The fair market value at the date of relocation will be considered to be the sale proceeds. Careful planning is therefore required and having a German tax advisor is especially important if the client has such an interest in a corporation. A different form of exit tax may also arise, depending on the specific circumstances, if the individual leaving Germany holds an interest in a partnership.

SUCCESSION PLANNING

When moving to Germany, clients should review their testamentary dispositions. Unless a choice of law has been made, German law will generally be applicable to the succession if the deceased had their habitual residence in Germany at the time of death. The law applicable to the succession may therefore change by relocating to Germany, from a German law perspective. This means that German law can unintentionally apply in the event of succession.

INHERITANCE AND GIFT TAX

Successions and gifts are subject to taxation, even between spouses (depending on the marital property regime). Taxation is primarily linked to the residence or habitual abode of either the transferor or transferee. German nationals who have not resided abroad permanently for more than five years without maintaining a residence in Germany are also subject to an unlimited IGT liability. In cases falling within the scope of the double taxation agreement (DTA) concluded with the US, this period is extended to ten years. The worldwide inheritance or the gift are subject to German IGT. Germany has concluded only a few DTAs in this area.

BE COMPLIANT

Under German tax law, there are various tax return and notification obligations to the tax authorities. For example, an income tax return must be filed annually, whereas successions and gifts must be reported within 30 days. These obligations also apply to German citizens who are subject to an extended unlimited German income or IGT for ten years after departure.[1] There is also an obligation to report the establishment or acquisitions of businesses, permanent establishments and partnerships abroad, as well as in foreign corporations and asset pools under specific circumstances. Failure to report income or other taxable transactions to the competent tax authority in Germany should be avoided under any circumstances.

#GERMANY #INTERNATIONAL CLIENT #RESIDENCY OR DOMICILE #TAXATION

1 See ss.2 and 4 of the German *Foreign Transaction Tax Act – Außensteuergesetz*

KEY POINTS

What is the issue?

Despite the lack of clarity in the *US-France Estate Tax Treaty* (the Treaty) regarding treatment of US trusts, it has been generally admitted by practitioners that a US trust subject to a tax-transparent regime in the US could be treated the same way in France.

What does it mean for me?

A recent decision of the French Administrative Supreme Court jeopardises this solution, finding that a US trust cannot be recognised as a fiscally transparent entity for the purpose of French domestic tax law and consequently for the application of the Treaty.

What can I take away?

The denial of the tax transparency treatment to a US trust creates a clear risk of double taxation for the French beneficiaries of the trust.

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Denial of transparency

FRÉDÉRIC ROUX ON UNCERTAINTY IN FRANCE REGARDING THE INCOME TAX TREATMENT OF FRENCH-RESIDENT BENEFICIARIES OF A US TRUST

Frédéric Roux TEP *is Counsel at CMS Francis Lefebvre Avocats*

In a recent decision, the French Administrative Supreme Court (*Conseil d'État*, the Court) raised potential issues regarding the tax treatment in France of income realised by a US trust held by French residents.

Under French domestic law, there is no comprehensive tax regime regarding the treatment of a foreign trust for income tax purposes (since 2012, a specific trust law covers the tax treatment of foreign trusts and foundations for wealth tax and estate tax purposes),[1] with the exception of art.120-9° of the *French Tax Code* (the Code). This article provides for the taxation of French individual residents on distributions received from foreign trusts as a standard dividend (taxed under the maximum global tax rate of 34 per cent).

THE TREATY

In the France-US context, the situation has been quite different because a specific article of the *US-France Tax Treaty* (the Treaty), with respect to taxes on income and capital,[2] addresses the situation of 'partnerships' that must be treated, under art.4, as transparent entities for income tax purposes by both states. This provision requires that income realised by the entity qualified as a partnership must be treated as that of the members or shareholders of the partnership and the corresponding treatment provided for by the Treaty must be applied as if the partnership does not exist.[3] Since the Treaty's definition of partnership is broad (i.e., 'every entity that is fiscally transparent'), it

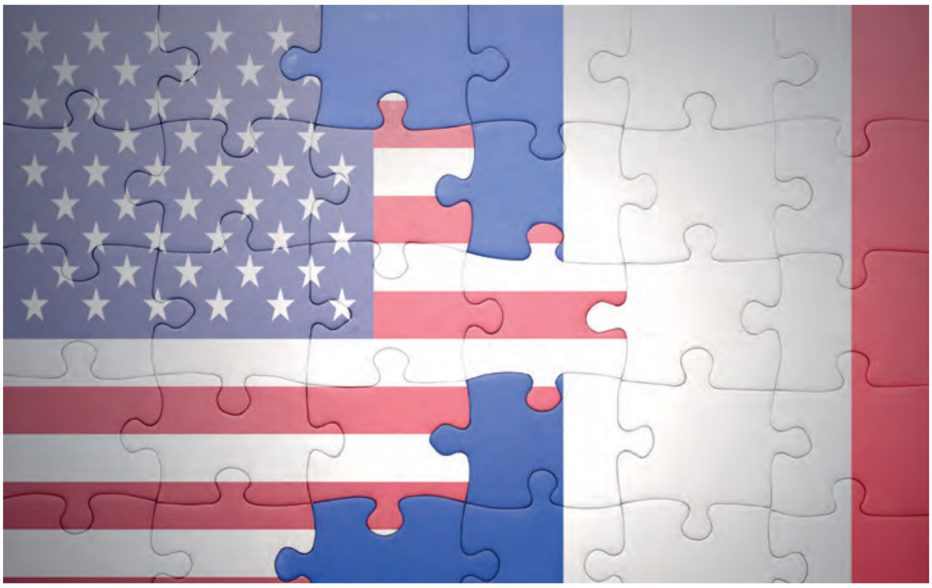
has been commonly accepted in France that US trusts with French-resident beneficiaries could be treated as a partnership for the purpose of the Treaty, provided that the US trust is regarded under US tax law as a transparent entity.

This position was supported by the fact that the French tax authorities released an official guideline[4] whereby they considered that some US trusts (e.g., grantor trusts) could be treated as tax-transparent entities for the purpose of the previous double taxation treaty between France and the US, dated 28 July 1967. This position regarding the interpretation of the Treaty is quite favourable to US citizens residing in France, as it might be considered that the specific provision in the Treaty allowing them to benefit from an exemption of French income tax on certain US-source income or gains was also applicable when said US income or gains were realised by a US trust of which they are beneficiaries.

However, this solution has been brought into question by a recent decision of the Court.[5] This decision is not, strictly speaking, a court ruling. Rather, it may be regarded as legal advice requested from the Court by the French tax authorities about the case of a revocable and non-discretionary US trust, of which the settlor, trustee or beneficiaries are French-tax resident. The French tax authorities asked the Court to deliver a legal opinion about the tax treatment resulting from the Treaty in this situation regarding income or gains realised by the US trust at the level of the French-tax resident beneficiaries.

In its published opinion, the Court considered that such a US trust cannot be recognised as a US fiscally transparent entity in cases where the beneficiaries are French-tax resident because the Treaty's provisions require that the domestic law of the state of the member of the entity (i.e., France) applies a tax-transparency treatment regarding the income or gains realised by the entity in order to be qualified as a partnership. Considering art.120-9° of the Code, the Court stated that French domestic law does not provide for a tax-transparency treatment to foreign trusts as income coming from trusts is only taxed at the level of the beneficiary upon an effective distribution to them. As a result, the Court found that if a US trust is fiscally opaque for French domestic law, the partnership clause of the Treaty cannot be evoked in the context of French beneficiaries of a US trust.

As a solution, the Court held that the tax-transparency treatment should be denied in France to a US trust when it includes beneficiaries who are French-resident individuals, with mainly negative consequences. US trust income and gains can be taxed at the level of the beneficiaries only upon an effective distribution of proceeds from the trust (subject to a specific domestic anti-abuse mechanism of taxation on a look-through basis). However, in this case, the distributed proceeds cannot be treated pursuant to the Treaty according to the source/nature of income or gains realised by the trust. For instance, if the proceeds come from US rental income derived by the US trust, it should not be possible to consider, by a transparency approach, that arts.6 and 24 of the Treaty lead to a tax exemption in France of said trust's income.



'The denial of transparency to the US trust could raise many issues of double taxation between France and the US for French-resident beneficiaries'

The denial of transparency to the US trust could raise many issues of double taxation between France and the US for French-resident beneficiaries. Indeed, in some cases, these beneficiaries are first directly subject to income tax in the US, through a transparency regime, on the income or gains realised by the trust. In France, the trust proceeds are taxed at the moment of the distribution to the beneficiaries, but the distribution changes the nature of the income and the date of the taxable event, which involves the risk that the US-source tax cannot constitute a tax credit to be offset against French individual income tax. Indeed, the other risk is that France would consider that a US trust, subject to tax-transparency treatment in the US, cannot qualify as US-tax resident for the purpose of the Treaty because it requires the resident to be personally liable to tax (which is not consistent with a tax-transparency regime). The consequence of this denial is that the distribution received from a US trust cannot be viewed as dividends covered by art.10 of the Treaty.

CONCLUSION

This decision cannot be deemed case law because it is only legal advice rendered by a specific section of the Court. But that the French tax authorities decided to publish it could be viewed as a willingness on their part to now treat US trust income derived by French individuals in this way. In addition, in cases of a dispute between a taxpayer and the tax authorities regarding the same legal issue, the litigation section of the Court might adopt the same solution, validating such an interpretation of the Treaty, which is generally unfavourable for the beneficiaries of the trust, especially if they are a US citizen who could benefit from the income tax exemption in France on US-source investment income provided for by the Treaty if they directly derive this US income or gain.

#FRANCE #INTERNATIONAL CLIENT #RESIDENCY OR DOMICILE #TAXATION #TRUST #US

1 Amended Bill for *Law n°2011-900* dated 29 July 2011 **2** Dated 31 August 1994 **3** Including rules of allocation of the right to tax between two states and the granting of tax credit by clauses of elimination of double taxation, for instance. **4** Guideline dated 25 March 1981 – BODGI 14 B-2-1981 **5** Dated 18 April 2023 (n°406825)

KEY POINTS

What is the issue?

Switzerland has seen several developments in the trust industry in the past few years.

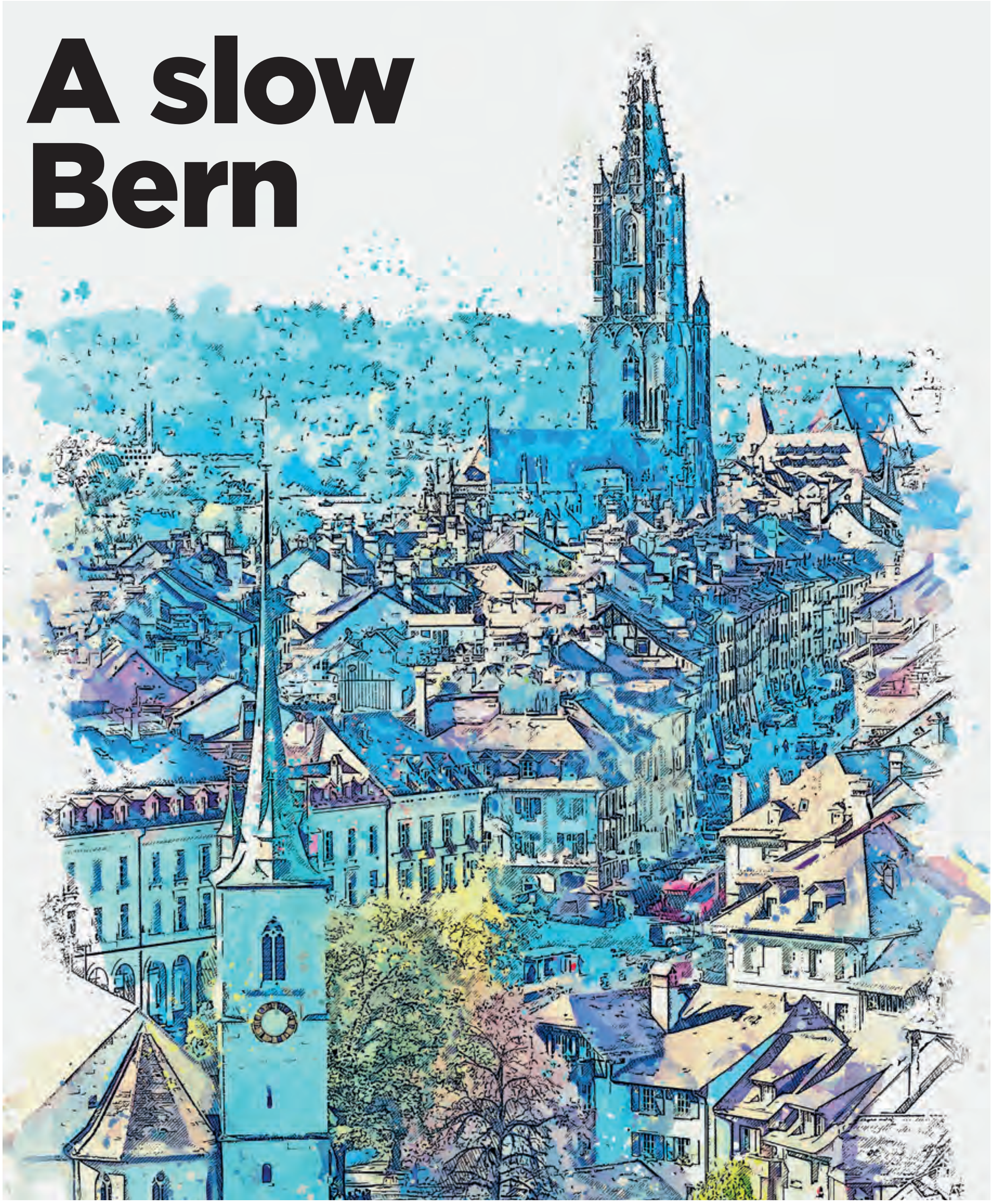
What does it mean for me?

Any trustee or advisor both in Switzerland and abroad should be aware of legislative updates when advising clients about Swiss trustees and the potential Swiss trust law.

What can I take away?

A review of the introduction of Swiss trustee licensing and the attempt to introduce a substantive Swiss trust law.

A slow Bern



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ANDREW MCCALLUM PROVIDES AN UPDATE ON THE LEGISLATIVE AND REGULATORY LANDSCAPE SURROUNDING TRUSTS IN SWITZERLAND

Andrew McCallum TEP *is Chair of the Swiss and Liechtenstein STEP Federation and a Senior Partner at Rawlinson and Hunter, Switzerland*

The Swiss authorities' public consultation regarding the possible introduction of a substantive Swiss trust law ran from 12 January 2022 until 30 April 2022. The Swiss and Liechtenstein STEP Federation, several STEP branches in Switzerland and the Swiss Association of Trust Companies (SATC) (collectively STEP/SATC) created a joint working group to jointly provide responses to that consultation.[1]

Rather than focusing solely on the draft Swiss trust law text in the public consultation, the Swiss authorities unexpectedly also consulted, as part of the same consultation document, on proposals to codify the taxation of trusts. This was unfortunate as most public consultation responses only focused on the unpopular tax proposals rather than the draft trust law itself. STEP/SATC were among the few organisations to provide a detailed consultation response covering both topics.

The position taken by STEP/SATC was to support, in principle, the introduction of a Swiss trust law but to strongly reject the tax proposals. STEP/SATC took the view that:

- if the tax proposals are not decoupled from the trust law proposals; and

- if the tax codification proposals are not abandoned in their entirety; then
  - STEP/SATC should reject the draft Swiss law proposals (because both topics are bundled together).

STEP/SATC further proposed that the current taxation rules/guidelines for trusts, which have proven themselves over time, be maintained, specifically the existing tax circulars on the subject. Many other industry groups and cantons also rejected the unpopular tax proposals but, as noted above, provided less or no coverage of the draft trust law in their responses.

In addition to the positions taken, as described above, STEP/SATC also made proposals for the improvement of the draft trust law text and requested clarification on several matters, as follows:

- Limitation of trustee liability: in the draft text, there is no similar protection to art.32 of the *Trusts (Jersey) Law 1984*.
- Perpetuity period: the draft text includes a perpetuity period of 100 years.
- The inclusion of purpose trusts in the draft text.
- Clarification on whether there is an obligation to have financial accounts and an audit of trusts where certain size thresholds are not met (meaning the thresholds already included in the Swiss *Code of Obligations*).
- Clarification on whether the proposed ability for a beneficiary to renounce their beneficiary status is both revocable and irrevocable.
- Clarification concerning the ongoing liability of a former trustee upon a change of trusteeship. The draft text would appear to result in an outgoing trustee remaining jointly and severally liable with the incoming trustee for a period of three years after the transfer of trusteeship. This point obviously needs to be resolved if trustees are to consider using Swiss trust law.

On 15 September 2023, the Swiss Federal Council (the Council) announced the conclusions of the public consultation. They confirmed that there is currently insufficient political consensus to be able to proceed with the Swiss trust law project at this time and noted that the tax proposals were clearly rejected. Consequently, the Council has proposed to parliament that the entire project be shelved.

Although parliament has the final say on the matter, it is very likely that it will follow the Council's proposal.

A couple of conclusions from the most recent developments are:

- Although it is very unlikely that the Swiss trust law project shall progress at this time, that does not mean that it is definitely abandoned. The Council noted that there is currently insufficient political consensus, but that does not close the door for it to be reconsidered at a later date.
- The current taxation rules/guidelines for trusts shall not be replaced by the unpopular tax proposals.

SWISS TRUST LICENSING UPDATE

The Swiss *Financial Institutions Act* (FinIA) and the related *Financial Institutions Ordinance* came into force on 1 January 2020. A transitional period was granted until 31 December 2022, by which time a professional Swiss trustee that falls into scope of the law:

- should be able to show proof that they are subject to supervision by a federally approved supervisory organisation (SO);[2] and
- must have sent their licence application to the Swiss Financial Market Supervisory Authority (FINMA).

As long as the trustee sent their licence application to FINMA before 31 December 2022, then it can continue in operation while FINMA deals with the application.

Of the 387 trustees who announced in June 2020 that they may need a FINMA licence, only 165 actually made the licence application by the 31 December 2022 deadline.[3] Therefore, more than half of the initial announcements did not make licence applications. According to the information provided by the entities themselves, some of the reasons for this level of drop-out include:

- trustees who are below the legally defined threshold of 'professional activity' (there are thresholds below which a FINMA licence is not required);
- trustees who have left the Swiss trustee arena (e.g., retirement, liquidation of the trust company, merging with another trust company, cessation of trustee activity within Switzerland, etc.); and
- entities not subject to authorisation due to exception or exemption (private trust companies or dedicated trust companies).

As of 31 December 2022, only 28 trustees had received their FINMA licence. At the time of writing, 61 trustees had received their FINMA licence. Many trust companies have not yet received their licence, including most of the larger trust companies. This is a reflection of the fact that FINMA received a large number of applications just before the 31 December 2022 deadline (i.e., FINMA needs the necessary time to study and process all of those applications) rather than being an indicator of any specific problems with those applications. Although FINMA has not communicated when it expects the initial licensing phase to be complete, it is very possible that the process will only be complete in 2024.

Another interesting fact is that none of the five federally approved SOs have attracted a critical market share of trustees. Only two SOs have more than a 20 per cent market share, and the range for all five is 14–26 per cent individually. It appears that the majority of trustees elected to be supervised by the SO most closely linked to the self-regulatory organisation (SRO) by which they were previously supervised for anti-money laundering (AML) purposes. The SOs are a newly created concept in response to the new Swiss trustee licensing law and are generally spin-outs from existing SROs.

As with most regulators, FINMA has announced that it takes a risk-based approach to authorisation of trustees, ranging from lower-risk (typically small single-member companies) and medium- to high-risk trust operations. The higher the risk or more complex the business model of the Swiss trustee, then the more independence and professional qualification requirements are needed by FINMA. For medium risk and above, the risk-control functions should be separate from the client-facing staff, and high risk requires a largely independent senior management body. In practice, many trustees have responded by outsourcing the internal control and AML functions.

FINMA has indicated that it considers the following categories as indicators of higher risk:

- **trustee-specific risks:** e.g., the holding of non-bankable assets and the use of a large number of governing laws for trusts;
- **FinIA risks:** e.g., the delegation of essential tasks abroad, such as investment management and trust accounting; and
- **AML risks:** e.g., foreign custodian banks and owning group companies abroad.

CONCLUSION

The Swiss trustee licensing regime is well underway, although it is likely to still take several more months before FINMA will have finalised the authorisation process of existing trustees, given that it received many applications close to the 31 December 2022 deadline.

With regards to the draft Swiss trust law, the Council has proposed to parliament that the entire project, i.e., both the Swiss trust law text and the unpopular tax proposals, be shelved. Therefore, the current taxation rules/guidelines for trusts remain intact, which STEP/SATC welcome. Time will tell whether the Swiss trust law text is revisited at a later date once political consensus is more likely to be reached, but certainly at this time it seems very unlikely that it shall be progressed for several years.

#COMPANIES #LEGISLATION #SWITZERLAND #TRUSTS

1 The author was a member of the working group. **2** This is a prerequisite to the following point. **3** These figures exclude the five branches of foreign trustees, of which only one made the licence application.

KEY POINTS

What is the issue?

Amendments to Spain's so-called 'Beckham' tax regime has created more flexibility for clients relocating to Europe.

What does it mean for me?

Foreign high-net-worth individuals, executives and investors should consider the tax implications of relocating to Spain.

What can I take away?

Up-to-date knowledge on the status of these tax regimes is of importance for advisors.

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Bend it like Beckham

CARLOS GABARRÓ DETAILS CHANGES TO SPAIN'S SO-CALLED 'BECKHAM' TAX REGIME

Spain is one of the highest-ranked countries in the world in terms of quality of life. However, high-net-worth individuals and expatriates should carefully consider the tax implications when relocating to Spain, including the advantages that may be provided by the so-called 'Beckham tax regime',[1] which has provided greater flexibility since January 2023.

ORDINARY TAX RESIDENT

An individual would be considered a tax resident if:

- they remain in Spanish territory for more than 183 days during a given calendar year ('sporadic' absences are disregarded unless they prove the individual is a tax resident of another country);[2] or
- their centre of economic interests, whether directly or indirectly, is located in Spain.

Spain applies the principle of worldwide taxation and a resident taxpayer is subject to tax in Spain on their worldwide income. Total personal income tax liability is computed under the general rules, plus those applicable in the autonomous community of residence.[3,4] Allowances and rebates also vary depending on the autonomous community of residence. So-called 'savings income' is taxed at lower rates ranging from 19 to 28 per cent for income exceeding EUR300,000. This income includes, in general terms, dividends, interest and capital gains derived from the transfer of assets.

At the time of leaving Spain, 'exit tax' applies in cases where the taxpayer owns certain shareholdings and has been a resident during ten of the previous 15 years.[5] The latent capital gains would have to be included in the taxable base corresponding to the last year

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of residence unless they were to relocate to another EU or European Economic Area Member State, in which case, Spain maintains its right to taxation if the relevant shareholding is effectively transferred within the following ten years. Further, taxation would apply, for example, if the tax rollover relief regime has been applied on corporate reorganisation transactions, such as on a merger or a share-for-share contribution (i.e., reorganisations resulting from the implementation into Spanish law of the EU Merger Directive),[6] or in cases where an individual has opted for certain other tax deferral benefits.

Other anti-tax deferral measures would potentially apply to resident taxpayers, such as the Spanish controlled foreign company (CFC) rules in cases of controlling a 'low-taxed' foreign entity or the obligation to report bank accounts and other specific assets located outside the country (under Form 720), noting the application of onerous penalties if they fail to do so.

THE EXTENDED BECKHAM TAX REGIME

With the aim of attracting foreign technology and IT talent, entrepreneurs and investors, the Beckham tax regime has become more flexible, per the amendments introduced by *Law 28/2022*, which have been in force since January 2023 and aim to encourage the start-up ecosystem.

Under the Beckham regime, if an individual relocates to Spain and becomes tax resident in Spain as a consequence of their work, they would generally suffer a much lower tax burden than an ordinary Spanish tax resident. In a nutshell, non-Spanish-sourced income (except for salary and self-employment remuneration derived from an innovative activity or an activity of special economic interest for the country) and non-Spanish-*situs* wealth would not be subject to taxation while the Beckham regime remains applicable.

To opt for this regime, the period during which the individual has not previously been a Spanish tax resident is now reduced from ten to five years. With the new rules, nothing has changed with respect to the term of application of this regime; it remains applicable during a maximum period of six years (i.e., the year one becomes a tax resident and the following five years), provided the relevant requirements are met during all those years.

The potential application of the Beckham regime is conditional on relocation to Spain during the first year in which the election is made or, with the new rules, even if the relocation took place during the previous year.

> *'In a nutshell, non-Spanish-sourced income … and non-Spanish-*situs *wealth would not be subject to taxation while the Beckham regime remains applicable'*

Such relocation shall take place as a consequence of any of the following circumstances:

- An employment contract with a Spanish employer or a foreign employer seconding the individual to work in Spain.[7] With the new measures, the regime can also apply even if the move to Spain has not been ordered by the foreign employer, as long as the labour activity is performed remotely by the exclusive use of computer, telematic or telecommunication means. This would be deemed to be the case for employees availed of a 'digital nomad visa', as defined under *Law 14/2013 of 27 September*.
- Becoming a director in a company. However, in cases where the company is a passive asset-owning company, the director cannot hold an interest of 25 per cent or more in its share capital.
- Being a self-employed entrepreneur in Spain carrying out an innovative activity or activity of special economic interest for the country, subject to receiving a favourable report by the Spanish government agency ENISA.
- Being a highly skilled professional providing services to a 'start-up' company[8] or in cases where more than 40 per cent of the total remuneration comes from work as a lecturer or a research and development or innovation specialist.

Worldwide salary (including certain in-kind benefits) or the remuneration for an innovative entrepreneurial activity or activity of special economic interest for the country (as indicated above) would be taxed at 24 per cent (and at 47 per cent for any amount exceeding EUR600,000). Spanish-sourced dividends, interest and capital gains derived from the transfer of assets would be taxed at rates varying from 19 to 28 per cent (the top marginal rate for income exceeding EUR300,000).

Conversely, other foreign-sourced income (including, but not limited to, dividends, interest and capital gains) would be out of the scope of Spanish taxation.

During the years of application of this regime, CFC rules would not apply and Form 720 should not be filed. The period to compute tax residence for the exit tax on certain shareholdings starts to apply only as of the first year in which this special regime is no longer applicable.

As another novelty, a spouse and children under 25 (or disabled children, no matter their age) may benefit from this special regime under certain requirements and if their taxable income, as per the Beckham regime, is lower than the one perceived by the main taxpayer for which the regime is applicable. Wealth tax and the new temporary solidarity tax would apply on Spanish-*situs* assets only.

Finally, careful consideration should be given to inheritance and gift taxation since the Beckham regime does not provide any specific benefit in this respect.

DIRECTOR OF A SPANISH COMPANY

As mentioned above, an individual relocating to Spain to carry on an active business through a Spanish company, where they hold the post of director, can now opt for the Beckham tax regime for up to six years.

Therefore, those moving to Spain for legitimate business and working reasons, and so acquiring tax residence in the country as a consequence of being appointed as director of their active companies, may now opt for this regime. This may include an individual starting a new active business as director in their own Spanish company or, also subject to detailed review, those being appointed as directors of a Spanish company holding domestic or cross-border active subsidiaries.

Foreign-sourced income including dividends or capital gains would be out of the scope of Spanish taxation. Likewise, foreign investments or assets would not be subject to the wealth/solidarity tax.

#RESIDENCY OR DOMICILE
#SPAIN #TAXATION

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1 Named after the first famous individual making use of this special tax regime, footballer David Beckham, when he played for Real Madrid. **2** The tax year in Spain coincides with the calendar year. **3** Spain consists of 17 autonomous communities and two autonomous cities. **4** Currently 54 per cent for the top marginal tax rate in the Valencia region. **5** In general terms, shareholdings in entities whose fair market value exceeds EUR4 million (or exceeding EUR1 million if holding more than 25 per cent of the share capital). **6** *EU Council Directive 2009/133/EC* **7** With the exception of professional sportspersons. **8** To qualify as a 'start-up', specific requirements must be met, to be certified by ENISA.

Barometer for succession planning

BY **HELEN BRADFORD-SWIRE, NEWS EDITOR, STEP**

IN A WORLD OF GLOBALLY MOBILE CLIENTS, A *STEP JOURNAL* ROUNDTABLE, SPONSORED BY EQUIOM, EXAMINED BEST PRACTICE IN CREATING AND MANAGING WILLS AND TRUST STRUCTURES FOR PRIVATE CLIENTS

In September 2023, ten private client experts came together in London for a STEP roundtable discussion, sponsored by Equiom. The discussion revolved around the best practice and pitfalls in succession planning that trustees and advisors may encounter when exercising their duties.

'We have all seen the fallout of conflict in high-profile wealthy families,' said Nina Johnston TEP, Managing Director at Equiom Isle of Man and Chair of the roundtable. 'As trustees and advisors, what good practice should we be looking to follow in writing wills and passing assets to intended beneficiaries?'

LOCATION, LOCATION, LOCATION

The discussion started with an examination of how best to support clients with assets in multiple jurisdictions. 'Younger clients whose assets are still actively moving may wish to consider having fewer wills for the sake of cost and simplicity,' commented Damian Bloom TEP, Partner at Taylor Wessing. 'But at a certain age, when their assets are more fixed, it is worth a client spending more time on multi-jurisdictional succession planning, particularly when it comes to real estate assets.'

Alex Streeter, Associate at JMW Solicitors and Robert Ham KC TEP, Barrister at Wilberforce Chambers, agreed that multiple wills should be approached with a certain caution as clients can have concerns around the implications for domicile. 'A will needs to make really clear what assets it deals with and in what jurisdiction,' noted Streeter. 'If a client has got assets elsewhere and wills in different jurisdictions, we have to take care that putting a new will in place in any of those jurisdictions doesn't inadvertently revoke others.'

Moreover, Bloom pointed out that trustees managing assets spread

Front row (L–R): Steve Le Seelleur, Managing Director, Equiom Jersey; Nina Johnston TEP (Chair), Managing Director, Equiom Isle of Man; Olivia Ellis, Vice President, JP Morgan; Damian Bloom TEP, Partner, Taylor Wessing
Back row (L–R): Will Burnell TEP, Partner, Mourant; Robert Ham KC TEP, Barrister, Wilberforce Chambers; Toby Graham TEP, Partner, Farrer & Co; Andrew Dickson, Director, Fieldfisher; Alex Streeter, Associate, JMW Solicitors; Nancy Chien TEP, Partner, Bedell Cristin

over different jurisdictions need to be cognisant of the interaction of common law, civil law, forced-heirship regimes and religious law.

Andrew Dickson, Director at Fieldfisher, said, 'It's best to think on an asset-by-asset basis: how each asset passes under the relevant succession law applied to it. In the case of civil-law jurisdictions, we have to consider whether they have the role of executors and, if not, how a worldwide will that includes civil-law assets should be resolved from an administration and succession perspective. Ultimately, taking specific advice is necessary.

'Another consideration is privacy: if a client has wills in multiple jurisdictions, in some of those locations the will is a publicly available document once it's admitted to probate,' added Will Burnell TEP, Partner at Mourant. 'That can be an issue that speaks in favour of fewer wills for some clients. Currently, we see some clients having a so-called international will that takes into account all of the jurisdictions that aren't dealt with in separate wills. It's vital for information to be given to the executors of that will as to which other jurisdictions have wills in place, so that one is not missed and the right will is admitted to probate in each jurisdiction.'

KEEP IT SIMPLE

The complexity of a multi-jurisdictional asset management plan extends beyond wills: practitioners must consider how it affects different types of ownership structures.

Nancy Chien TEP, Partner and Head of the private client team at Bedell Cristin, commented that simplicity should ideally be the new normal. 'Pre-FATCA[1] and CRS,[2] it was very common to have multiple layers of structures in many different jurisdictions,' she said. 'But now those structures serve less of a purpose. It's better to keep structures more understandable, transparent and compliant.

'There's complexity in terms of the variety of jurisdictions and entities but, certainly within the trust context, there can also be complexity within the constitutional documents,' said Burnell.

He accepted that a committee with appropriate skill sets and knowledge of the assets underlying the structure can be a helpful governance, administration and de-risking tool for a trustee. 'The education piece is vital,' he advised. 'It can be important to demonstrate to a settlor that sometimes a professional trustee who is well-engaged with the structures and family would be better than many different control mechanisms with different committees and oversight boards.'

THE HARDEST QUESTION

'The answer to avoiding overcomplication is to focus on what client's objectives are and do no more than is necessary to achieve those objectives,' observed Ham. However, the roundtable participants all agreed that the thorny issue of capacity can complicate matters further.

'It is a hugely difficult, emotive topic and it is difficult to bring up the conversation with families when we know that there are some capacity issues and there are sensitive subjects being discussed,' said Johnston. 'Particularly in families where there may be a new partner or stepchildren; who is the person to make those decisions? Does the person with loss of capacity have a power of attorney [POA] in place? Has that POA been made validly and registered? There are a lot of different aspects to what is a difficult topic.'

'It's as important to think about beneficiary capacity as testator's capacity,' commented Streeter. 'Part of our work is to make sure that clients' wills are structured appropriately to pre-empt passing a legacy to a beneficiary who might have capacity issues. We meet with clients, understanding everything about their family and whether they want to consider the best way to protect their legacy to a beneficiary and any risks that that person might not be able to deal with an inheritance.'

Chien gave an example of this problem in practice, where she advised on a matter where the beneficiary had lost capacity. In such a case, the important point for the trustees to bear in mind is who they should deal with to determine the interests of the incapacitated beneficiary, she pointed out. It might not be appropriate to liaise with the family members whom they think represent the beneficiary. They need to take steps to work out who is legally able to represent that person and deal with them directly.

Acknowledging that a client's capacity report can change several times depending on family views, assessor and level of general health, the participants considered how a letter of wishes might help to direct trustees in executing a settlor's wishes.

'The participants considered how a letter of wishes might help to direct trustees in executing a settlor's wishes'

Chien noted that the recent decision in *Grand View Private Trust Company and another* v *Wong and others*[3] was a point of reference for trustees. The Judicial Committee of the Privy Council emphasised the core purposes of a trust are determined at the time of establishing the trust and in that case such purpose was found in the trust instrument. 'Following *Grand View*, trustees should be examining the purpose of a trust at the time it was established. Settlors and trustees should treat subsequent letters of wishes or any acts which might otherwise change the purpose of the trust with caution,' Chien said.

Toby Graham TEP, Partner at Farrer & Co, noted that *Grand View* confirms only a letter of wishes contemporaneous with the establishment of a trust is relevant to the discernment of purpose. He suggested that care should therefore be taken when crafting an initial letter of wishes but warned of the risks associated with detail, saying, 'The degree of detail now put in letters of wishes can be overwhelming and we have to be careful that the key messages don't get lost. Clients can become overelaborate in the design and so be extremely prescriptive.'

Steve Le Seelleur, Managing Director at Equiom Jersey, comments that, from the trustee's perspective, the more detail and guidance the better, but added 'the detail has to be clear. It is worth reiterating to settlors that detail is important but clarity is also vital and they have to work in conjunction with the trust deed.'

Despite the value of such a document, participants acknowledged that they can be a drawback in certain circumstances. 'It's important that a client isn't ruling from the grave through a letter of wishes,' pointed out Bloom. 'If they're too prescriptive, it might be that the letter of wishes is no longer relevant at the time it is actually referred to. It's better that they cover the principles of the structure that will apply long term, as well as who will be taking the various decisions once they pass away. If they know that the right people will be making those decisions, they can trust the right decision will be taken at that time. That approach also sits more comfortably alongside *Grand View*, on the basis that decisions will be determined by purposes and principles, not driven by conflicts.'

Johnston asked the participants how far a letter of wishes should be shared: should a settlor keep it between themselves and the trustee or gather their family and beneficiaries to discuss it and their intentions for their assets after death.

'It should be considered on a case-by-case basis, taking into account the dynamics of the family,' suggested Burnell. 'For some settlors, full disclosure is the ideal route. Others may prefer to put the overarching principles in a letter that is shared with family and the intricacies in a separate private letter. The bottom line is that you need to be clear on how the settlor views disclosure.'

'Oversharing a letter of wishes allows everyone the opportunity to interpret what a settlor means,' said Streeter. 'However, that has to be balanced with the risk of beneficiaries all having their own disparate ideas. The trustee still has to keep a control on what the settlor actually wanted and they have a duty to see those wishes through.'

COMMUNICATING AND FUTURE-PROOFING

Many clients choose to include their families in discussions, from the letter of wishes through to trust structures and estate administration details, as part of succession planning. Le Seelleur noted that this is often a key part of family governance, especially for clients in Asia, India and the Middle East.

Graham commented that it is not uncommon for family wealth (including trading businesses) to be held in a unitary way, under the control of one leading family member. That controlling person is trusted to act in the interests of all the family; the issue is whether this is in fact what is happening. The difficulty for trustees is finding out what is happening on the ground, where there is limited communication with the wider family because the trustee's sole point of contact is the individual with control, Graham explained. 'Without having a means of touching base with the other family members, it's difficult for the trustee to know whether the controller is acting in the family's best interests and has their support, and this can lead to risk,' he said.

Communication is an important aspect of future-proofing structures. 'It is about creating a training ground for the next generation to get to know each other, learning the asset pots and understand the principles behind the structures,' said Olivia Ellis, Vice President at JP Morgan.

It is also key, said Le Seelleur, in fulfilling the trustee obligation to ensure beneficiaries and clients are tax compliant: communicating fully with

them to ensure they are aware of all their reporting obligations and the information they need to share with trustees and advisors.

'Finding out a client is planning to move to a different jurisdiction with different tax implications can have hugely detrimental consequences if they only inform the trustee after the fact,' agreed Dickson. 'We need to be communicating to beneficiaries that they are responsible for their own tax reporting and feeding back to the trustee who is maintaining logs specific to particular tax systems. Keeping up to date with the beneficiaries is generally important but it's vital to make them aware of their responsibilities as well.'

KEEPING RECORD

Referring to trustee logs, Johnston asked the participants for their views on the value of record-keeping and the degree to which it should be maintained. 'A trust structure will last 150 years or more and no trustee will be present for the entire duration of the trust period: how do we ensure we have proper records and how do we define what is essential to document?' she asked.

'The discipline of actually taking minutes and undertaking detailed record-keeping is calculated to improve the quality of decision-making,' observed Ham. 'It focuses advisors and trustees in on the considerations that they need to take into account.'

Bloom added that there are still a large number of structures emerging from low-tax, low-regulation jurisdictions that have very little documentation to support them in terms of minutes and information regarding decision-making processes. Chien agreed and said that with many jurisdictions now offering professional trusteeship, courts expect a higher standard of documentation and record-keeping than they would have done previously. All agreed that it is a key element of keeping structures as secure and robust as possible.

Nevertheless, Burnell pointed out that it is impossible to know with certainty that any structure is absolutely robust, with potential trigger events arising that cause unexpected problems or deviations.

'We have to manage those relationships to ensure the family, trustees and advisors are all aligned,' advised Ellis. 'For example, some beneficiaries are now starting to express concerns that they need to be investing their pots of cash in a more sustainable way. Trustees and advisors are therefore working with them to look at how investment portfolios can be updated.'

From trigger events such as divorce to societal shifts in environmental, social and governance investing, practitioners are more aware than ever of the need for structures that are future-proofed against risks and flexible in the face of change.

'What is true today isn't necessarily true tomorrow,' concluded Johnston. 'It's up to us as practitioners to educate clients that clear purpose and future-proofing is beneficial for them and their families, as it is key to the security and longevity of their assets and structures.'

#CONTENTIOUS TRUSTS AND ESTATES #ESTATE ADMINISTRATION #ESTATE PLANNING #TRUSTS #THOUGHT LEADERSHIP #VULNERABLE CLIENT

1 *Foreign Account Tax Compliance Act*
2 Common Reporting Standard
3 [2022] UKPC 47, bit.ly/3sp7Om9

Around the world

HELEN BRADFORD-SWIRE ROUNDS UP NEWS FROM CYPRUS, GIBRALTAR AND MALTA

REGULATION

Cyprus

- At the end of 2022, the Council of Europe's MONEYVAL expert committee issued a follow-up report on Cyprus' improved compliance with Financial Action Task Force (FATF) standards on anti-money laundering (AML) regulations. The jurisdiction has made some improvements regarding the supervision of non-profit organisations and virtual asset service providers and in giving law enforcement more powers to investigate.
- Cyprus' redesigned register of beneficial owners of companies and other legal entities came online at the end of October 2023. Existing companies had to submit all relevant information by 30 September 2023. Under the new online system, entities will be allowed one month to confirm and complete this data; submit requests for exemption from disclosure of information to the general public; and submit their grounds for exercising customer due diligence. Automatic imposition of EUR200 daily fines will then commence.

Gibraltar

- The FATF June 2023 plenary meeting has noted that Gibraltar is one of nine jurisdictions that have missed the agreed deadlines for tightening their AML regulations. The FATF has advised all the jurisdictions to 'swiftly demonstrate significant progress'.

TAXATION

Cyprus

- In May 2023, both houses of the Netherlands' parliament approved the country's first-ever double taxation treaty (DTT) with Cyprus, signed in June 2021. Cyprus has already completed ratification and the DTT is expected to have effect from 1 January 2024. The DTT will abolish withholding taxes on cross-border interest and royalties payments and limit withholding tax on dividends to 15 per cent. It will also authorise the two countries to charge capital gains tax on disposals of property investment companies.
- In October 2023, Cyprus' government issued a draft law to implement the 15 per cent global minimum tax agreed under the OECD Pillar Two negotiations for large multinational companies. It includes an income inclusion rule effective for accounting periods from 31 December 2023 and an undertaxed profits rule effective for accounting periods from 31 December 2024.

Gibraltar

- Gibraltar's implementation of the OECD Pillar Two global minimum corporation tax will take effect for accounting periods beginning no earlier than 1 January 2025, according to its 2023/24 budget. It is examining new incentives to attract large multinational groups, with a distinct new regime for companies within the scope of Pillar Two and a domestic minimum top-up tax.

Malta

- Malta's tax authority now has the legal right to pursue pending tax claims against companies that had been struck off the company register for failing to file their annual returns and accounts. The move follows three cases where the Commissioner for Revenue successfully sued the official Registrar of Companies. In each case, Malta's Commercial Civil Court ordered the defaulting companies to be restored to the register under art.325(4) of the *Companies Act*. The Act allows any creditor to initiate proceedings to reinstate a company within a five-year deadline from the date of the notice of the strike-off's publication.

TRUSTS

Malta

- The Malta Financial Services Authority (MFSA) has published proposed amendments to the rules for trustees of family trusts, with consultation closing in September 2023. The changes seek to clarify the MFSA's criteria for deciding whether an applicant has sufficient family connection to be registered as a trustee under art.43B of the *Trusts and Trustees Act*. Under the proposals, applicants will also have to explain why they chose Malta as the trustee jurisdiction and the fit-and-proper assessment will be broadened to cover parties other than directors.

RESIDENCY

Cyprus

- Cyprus has amended its residence-by-investment scheme to require applicants to prove they have invested at least EUR300,000 when filing their application, rather than by making a partial payment in advance. Applicants who reside outside their country of citizenship must now also submit police clearance certificates from both that country and their country of residence when filing their applications. The minimum threshold for annual earnings from outside Cyprus has been raised from EUR30,000 to EUR50,000, plus EUR15,000 for a dependent spouse and EUR10,000 for each dependent child. Applicants' adult children, parents and in-laws are no longer eligible to apply for dependent permits.

#REGULATION AND COMPLIANCE
#RESIDENCY OR DOMICILE #TAXATION
#TRUSTS

Helen Bradford-Swire
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KEY POINTS

What is the issue?
Advanced digital technologies, such as cryptocurrencies and tokenised securities, have gained significant prominence in recent years, attracting investors, researchers and market participants.

What does it mean for me?
The current regulatory landscape for digital assets is fragmented and evolving quickly.

What can I take away?
The categories of digital asset regulations are broad and include the classification of digital assets, the regulatory framework, jurisdictional boundaries, taxation and investor protection.

Sara Adami-Johnson TEP *is Vice President of HNW Planning at RBC Wealth Management, British Columbia*

Mind the gaps

SARA ADAMI-JOHNSON REFLECTS ON DIGITAL ASSETS REGULATION ACROSS BORDERS

Many countries and legislators seem to agree that establishing clear, cohesive and comprehensive regulation of digital assets is of paramount importance due to far-reaching implications on financial stability, investor protection and the overall integrity of the financial system.

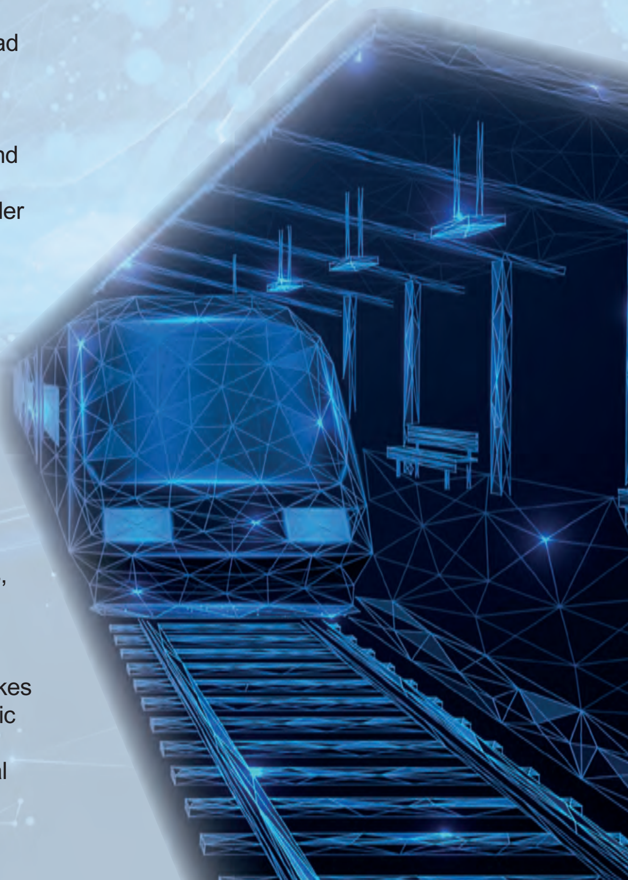
Advanced digital technologies, such as cryptocurrencies and tokenised securities, have gained significant prominence in recent years, attracting a broad spectrum of investors, researchers and market participants. Without effective (and one might argue coordinated) regulation, the inherent risks associated with these assets, including fraud, market manipulation and cyber threats, could continue to undermine investor confidence and lead to significant financial losses. Robust and tech-smart regulatory frameworks help mitigate these risks by imposing standards for transparency, security and accountability, thereby safeguarding both individual investors and the broader financial ecosystem.

The regulation of digital assets is crucial for ensuring compliance with anti-money laundering (AML) and know-your-customer (KYC) requirements. Cryptocurrencies, in particular, have been associated with illicit activities such as money laundering and the financing of terrorism due to their anonymous nature. Appropriate regulations compel digital asset service providers to implement AML and KYC measures, helping authorities trace and prevent unlawful financial activities.

In this context, legislative regulation supported by judicial interpretation strikes a balance between protecting the public interest and promoting responsible innovation in the rapidly evolving digital asset space. That said, it is important to implement regulations carefully to avoid stifling innovation and to ensure that they are effective in achieving their intended goals.

GLOBAL RULES

The categories of digital asset regulations are broad and include the classification of digital assets, the regulatory framework, jurisdictional boundaries, taxation and investor protection. Each jurisdiction has implemented its own approach to regulation, prioritising certain areas over others. For example, a Financial Action Task Force (FATF) report from June 2023 reveals that 75 per cent of countries lack virtual asset AML regulations. ⋙→



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Indeed, even for countries implementing rules, enforcement remains low at only 21 per cent.[1]

The FATF report also states that, as of April 2023, 58 jurisdictions have passed legislation or regulation to implement the 'travel rule' (the Rule), reflecting significant progress since 2022, although global compliance remains unsatisfactory. The Rule is a regulatory requirement that targets the anonymity of crypto transactions in order to prevent money laundering and terrorist financing.

The Rule specifically targets virtual asset service providers (VASPs). VASPs are companies able to conduct cryptocurrency transactions, including custodial services, the provision of crypto wallets and payments that dictate the level of cryptocurrency adoption within any country.[2] Companies known as money transmitters, some of which are able to transmit crypto, are not strictly speaking VASPs.[3] The personal data of the transacting parties 'travels' with their transfers, hence the name 'travel rule'.

The Rule existed before the FATF's 2019 Recommendations, which expanded the Rule to include the crypto industry. The Rule requires VASPs to communicate the information of the originators and beneficiaries of crypto transactions that exceed a certain threshold, which can differ by country. For instance, in Canada, the relevant licence allows for 'dealing in virtual currencies' and is issued by the Financial Transactions and Reports Analysis Centre of Canada to a subset of money transmitter service businesses. It requires VASPs to obtain and share 'required and accurate originator information, and required beneficiary information' with counterparty VASPs or financial institutions during or before the transaction.

In the US, the Rule is required for any transaction above USD3,000. The EU has also approved the Rule for crypto-assets, which will cover transfers of crypto-assets and will require information on the source of the asset and its beneficiary to 'travel' with the transaction and be stored on both sides of the transfer.[4]

INVENTORY FOR DIGITAL ASSETS AND DIGITAL DEVICES

It is best practice for practitioners to encourage clients to undertake an inventory of digital assets and digital devices as part of their estate planning, incapacity planning and to assist in estate and trust administration. STEP's Digital Assets Global Special Interest Group has devised an inventory template to help you and your clients account for their digital assets. Download a printable or interactive online version of the inventory at **bit.ly/3Qggswo**

Much of Europe has adopted the EU Fifth Anti-Money Laundering Directive, which requires VASPs to register with the relevant authorities and comply with AML/counter-financing of terrorism regulations. The Caribbean region has also been developing regulatory frameworks for VASPs, with the British Virgin Islands and the Cayman Islands among the countries that have adopted VASP legislation. The regulatory frameworks in the Bahamas, Bermuda and the Cayman Islands are considered leading global examples in this space.

The *Virtual Asset (Service Providers) Act, 2020* (the Act) brought digital assets and related service providers under the Cayman Islands Monetary Authority's (CIMA's) remit. Entities engaged in or wishing to engage in virtual asset services must be registered with CIMA. The Act also prohibits natural persons from carrying on virtual asset services as a business or in the course of business in or from within the Cayman Islands.

CONFUSION AND UNCERTAINTY

The current regulatory landscape for digital assets is fragmented and evolving quickly, with multiple regulators at the federal and/or state level having jurisdictional authority over a transaction. This can create gaps and overlaps as the market develops, leading to confusion and uncertainty for businesses and investors.[5] Moreover, existing property laws may not fully accommodate digital assets, which have unique qualities and features. This can make it difficult to provide a strong legal foundation for the digital assets industry and its users. For this reason, the EU's adoption of the Markets in Crypto-Assets Regulation is especially welcome and introduces a harmonised regulatory framework for digital assets in the region. The new rules cover issuers of utility tokens, asset-referenced tokens and stablecoins.

The regulation is the first attempt at creating a comprehensive regulatory framework for digital assets in the EU and is expected to reduce fragmentation.[6] The International Monetary Fund has called for the harmonisation of digital asset regulation to address the challenges posed by the evolving crypto world.[7] UNIDROIT, an intergovernmental organisation, has adopted principles on digital assets and private law to provide legislative guidance and best practices in relation to transactions involving digital assets, such as cryptocurrencies.[8] The principles aim to promote legal certainty and predictability in the use of digital assets. Harmonisation could lead to standardisation of processes across the digital asset lifecycle, so reducing operating risk and costs and the complexities of navigating varying regulatory landscapes, making it easier for businesses to operate across borders and investors to access new markets and opportunities.[9]

#DIGITAL ASSETS #LEGISLATION #REGULATION AND COMPLIANCE #TECHNOLOGY

1 FATF (2023), *Targeted Update on Implementation of the FATF Standards on Virtual Assets/VASPs*, FATF, Paris, France, bit.ly/407qAuK **2** For example, Binance and Coinbase-like companies. **3** Coincub, *VASP Registration Report 2023*, bit.ly/3ZHUC8j **4** bit.ly/48HjeC4 **5** bit.ly/46EwRQF **6** bit.ly/45fbAvS **7** bit.ly/48E6NH7 **8** bit.ly/3ryASYb **9** bit.ly/3RQBvH4

KEY POINTS

What is the issue?
Growth in online ecosystems through cryptocurrencies and the ability to document digital asset ownership through non-fungible tokens has led to gaming platforms making the futuristic idea of the metaverse a reality.

What does it mean for me?
The various assets that can exist in the metaverse and how they can have real-world value and pass on death are important factors to consider as part of wider succession planning and estate administration.

What can I take away?
Understanding the concept of the metaverse, what assets can currently be owned within it and how advances in technology may change this in the near future will be important for future succession planning and estate administration.

***Richard Marshall TEP** is Legal Director at Hill Dickinson, UK*

The DIGITAL playground

THE METAVERSE HAS ARRIVED, PROMPTING **RICHARD MARSHALL** TO CONSIDER HOW ADVISORS CAN PLAN FOR NEW CLASSES OF VIRTUAL-ONLY ASSETS

Imagine a future when one's digital footprint is a 3D representation of oneself that owns valuable digital fashion, digital land, stores countless digital memories and has a digitally recorded personality that can live forever. What would the implications be for those providing succession planning advice?

Although the adoption of this concept may seem like a far-off daydream somewhere in the distant future, Gen Z and Gen Alpha[1] (our clients of the future) are already well-versed in living in online worlds. Coupled with advances in technology that are enabling online worlds to be built more cost-effectively and the rise of cryptocurrencies and non-fungible tokens (NFTs), this future may not be as far away as once thought.

Popular games such as Fortnite and Roblox are pushing the boundaries of their medium and creating virtual worlds in which users can interact, create, play and monetise their online experiences. They are, in essence, metaverses. With their own in-game currencies and social commerce, users are more than comfortable interacting, trading and purchasing in these 3D immersive digital worlds. The popularity and success of such platforms is reinforced by the household names that are partnering with and entering these spaces.

However, one of their biggest limitations at present is the non-transferable nature of in-game accounts and assets. Avatars (in-game characters), creations and in-game purchases stay on the platform and generally cannot be transferred between account holders. Whatever time and money people invest in these platforms largely stays within the game, so if you stop playing (or the platform is withdrawn), the value is lost.

For most, the interaction within these online platforms remains, in large part, a traditional gaming experience with the added ability for in-game purchases.

However, with the growth in online ecosystems through cryptocurrencies and the ability to document digital asset ownership through NFTs, platforms such as Decentraland and The Sandbox are making the futuristic idea of the metaverse a reality (albeit of a virtual nature).

WHAT IS A METAVERSE?

Collins English Dictionary defines a metaverse as:

- a proposed version of the internet that incorporates three-dimensional virtual environments; or
- a three-dimensional virtual world, especially in an online role-playing game.

According to this definition, these online gaming platforms are indeed metaverses but if we look at developments through crypto-assets, we can begin to understand how such platforms have the potential to become sources of financial value to the end user and how this can be realised and adopted en masse.

'An immortalised version of a person could hold huge sentimental value for loved ones'

Illustration: Ben Kirchner

'… it is arguably only a matter of time before such assets become a more prevalent part of estate administration'

DIGITAL FASHION AND DIGITAL TWINS

Digital fashion has been gaining in popularity for some time, as seen at New York Fashion Week, which scheduled online fashion drops in the Decentraland metaverse earlier this year and included in-real-life (IRL) fashion inspired by NFT collections on the catwalk.

More recently, Milan Fashion Week showcased designer boots, the Hoofster, which have a digital twin (an NFT representation of the boots) linked by an embedded near-field communication chip in the boots. The NFT provides a certificate of ownership and provides for future benefits from the creators.

Wearable digital fashion in the form of NFTs is also making ground, enabling avatars in the metaverse to be dressed like their IRL counterpart. Given the value of high-end fashion and the transferable nature of their NFT counterparts, there is the potential for an online wardrobe that exists in the metaverse to have real-world value.

If the ability to move between metaverses (the ever-coveted interoperability of metaverses) were to develop like organisations such as Ready Player Me are working towards, this would only add to the potential value of such assets, given that they could be showcased across metaverses.

DIGITAL LAND OWNERSHIP

Virtual real estate in metaverses such as Decentraland and The Sandbox is also gaining traction. With such assets again represented by transferable NFTs, it is arguably only a matter of time before a premium is payable to hold certain areas of land within a popular metaverse. With big brands already acquiring virtual square footage with the assistance of metaverse builders such as Landvault, price per acre could well be replaced by price per pixel in our metaverse of the future.

PLAY-TO-EARN GAMES

The popularity of the gamification of life in online worlds does not show any signs of slowing. However, enter into the equation the ability to earn in-game tokens, which can be transferred into something of value (such as Bitcoin or Ethereum), or to develop an avatar, which can be transferred for such tokens (given the NFT nature of the in-game character), and the potential for valuable gaming accounts within the metaverse is a real possibility.

IMMERSIVE EVENTS

Decentraland and The Sandbox are already well-versed in hosting online immersive events in the metaverse, with big names playing virtual concerts and festivals for their fans. Tickets for such events are often issued as NFTs and there is a real possibility that such tickets could well become the next big collectible memorabilia for adoring fans of celebrities or for iconic events.

AVATARS AND PERSONAL DATA

Of course, a glimpse into the future of the metaverse would not be complete without touching on artificial intelligence (AI). It is conceivable that AI models could be integrated into a metaverse in such a way as to capture all interactions of an account holder within that digital world over the person's lifetime. With such a bank of personal data collected over a prolonged period, it is feasible for such AI to then be integrated with the account holder's avatar, in effect creating an automated online version of the person in the metaverse that could live forever. An immortalised version of a person could hold huge sentimental value for loved ones following death; however, it also raises questions as to who would have control over the avatar, the data and the overall functioning of the account following death. In our imagined metaverse of the future, it would not appeal to many people to have zombie avatars walking among us.

WHAT DOES THIS MEAN FOR SUCCESSION PLANNING?

An interoperable metaverse enabling ownership of digital assets that can be transferred on death and therefore hold real-world open market value creates a new conversation with our clients of the future. As well as planning for the devolution of high-value IRL assets, consideration will have to be given to their digital counterparts.

On the assumption that such assets would be owned on a blockchain and accessed through a wallet, the well-known issues for passing on cryptocurrencies would equally apply to their metaverse counterparts (on the assumption that the current user experience remains the same). There would also be the often-contentious sentimental value to some of the assets in the metaverse, such as beloved high-end items of digital fashion, immersive event memorabilia and metaverse moments that have potentially been captured and immortalised, similar to photos and videos on social media.

There is then the jurisdictional question over where the metaverse exists in relation to the law applicable to the devolution and taxation of such assets. Any disputes arising within the estate due to claims against the estate or posthumous fraud on the account could also raise complicated questions over jurisdiction.

Although these issues seem hypothetical, it is worth noting that there will be clients who already have a well-established existence in decentralised metaverses, owning cryptocurrencies, digital fashion, digital land and cultivating interoperable avatars. These questions are therefore as prevalent today for the right client as they will be in the years to come when the transition of wealth to Gen Z and Gen Alpha begins to take effect. It is also likely that such clients will not be averse to accessing professional services in the metaverse when the time comes.

Having an awareness of the momentum that is building in the ownership of such assets is key as it is arguably only a matter of time before the Rubicon is crossed and mass adoption begins to enter the market.

Until then, those who are at the forefront of cryptocurrency and digital assets ownership are not getting any younger and it is arguably only a matter of time before such assets become a more prevalent part of estate administration. The biggest questions at that time will be whether the advisor is able to assist in the administration of such assets and whether the succession-planning advice was appropriate during lifetime for such assets. If the answer is no, then there may be trouble ahead.

#DIGITAL ASSETS #ESTATE PLANNING #TECHNOLOGY

1 Gen Alpha are those born (or to be born) between 2010 and 2025.

KEY POINTS

What is the issue?
The suitability and application of traditional trustee services for individuals and entities participating in decentralised finance, 'on-chain' activities and wealth creation.

What does it mean for me?
Structures such as purpose trusts and foundation companies located in suitable jurisdictions can be appropriately deployed to mitigate the legal, regulatory, compliance and lifestyle challenges that digital asset holders and blockchain companies can face.

What can I take away?
As the digital and fiat worlds increasingly coalesce, trustees can help remove friction for the growing and influential population of digital asset owners, entrepreneurs and investors.

***Siobhan Moret TEP** is a Client Director at Saffery Trust, Switzerland*

The new digital horizon

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SIOBHAN MORET EXPLORES EMERGING OPPORTUNITIES FOR TRUSTS AND TRUSTEES

In recent years, there has been a growing appreciation of the potential application of traditional trust and other asset-holding structures to solve challenges faced by digital wealth owners seeking to interact with the wider on- and off-chain economies.[1]

For example, the purpose trust and Cayman Islands foundation company have been deployed as a 'wrapper' for decentralised autonomous organisations (DAOs)[2] due to their ability to 'mirror', in legal form, the unique attributes of a DAO. These are notably formed as 'orphan' structures, existing for a purpose rather than for the benefit of shareholders.

A DAO is not a legal entity and therefore has no ability to hold assets, often leading to a situation where individual (or a group of) DAO members must hold assets personally.

Holding assets, which may include intangibles such as the intellectual property created by the developers of the DAO, in a structure with an established legal 'personality', such as a purpose trust or a foundation, limits personal liability for DAO members. It also enables the DAO to engage with the traditional financial world, connects it to the regulatory environment and facilitates good governance with international regulations and compliance requirements.

Use cases are not, however, limited to DAOs. Trusts, as well as certain other corporate structures, have been demonstrated to provide similarly significant advantages to individual investors and their families.

ASSET-HOLDING SOLUTIONS

Trusts and foundations can also be effectively deployed for passive holding of digital assets for high-net-worth individuals (HNWIs) and family offices, just as they can be for traditional assets.

The well-worn saying 'not your keys, not your crypto' provides valuable insight into dealing with the psychology of crypto-native HNWIs. From a psychological perspective, the barriers to convincing digital asset owners to trust in such structures are often higher. The volatile nature of the market, in addition to several highly publicised exchange failures and fraudulent activity,[3] as well as general disapproval by traditional markets, all make for a certain level of mistrust across this client base and they may, in some cases, feel a high level of discomfort with ceding legal control of their assets. Some may even feel it is counterintuitive to engage with a traditional financial service for a need that is at the cutting edge of technological innovation.

But there is a solid role for trustee services to play, not least to relieve owners of the administrative burden they face in managing their digital wealth but often as a segue to traditional markets and services. There are practical realities to consider too, not just for sophisticated digital natives with complex on-chain requirements but for 'casual' investors/collectors of digital assets.

Structures such as a discretionary trust have been demonstrated to be effective for centralising and managing a portfolio of non-fungible token collectibles, for instance. This can allow the collection to be held in a tax-neutral environment while providing for a straightforward transfer to the beneficiaries on the death of the settlor without the administrative challenge of liquidating the collection or establishing smart contracts for individual heirs in probate. Without appropriate structuring, it can be challenging for these assets to be effectively transferred, especially where the beneficiaries have limited knowledge or understanding of crypto-assets and how (and where) they are held.

It is also worth noting that, much in the same way that trustees would not hold hundreds of thousands of their client's bank notes in their safes, they should never hold (or even have sight of) cryptocurrency keys themselves. However, they have an important role to play in undertaking rigorous due diligence to find the right key custodian so that assets can be accessed by beneficiaries as and when appropriate.

More complex scenarios may require a sophisticated structuring framework, combining a trust with an underlying special purpose vehicle, for example, or deploying a mix of structures across jurisdictions to manage gains/profits, mitigate price fluctuations and provide clarity over the international tax position for owners and their enterprises. This is especially critical for owners who are globally mobile or who are in the process of relocating between jurisdictions that may take a very different approach to digital asset regulation and taxation.

EXPERTISE AND INFRASTRUCTURE

The right choice of trustee is vital. Not all service providers will feel comfortable acting on behalf of clients with digital assets and those who do must be able to evidence that they have the requisite experience, expertise and networks.

Trusts and trustees should have substantive supporting infrastructure, including appropriate anti-money laundering (AML) and on-boarding protocols, the correct scale of professional indemnity insurance and tailored accounting procedures. They will also require access to specialist expertise where necessary, such as digital experts for legal advice and drafting, reliable custody and investment solutions, and good relationships with banks and other financial institutions to smooth decentralised/traditional finance on- and off-ramping.

> *'More complex scenarios may require a sophisticated structuring framework, combining a trust with an underlying special purpose vehicle'*

Settlors will need assurance about how transactional decisions will be taken and verified, including what tools will be used to maximise security and what the trustee will do to anticipate future challenges and support the settlor over the long term. As appropriate, such details can be set out within the service agreement.

CHOOSING THE RIGHT JURISDICTION

One of the most critical decisions to make when assessing the suitability of digital asset-holding structures is location.

The Cayman Islands, Guernsey and Switzerland are among those that lead on digital assets legislation, have a robust recognition of trust law, offer a wide range of digital-friendly structuring vehicles, have a strong legal framework, well-tested case law and sound regulatory oversight.

Guernsey has strong regulatory oversight, a large network of professional advisors and a highly permissive framework for establishing trusts. Moreover, its body of law provides flexibility for digital asset investors to use trusts. In 2022, it launched its own cryptocurrency fund and the world's first Tier 1 Bitcoin exchange-traded fund. With its independent legal, fiscal and administrative systems, it is also insulated from volatility and uncertainty in the EU, the UK and beyond.

The Cayman Islands is a well-regarded international financial centre with a stable economic and political environment, robust judicial system and sophisticated advisory community. Its trust law is derived from English and Welsh common law, but its independence has enabled it to innovate with its *Special Trusts (Alternative Regime) Law, 1997*, which allows flexibility to hold and manage higher-risk assets. In 2020, it implemented its virtual asset service providers framework, strengthening its attractiveness as a location for digital asset owners.

Switzerland has one of the most stable political and financial systems in the world. It is a signatory to the Hague *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* and has introduced specific licensing for trustees. In 2020, it passed the *Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology* to license certain crypto banks and exchanges, while Lugano's Plan ₿ is establishing cryptocurrency as a de facto legal tender in the city. It also boasts a thriving 'crypto valley' Web3 community.

Other locations such as Dubai and Singapore are also taking significant steps to establish themselves as leading digital asset jurisdictions. For example, Dubai recently established the world's first virtual assets regulator and a new digital assets law is now being consulted on, while Singapore has become one of the first jurisdictions globally to introduce a reserve-backed stablecoin.

Ultimately, when it comes to dealing with digital assets, supporting innovation is almost as important as wealth protection. Asset owners rightly want to be confident that their digital wealth is being managed by a professional trustee who is compliant with the highest international AML and global tax reporting standards, and who has the expertise and infrastructure necessary to manage digital assets in line with their wishes, while meeting regulatory requirements and tax obligations.

Despite an uncertain landscape over the past 18 months, digital wealth is only set to grow in one form or another as the next generation of digitally native wealth owners and creators become more influential economic and investment actors. And as the demarcation between the digital and traditional realms becomes more intuitive and user-friendly, trusts and trustees can play a pivotal role in supporting their success.

#CAYMAN ISLANDS #DIGITAL ASSETS #GUERNSEY #REGULATION AND COMPLIANCE #SWITZERLAND #TRUSTS

1 Every step linked to an on-chain transaction occurs on the blockchain, and the blockchain status is modified to reflect the occurrence and validity of the transaction. In contrast, an off-chain transaction takes the value outside of the blockchain. **2** Recent examples include the blockchain entities dydx and NEAR. **3** Such as FTX.

KEY POINTS

What is the issue?

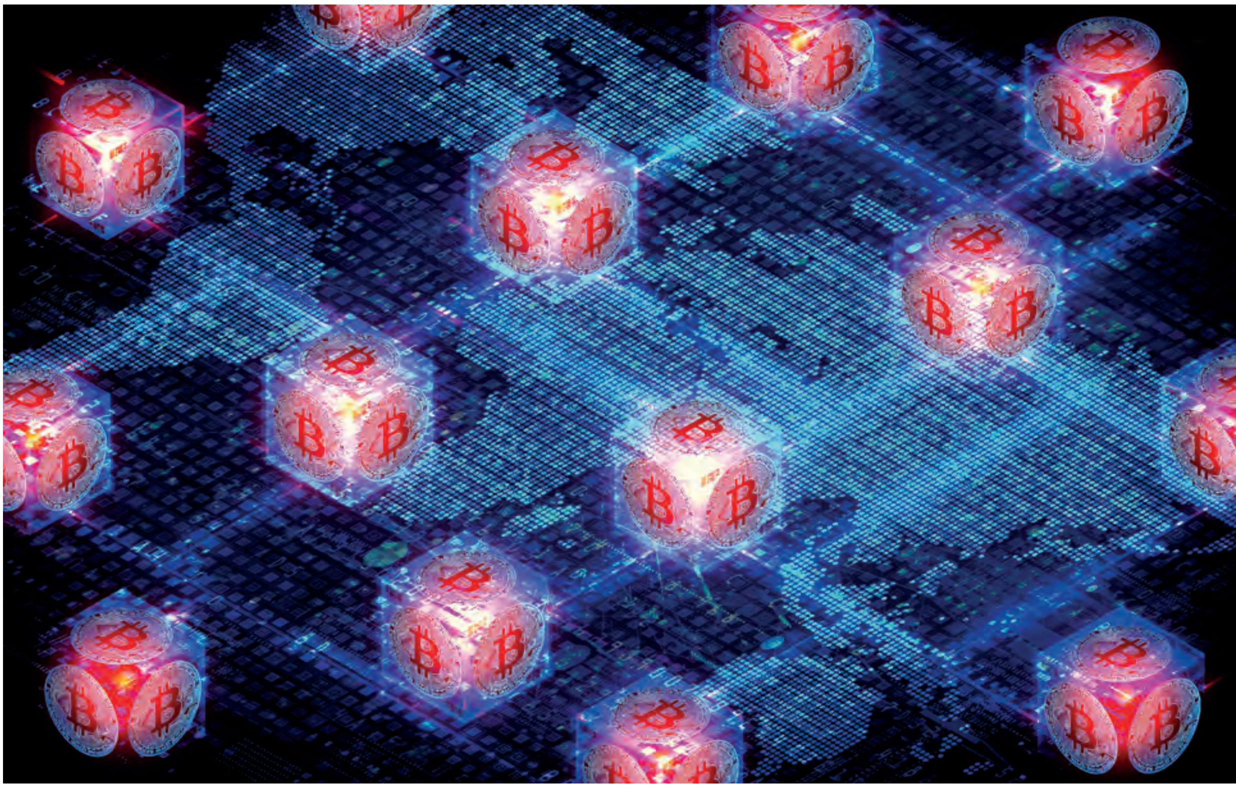
There has been recent work to develop a framework for private international law rules to apply to digital assets.

What does it mean for me?

These consequential changes will guide cross-border succession and inheritances involving digital assets.

What can I take away?

The efforts being made to harmonise cross-border digital asset transactions are hugely important in affording legal certainty to market participants and could determine questions about the *situs* of digital assets.



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Digital assets and the conflict of laws

ALESSIA PAOLETTO, LAUREN RAPEPORT AND ETHAN YU EXPLORE THE CHALLENGE OF HARMONISING DIGITAL ASSET TRANSACTIONS ACROSS BORDERS

Alessia Paoletto *is a Partner,* ***Lauren Rapeport*** *is a Senior Associate and* ***Ethan Yu*** *is an Associate at Withers, UK and Hong Kong*

In 2023, lawmakers and regulators across the globe have continued to face up to the challenges brought by digital assets, such as cryptocurrencies and non-fungible tokens. One area that perhaps receives less media attention is the challenge of accommodating digital assets within international conflict-of-law rules.

Conflict-of-law rules assist lawyers in determining which jurisdiction's laws apply to cross-border transactions that have connecting factors to more than one jurisdiction, from commercial deals to succession and inheritances. The body of rules that has developed over time to try to resolve these issues is generally referred to as private international law (PIL).

WHY IS THIS SO COMPLEX FOR DIGITAL ASSETS?

The main issue is the question of where digital assets are located. Although the *situs* of most asset classes has long been settled under domestic laws, digital assets present some novel questions due to their unique characteristics.

Broadly, crypto-assets exist as intangible computer code on digital ledgers that are distributed across multiple computers (or 'nodes') worldwide. These distributed ledgers are also known as the blockchain. Transactions on the blockchain are described as 'decentralised', since no one person or group can block or approve a transaction or rewrite the state of the ledger. Instead, the blockchain code determines whether a change to the ledger may be validated. However, practical control of a specific crypto-asset or token is possible with a 'private key', i.e., a series of numbers and letters that is often stored on a hard copy device or on a computer.

To date, there have been various approaches put forward by academics, courts and tax authorities in different jurisdictions as to how to determine the *situs* of such unique assets, but the area is still relatively untested and harmonisation is sorely lacking.

Another issue is that the newness and complexity of the technology can mean that the terminology used to describe the assets or definitions of their core features may vary. This leads to more uncertainty as market participants have to consider whether the token they have fits into the same 'box' in each jurisdiction or context in which they operate.

IMPLICATIONS FOR CROSS-BORDER SUCCESSION

In PIL terms, when jurisdictions apply different rules regarding the location of the same asset it can lead to complex outcomes. If more than one jurisdiction (or none at all) considers that it has control, conflicts can arise. In a succession context for individuals with international connections, such a situation may cause uncertainty regarding the laws that govern their estate on death and how it will be administered.

Example

Alice is habitually resident in England and owns some cryptocurrency. The private key is stored on a USB stick that she keeps at her parents' house in Abu Dhabi. Under English and Welsh law,[1] *Dicey and Morris* suggests,[2] tentatively, that the state of location of the owner of the cryptocurrency has indirect control of the property and, therefore, has the best claim to being where the property is located under existing *lex situs* rules. The 'owner' would be the party who exercises factual control, such as being able to effect a sale. The *situs* of Alice's cryptocurrency would therefore likely be England, from an English law perspective. However, if Abu Dhabi were to consider the cryptocurrency to be located in Abu Dhabi because the private key is physically there or because Alice's parents could also be said to have control of the private key, there would be a conflict as to the *situs*.

This could cause difficulties if Alice has executed separate wills covering her English property and her Abu Dhabi property on different terms. It could also call into question which succession law applies. For example, if Alice is UK-domiciled, then English law will govern the succession of her cryptocurrency as a movable asset. However, if Abu Dhabi considers itself to be the competent forum for succession matters relating to assets situated within its territory, it might then apply another succession law to the cryptocurrency under its domestic law.

So, how are legal bodies trying to resolve these issues?

LAW COMMISSION OF ENGLAND AND WALES

Over the past few years, the Law Commission of England and Wales (the Commission) has brought together legal and technological experts to consider some of the more complex issues relating to digital assets, with the aim of supporting courts to develop consistent, evidence-based principles. In July 2022,

'The Commission suggested that identifying the person with "control" may be a way to ascribe situs for conflict-of-law purposes'

the Commission published its digital assets consultation paper (the Paper),[3] a detailed examination of the technological features of a wide range of digital assets, along with an analysis of fundamental questions and challenges posed by digital assets (for example, whether they fit within the traditional types of property at common law). On 28 June 2023, the Commission published the final report (the Report) with its final recommendations.[4]

Although neither directly considered conflict-of-law questions, the Paper started to lay the groundwork for how such questions might be resolved. The Commission suggested that identifying the person with 'control' may be a way to ascribe *situs* for conflict-of-law purposes. The concept of control could be developed through non-binding guidance produced by industry experts to foster innovation and ensure the law is flexible enough to keep pace with technology rather than defining it in legislation. In the Report, the involvement of industry experts was one of the three pillars of the Commission's key recommendations, alongside common-law development and limited statutory reform.

It should be noted that the concept of 'control' will have broader application than conflicts of law. In the Report, the Commission states: 'We think that the courts will turn to the concept of control as a matter of default.' According to the Commission, the concept of factual and legal control in a digital asset context is highly nuanced and may provide a way in to understanding and characterising many transactions involving digital assets.

In addition, in October 2022, the Commission announced a related project, 'Digital Assets: Which law, which court?' This project will focus primarily on conflict-of-law issues, including how to determine which court has jurisdiction over crypto-assets and *situs*. Publication of the consultation paper is expected in the second half of 2023. It is hoped that the Commission will apply the same methodical approach to these questions as to the other legal issues considered in its earlier reports and that it will build on its earlier analysis.

UNIDROIT

In parallel, the International Institute for the Unification of Private Law (UNIDROIT) has been working on a set of principles covering a wide range of PIL issues for digital assets that countries could enact in their domestic legislation (the Principles).

The Principles, currently in draft, also look to the concept of control. They define a digital asset as 'an electronic record which is capable of being subject to control'. Principle 6 defines control as the exclusive ability to obtain (and to prevent others from obtaining) the benefit of the digital asset and the exclusive ability to transfer those abilities to another person. The commentary to Principle 6 indicates that a person may identify themselves as having control by 'reasonable means', such as a cryptographic key or account number. It also makes the point that factual control (such as being able to influence a private key holder to follow your wishes) can be as important as the functional control of possessing the private key.

FINAL THOUGHTS

It is not possible to eradicate conflicts of law in a succession (or any other) context. However, the ongoing work of both the Commission and UNIDROIT, with their focus on control as a key connecting factor, are positive steps.

Both the Commission and UNIDROIT are in favour of jurisdictions developing their own concept of control. This may well be the right approach given the inherent variability and constant innovation of blockchain technology, although, the meaning of control will inevitably be interpreted differently between states. However, the Commission says that it intends its recommendations to be consistent with other reform initiatives, including UNIDROIT's, and that UNIDROIT's work could be a source of guidance on the concept of control.

In short, if control of a digital asset were accepted internationally as the touchstone for assigning a location to a digital asset, this would simplify cross-border succession planning, even if what control means remains somewhat subject to interpretation on a jurisdiction-by-jurisdiction basis.

#CROSS-BORDER ESTATES #DIGITAL ASSETS #ESTATE PLANNING

1 For the remainder of this article, 'English and Welsh' and 'England and Wales' will be abbreviated to 'English' and 'England', respectively. **2** *Dicey, Morris & Collins on the Conflct of Laws*, 16th edn, chapter 23 **3** bit.ly/3PRdi25 **4** www.lawcom.gov.uk/project/digital-assets

Fraudsters' paradise

ENGLISH AND WELSH COURTS ARE MEETING THE CHALLENGES OF A SHARP INCREASE IN CRYPTO FRAUD, BUT VICTIMS STILL FACE STEEP HURDLES, WRITES NICOLA MCKINNEY

Crypto fraud has sharply increased in the past two years, according to data from Action Fraud UK[1] and the UK Financial Conduct Authority,[2] both of which recorded rises in the number of victims, as well as the total sums lost. The trend is unlikely to come as a surprise to English and Welsh civil fraud lawyers,[3] who have seen a steep rise in fraud cases pursued through the English courts in the same period. In its 2023 report on crypto crime,[4] blockchain analysis company Chainalysis identified romance scams as the most prevalent form of crypto scam, with high levels of impersonation and investment scams also recorded.

Investments into digital assets are often carried out by individuals without the assistance of professional advisors and this has created a target-rich field for fraudsters. This is particularly the case for those investing in digital assets for the first time or with a very limited resource pool, such as a pension pot.

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Romance scams rely on the pretence of a romantic or friendly relationship being developed by the scammer with a victim, who is then persuaded to send money to purchase digital assets. Investment scams rely on sophisticated fake websites and platforms to draw in potential investors, who then send fiat or digital currency with the intent of purchasing crypto-assets, only for the funds to be deposited directly into the wallets of fraudsters.

ATTEMPTING RECOVERY

Victims of crypto fraud will be faced with a series of hurdles in order to try to recoup their losses. Criminal proceedings are particularly complex because most scams are international, with anonymous scammers beyond the reach of national law enforcement. Even where there is a defendant to arrest, charge and prosecute, the aim of the proceedings is generally not to recover assets for a victim.

Others who have suffered losses will turn to fraud lawyers. Seeking remedies (or threatening proceedings) through the courts can be a successful way to obtain information or recover assets but, in some cases, the expense will put those steps beyond the reach of victims.

In many respects, attempts to recover digital assets bear little difference from more traditional forms of fraud. Delay can be catastrophic. Identifying enforcement prospects and locating the stolen assets is often a first step before proceedings for recovery or damages may commence.

However, even with the transparency of transactions on the blockchain, the pseudonymous nature of the technology means that tracking transfers is easier than identifying the fraudsters. Following or tracing funds is likely to require a robust and costly blockchain analysis and report, especially where a victim's digital assets have been mixed with others in the course of a series of 'hops' through digital wallets.

EVOLVING LANDSCAPE

Common-law courts have proved willing to grant orders in aid of recovery efforts, including disclosure orders under *Norwich Pharmacal* v *Customs and Excise Commissioners*[5] and *Bankers Trust* jurisdictions, and freezing injunctions to prevent the dissipation of assets within an identified digital wallet. Early cases required courts to engage with fundamental concepts such as whether cryptocurrency is capable of amounting to property or being held, subject to a constructive trust.

Although the merits of those arguments have been accepted numerous times (albeit in interim proceedings), there are likely to be cases over the next few years that continue to advance the jurisprudence specific to crypto fraud.

Further, as judges have gained in experience with digital assets, applications have already been met with increased scrutiny. For example, where worldwide freezing orders might have been granted quite easily by English courts in early applications, the recent case of *Piroozzadeh* v *Persons Unknown and Others*[6] made it abundantly clear that the ordinary, rigorous duties on applicants and legal advisors relating to 'full and frank disclosure and fair presentation' apply in these cases.

The legal landscape for the recovery of stolen digital assets has evolved quickly and much more so than the regulatory framework. However, the road to recovery for victims is still a bumpy one.

#DIGITAL ASSETS #ENGLAND AND WALES #INVESTMENT #TECHNOLOGY

1 bit.ly/3tadobX **2** bit.ly/450XwpB **3** For the remainder of this article, 'English and Welsh' will be abbreviated to 'English'. **4** bit.ly/3EPDUtY **5** [1974] AC 133 **6** [223] EWHC 1024 (Ch)

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KEY POINTS

What is the issue?
Jersey has established its first 'data trust' under Jersey trust law.

What does it mean for me?
We may begin to see data trusts being considered as a vehicle for data stewardship. Professional trustees will need to ensure they are equipped to deal with data in a digital era.

What can I take away?
The potential use of data trusts for international businesses that hold and process vast amounts of data is obvious and significant.

Stephen Alexander TEP *is a Partner at Mourant, Jersey*

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The future of the trust industry?

STEPHEN ALEXANDER EXPLORES THE POTENTIAL OF JERSEY'S NEW 'DATA TRUSTS'

In a pioneering new initiative, Digital Jersey, together with the Jersey Office of the Information Commissioner, has established the first 'data trust' under Jersey trust law. The pilot project, named LifeCycle, was primarily designed to test the viability of using a trust structure for data stewardship. This article explores the concept of a data trust and considers the advantages and risks associated with it.

WHAT IS A DATA TRUST?

A data trust is a legal structure that provides independent stewardship of data. Like ordinary trusts, which are set up to protect, administer and distribute valuable assets (e.g., cash, shares, investment portfolios and immovable property), a data trust is designed to hold, manage and protect its principal asset: data. A data trust is likely to:

- have been set up as a hybrid or mixed trust;
- be both a non-charitable purpose trust and a discretionary trust;
- have beneficiaries and a purpose to be fulfilled;
- be administered by professional trustees; and
- hold data that has a growing commercial value.

Data trusts are created by a trust instrument and operate within the legal framework of the *Trusts (Jersey) Law 1984*. Accordingly, trustees of data trusts will have the same duties as traditional trustees under the Law. These duties include:

- acting with due diligence, as a prudent person would, to the best of their ability and skill;
- observing the utmost good faith; and
- exercising their powers solely for the benefit of the beneficiaries.

Trustees of data trusts will also have to preserve and enhance the value of the trust property subject to the terms of the trust instrument. The trust property will, of course, consist entirely of data with a growing commercial value. The trustees

will be responsible for analysing the data and deciding when and how to share it with third parties.

THE EXPERIENCE SO FAR

LifeCycle has been set up for an initial period of a year and will collect data and create information about the activities of island cyclists as they move around Jersey. The data created will be held in a data trust administered by Jersey private client companies ICECAP and JTC.

LifeCycle will recruit 200 cyclists to participate in the pilot and the data will be collected through lights fixed to the rear of the cyclists' bikes. The lights are a highly advanced technology combining sensors and artificial intelligence (AI) to monitor the cyclists' environment. Participants will also be invited to use an app to report any safety and infrastructure issues encountered on their cycling journeys.

The data collected during the life of the pilot will ultimately be anonymised and turned into insights by data analysts. As the body of data grows, so will the commercial value of that data. Similarly, the data acquired will promote the development of environmental, social and governance strategies; for example, by promoting cycling as a safe, healthy and sustainable way to travel around the island.

The information gathered will be shared by early 2024. Only select organisations whose aim is to promote cycling on the island will have access to the insights produced from the data. After the completion of this data trust, Digital Jersey is planning further data trusts in 2024.

ADVANTAGES OF A DATA TRUST

The principal advantage of using a trust structure to hold data is that the data can be stored, managed and shared safely and lawfully in accordance with the trust parameters. The existence of trustees means that fiduciary duties are applied to the stewardship of data and, as with traditional trust structures, a data trust operates within a highly regulated environment.

There are other potential advantages that may make a data trust an attractive option for a business whose principal asset is the data it holds or will acquire. For example:

- Data trusts offer a flexible, sophisticated method of sharing data, so allowing organisations to benefit from the economic and social advantages that come with sharing data in a safe and equitable way.
- A data trust's purpose can be tailored according to the aims of the stakeholders. For example, the purpose could be societal or environmental, for the public good or for profit, or any combination of these and other factors.

'The existence of trustees means that fiduciary duties are applied to the stewardship of data and, as with traditional trust structures, a data trust operates within a highly regulated environment'

- The data is managed by professional trustees with experience of complex fiduciary responsibilities. As such, a settlor can be confident that even highly valuable and sensitive information will be adequately protected.
- The trust instrument will set out the trust parameters and provide clarity as to stakeholder rights and obligations; e.g., it will set out what data is to be shared, who owns it, who can use or view it and how it is to be used.
- As the data is stored and managed by an independent third party, this will relinquish the settlor of some of the day-to-day responsibilities and risks of operating a business, so freeing up resources to be invested elsewhere in the business.
- The overall risk of data breaches may be reduced in light of the increased safeguards afforded by the trust structure and the appointment of professional trustees.
- In the event of any data breaches or regulatory non-compliance, the organisation may be removed from direct liability, which would instead rest with the trustees of the data trust.
- Optically, it may provide comfort that the data is being held and managed by an independent third party, and help to restore public confidence in information businesses and their treatment of personal data (especially where there have been previous data breaches).

RISKS OF USING A DATA TRUST

Notwithstanding the numerous advantages outlined above, it would be naïve to think that a data trust comes without potential risks. There are a number of factors that an organisation will need to consider when deciding whether to establish a data trust.

The most notable risk relates to the regulatory obligations that attach to holding and managing personal data and, in particular, ensuring compliance with the *Data Protection (Jersey) Law 2018* and the EU General Data Protection Regulation. Personal data relating to the participants of Lifecycle, for example, will be collected during the life of the project (e.g., their journeys will be tracked to the extent that home addresses, workplaces, habits etc., could all be ascertained). Sanctions for breaches of or non-compliance with data protection legislation can be severe and, as such, professional trustees may not be willing to take that risk. It is perhaps more likely that large, conglomerate, investment-backed professional services firms would be better placed or more willing to assume such risk.

Further, information businesses will need to consider whether it would be acceptable from the regulators' perspective and/or as a matter of public perception for the data to be held externally. This will be particularly applicable if the business has previously experienced a notable public data breach. There are likely to be calls for the business to be seen to be accountable for its future conduct and the use of a data trust may be viewed as an attempt by the organisation to distance itself from any future liability.

Finally, the data collection methods used in the context of data trusts are increasingly likely to rely on advanced technology and AI, as demonstrated by the use of the bicycle lights in the LifeCycle project. Given the likely interface that data trusts will have with the use of technology/AI, this begs the question of whether trustees are best placed to hold, manage and control the sharing of data as opposed to the information businesses themselves, who are already operating in the digital sphere and have a deeper understanding of the relevant technologies. Although professional trustees will have experience of managing trusts and exercising fiduciary duties, their ability to enhance the value of the trust property (the data) may be less effective than the information business itself would be able to achieve due to its industry experience of dealing with data in a digital era.

The establishment of Jersey's first data trust is an exciting new development for Jersey trust law. The potential use of such trusts for international businesses that hold and process vast amounts of data is obvious and significant. It will be important to see how this method of data stewardship operates in practice and its next stage of development.

#JERSEY **#REGULATION AND COMPLIANCE** **#TECHNOLOGY** **#TRUSTS**

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WHY PRACTITIONERS MUST STAY ABREAST OF TECHNOLOGICAL CHANGE

BY **ROSIE ALLSOPP**

The rapidly evolving technological landscape is affecting almost every area of our lives, with advancements in the way we work and learn, access healthcare and even order groceries. The world of finance is no different and private wealth service providers need to ensure they respond accordingly to stay abreast of developments, according to recent research commissioned by Guernsey Finance.

The shift in generational wealth, as it moves from the control of the 'boomer' generation to the under-35s, means that advisors need to be aware of the new generation's mindset when it comes to investing and preserving their wealth. Being a good global citizen is more important to this generation, as is a keen interest in the advancement of technology. More than 85 per cent of those surveyed as part of Guernsey Finance's research agreed that the impact on private wealth business of increasing technological awareness, along with the growth of digital platforms, is significant, adding that industry must adopt improved technology to better serve the needs of the next generation of wealth holders.

It is clear that no one wants to be left behind in this latest technological wave.

EMBRACING INNOVATION

This naturally leads to the question: how can the private wealth industry keep up? As Manoj Badale, co-founder of the UK digital venture builder Blenheim Chalcot, highlighted at Digital Greenhouse Guernsey's recent Innovation Summit, innovation is hard. Not only that, but the challenges are also different depending on whether a business is larger and mature, compared with smaller, newer contenders.

But it is also important to keep driving forward. To quote Badale: 'Innovation is the route to longevity, growth and profitability. It's about new and valuable ideas, taking them to market and ensuring a vibrant, growing economy.'

At the event, I was fortunate to moderate a discussion panel on embracing fintech innovation. I was joined by Damian Bell of authorised signatory app Cygnetise; Shelley Langan-Newton, CEO of SQR Group, which specialises in security solutions; Steve Moore of law firm Collas Crill; and Tim Baker, co-founder of Kloo, an AI-powered accounts payable automation platform.

They talked about the ways in which fintech is shaping the future of finance, the cutting-edge solutions that are being utilised to make for a more efficient way of working, and the challenges and opportunities they face along the way. Everyone agreed that a longer-term view is needed on innovation and adoption of new technologies, and there was lively discussion on the best way to get there.

BREADTH AND DEPTH OF EXPERIENCE

With the needs of private clients and families continually evolving, it is ever more important to understand how attitudes shift in light of economic headwinds, changing cultural dynamics and the climate crisis.

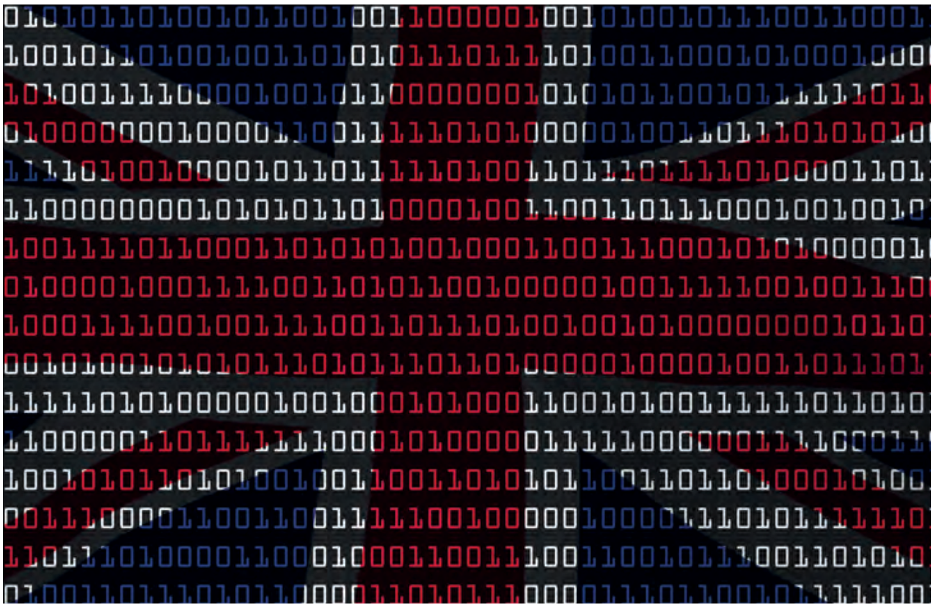
Guernsey, as an international finance centre with more than five decades' experience in servicing private wealth for sophisticated clients, has a history of innovation going back centuries. Not only does that spirit of entrepreneurialism continue today, but also the breadth and depth of experienced professionals, coupled with an excellent suite of product offerings, mean its practitioners are well ahead of the curve in areas such as sustainability and robust corporate governance.

But don't take my word for it, here's Damian Bell of Cygnetise talking about his experience of working with Guernsey: 'As a fintech, go to Guernsey. We did and it's a great place to do business in and with. There's a rich ecosystem of corporate service providers. People know each other so you can get referred easily if your product is good.'

I would go further and say Guernsey's finance industry firms are generally always keen to hear from potential partners and fintech companies if they can make business processes more efficient and ultimately create a better service for underlying clients.

Read more about Guernsey's fintech platform at bit.ly/464bE1V

Rosie Allsopp is Communications Director at Guernsey Finance



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Crypto catch-up

JACK BURROUGHS DETAILS RECENT LEGAL DEVELOPMENTS DESIGNED TO SECURE THE UK'S POSITION AS A GLOBAL CRYPTO HUB

In 2023, the UK has seen various legal developments relating to crypto-assets. These include the work undertaken by the Law Commission of England and Wales (the Commission) on property law, potential modifications to the tax treatment of certain decentralised finance (DeFi) transactions and additional regulation of the industry.

LAW OF PROPERTY

On 28 June 2023, the Commission published the final report of its digital assets project (the Report),[1] following its 2022 consultation paper. This project focused on the place of crypto-assets within the law of property.

The Commission's conclusion was that certain digital assets can be subject to property rights. It suggests that they would form part of a third category of personal property, apart from things in possession and things in action. It recommends legislation to confirm that things outside these two existing categories can be recognised as subject to property rights. However, the boundaries of this third category should be left to be developed by the common law. It further recommends legislation to set out a legal regime for collateral arrangements involving crypto-assets.

The Report also contains useful legal analysis of various issues relating to crypto-assets, including control, transfers, intermediated holding arrangements and collateral arrangements.

TAXATION

The UK does not have a specific tax regime for crypto-assets. Therefore, their taxation will be governed for the most part by the existing rules and general principles applicable to other assets. Guidance on how to apply these rules to crypto-assets can be found in His Majesty's Revenue and Customs' (HMRC's) *Cryptoassets Manual*,[2] as well as in specialist works on the subject.[3]

By contrast, other jurisdictions, like Austria, have a specific tax regime for crypto-assets. There have been calls for the UK to adopt its own crypto-asset tax regime, such as in the response of an industry representative association, Crypto UK, to the House of Commons Treasury Committee inquiry into the crypto-asset industry.

It is unclear whether this is going to happen in the UK but we can expect to see specific legislative tweaks. HMRC ran a consultation earlier in 2023 on lending and staking crypto-assets in DeFi transactions,[4] to which STEP responded. Lending a token to another person, or staking it to a liquidity pool, will often involve a transfer of beneficial ownership. At present, this is a disposal that would be subject to capital gains tax (CGT), even though the effective economic ownership of the token is retained.

The consultation proposed that, in this situation, there would be no CGT payable on the original transaction. CGT may be payable later if the borrower becomes unable to return the borrowed tokens or if the lender disposes of the right to recover the lent/staked tokens (e.g., by selling a liquidity token).

The consultation closed on 22 June 2023 and we are currently awaiting a response from the government.

REGULATION

The UK government is increasingly moving to regulate crypto-assets. One example is His Majesty's Treasury's 2023 consultation on the financial services regulatory regime for crypto-assets.[5] It is proposed to bring crypto-assets within the regulatory framework of the *Financial Services and Markets Act 2000*. This would involve specifying certain activities involving crypto-assets that are to become regulated, meaning that those carrying them out would need to be authorised and that the Financial Conduct Authority (FCA) would be able to impose rules regulating those activities.

STEP has responded to this consultation, flagging the fact that, as proposed, the rules would apply to trustees and personal representatives who sell or purchase crypto-assets or hold private keys on behalf of a trust or estate. STEP proposed that exemptions should be provided for these circumstances on similar lines to the pre-existing exemptions for personal representatives and trustees. The consultation closed on 30 April 2023 and we are awaiting the government's response.

We have also recently seen developments in crypto-asset regulation from the FCA. One of these is the 'travel rule', introduced from 1 September 2023, which requires crypto-asset businesses in the UK to collect, verify and share information about crypto-asset transfers. Another is the introduction on 8 October 2023 of crypto-asset marketing rules. These require marketing to be clear, fair and honest, with prominent risk warnings, and to prohibit inappropriate incentives such as 'refer a friend' bonuses.

STEP'S RESPONSE

STEP's response to the Law Commission of England and Wales' digital assets consultation can be found at **bit.ly/3RYMxtZ**

#DIGITAL ASSETS #REGULATION AND COMPLIANCE #TECHNOLOGY #UK

1 bit.ly/3WNiN33 **2** bit.ly/3PSUX3z **3** For example, L Sagar TEP and J Burroughs TEP, *The Digital Estate*, 2nd edn **4** bit.ly/3FXfpeY **5** bit.ly/49wguYJ

Jack Burroughs TEP *is a Private Client and Taxation Advisor at the CLA, UK*

Cowboy will writers

HANNAH CLARKSON DISCUSSES THE CHALLENGE OF UNREGULATED WILL PROVIDERS IN ENGLAND AND WALES

In England and Wales, the total value of the wills, trust and probate market in 2021 amounted to GBP2 billion. Within the market, there are approximately 208,000 unregulated will providers currently practising. With a seemingly growing market share for unregulated service providers, the necessity to more closely safeguard individuals' rights and assets is more crucial than ever.

The recent announcement of the Competition and Markets Authority's (CMA's) review of unregulated will writers and pre-paid probate services is a significant and positive step towards ensuring that vulnerable clients receive the protection they deserve, and need, against potentially unfair, poor quality and costly will-writing services.

THE SAFETY OF REGULATED EXPERTS

Solicitors, as regulated professionals, operate under the watchful eye of the Solicitors Regulation Authority (SRA). The primary objective of the SRA is to protect the public by overseeing and regulating solicitors. This regulation ensures that people have access to a fair marketplace where they can obtain high-quality legal services at a reasonable price.

However, it is not necessary to be a qualified solicitor nor regulated by the SRA or any other governing services to provide will writing and probate services. Even within the regulated legal industry, there have been cases where solicitors have fallen short of the SRA's standards and rules. There are serious consequences for non-compliance with SRA regulation, and so solicitors are obliged to be transparent and fair with their clients. In this way, the SRA offers peace of mind to clients by, in essence, providing a safety net in case something goes wrong. Further, solicitors are required to maintain insurance to protect their clients.

Although solicitors who engage in dishonest or unfair practices can face being struck off and barred from offering their services, unregulated providers do not share the same level of culpability. They can continue unfair and dishonest practices without facing the same repercussions and often do not provide the added security of insurance, leaving vulnerable clients exposed to subpar and even damaging services.

This is especially pertinent to will-writing services, as a will is one of the most vital legal documents an individual will ever complete, and estate administration can be a complex and emotionally challenging process. It is imperative that consumers engage providers with strong legal knowledge and expertise to properly safeguard estates and beneficiaries, which unregulated providers can be guilty of falling short of.

THE CHEAP AND QUICK FALLACY

Given the current cost of living, affordability is a concern for many and so consumers are sometimes drawn to unregulated service providers due to their lower fixed fees. However, these low fees can be misleading, with final costs often escalating unexpectedly. The CMA's investigation aims to shed light on these issues and protect consumers from the consequences of unfair contractual terms.

Aside from costs, consumers may also be attracted to online will-writing services, which are seemingly quicker and easier. However, consumers should not underestimate the importance and uniqueness of a will. Wills should be very carefully tailored to a consumer's individual circumstances and wishes.

Pre-paid probate services are a further area of concern. Estimating the amount of work required to administer an estate is challenging, especially considering current delays in the probate process now exceed 12 months on average. Clients must be assured that pre-paid packages will address these challenges transparently, clearly outlining the scope of work included in the costs.

A lack of accuracy or certainty in writing or probating a will can have devastating consequences, and so consumers must be fully aware of the risks of using cheaper online services or pre-paid probate plans that are not regulated.

It is important to note, however, that not all unregulated will writers and estate practitioners offer substandard services. Many professionals embrace a modern, transparent and accessible approach to serving clients. Those who are members of reputable organisations like the Institute of Professional Will Writers and STEP largely adhere to best practices, acting in the best interests of their clients. It is crucial to keep in mind that not all unregulated professionals are the same and the CMA's review is expected to highlight those who adhere to best practices.

The CMA's review will also promote education within the industry, empowering consumers to make informed decisions about whether to choose regulated or unregulated service providers. Understanding the distinctions between regulated and unregulated professionals is essential, and consumers should be entitled to the expected level of protection under consumer laws, regardless of their choice of service provider.

The CMA's review is a welcome step towards ensuring consumer protection in the legal services industry. It aims to address disparities in accountability, educate consumers and promote best practices. Although affordability is a valid concern, it is essential to prioritise the protection of vulnerable clients and their assets. As we await the findings of the review, we can look forward to a future where individuals have access to a wide range of high-quality legal services, whether they opt for regulated or unregulated providers, with the confidence that their rights and interests are safeguarded.

STEP REPORT

STEP has recently published a new report, *Wills and Trusts: Buyer Beware*, that uncovers the impact of unqualified advisors in the estate-planning sector.

Read the report at **www.step.org/research-reports/wills-and-trusts**

#BUSINESS PRACTICE
#ENGLAND AND WALES
#REGULATION AND COMPLIANCE

Hannah Clarkson *is Head of Wills and Probate at Adkirk Law*

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VAT and real estate

ELENI DRAKOU DESCRIBES RECENT CHANGES TO THE CYPRIOT VALUE-ADDED TAX REGIME

After more than a year of discussion and deliberation, Cyprus' parliament has approved an amendment to the provisions of the value-added tax (VAT) law for the acquisition of real estate. The amendment refers to the VAT imposed on the purchase or the construction of new residential properties that will be used by individuals as their primary permanent residence in Cyprus.

On 16 June 2023, the amending *Law 42(I)/2023* (the Law) was published in the *Official Gazette of the Republic of Cyprus*, so becoming enforceable from that date onwards.

The standard VAT rate imposed on the acquisition or construction of new real estate properties is 19 per cent. A reduced VAT rate of 5 per cent can be granted by the Cyprus Tax Department following the submission of an application by an adult, natural person to that end, before taking possession of the property, provided that the applicant has not acquired any other residence in Cyprus with the reduced VAT rate.

The application must be submitted for properties being purchased or constructed in order to be used as the primary permanent residence of the applicant in Cyprus for a period of at least ten years. Nevertheless, it is possible for the applicant to apply for the reduced VAT rate for a (second) property, before the lapse of the ten-year period. This is possible provided that the applicant refunds the Tax Department the difference between the standard VAT rate (19 per cent) and the reduced VAT rate (5 per cent) on the first property's value, proportionately, for the remaining time of the ten-year period.

THE AMENDMENT

The changes introduced by the Law set certain limitations to applications for the reduced VAT rate. Such limitations are based on the property's size and value. As per the provisions of the amending law, the reduced VAT rate of 5 per cent shall apply for the first 130sqm of the buildable area of the residence, as per the building coefficient, provided that the total buildable area does not exceed 190sqm. Moreover, the reduced VAT rate shall apply for properties up to a value of EUR350,000, provided that the total value of the transaction does not exceed the amount of EUR475,000.

If the property's buildable area is less than 190sqm but more than 130sqm, the reduced VAT rate of 5 per cent shall apply for the first 130sqm, while for the remaining buildable area the standard VAT rate of 19 per cent shall apply, provided that the property's cost is up to EUR475,000.

The Law has taken into consideration persons with disabilities.[1] The application for the reduced VAT rate can be submitted by a person with disabilities for the first 190sqm of the property's buildable area, independent of the total buildable area of the residence.

In cases of families with more than three children, the total buildable area of the residence shall be extended by 15sqm per each additional child, once a minimum threshold of three children is met. For example, for a family of four children, the total buildable area shall be 205sqm instead of 190sqm.

PREVIOUS PROVISIONS

Prior to the changes introduced by the Law, the reduced VAT rate of 5 per cent was applicable for the first 200sqm of the residence's buildable area, without having any limitation to the property's total buildable area or to the property's cost.

GRACE PERIOD

A grace period has been provided by law for applications that were close to submission before the enforcement of the Law. New applications for the reduced VAT rate of 5 per cent shall be subject to the new criteria, unless the building has secured a planning permit or an application for a planning permit was submitted before 31 October 2023. Further, the application for the reduced VAT rate must be duly submitted within three years from the enforcement date of the Law (i.e., by 16 June 2026).

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#CYPRUS #LAND AND PROPERTY #RESIDENCY OR DOMICILE #TAXATION

1 As recognised as such by the System for the Assessment of Disability of the Ministry of Labour and Social Insurance.

Eleni Drakou TEP *is a Partner at Michael Kyprianou, Cyprus*

KEY POINTS

What is the issue?
The children of many high-net-worth families choose to study at US universities on student visas. After graduation, these children are often interested in remaining in the US to start their professional careers.

What does it mean for me?
The H-1B visa is one of the most frequently used work visas, though high demand has made it challenging to secure in the annual lottery.

What can I take away?
There are a variety of viable temporary and permanent residence visa options to explore as contingency options to the H-1B visa.

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States of play

RACHEL BEARDSLEY OUTLINES IMMIGRATION CONSIDERATIONS FOR HIGH-NET-WORTH FAMILIES LOOKING TO THE US FOR EDUCATION AND BEYOND

The children of many high-net-worth (HNW) families choose to study at US universities on student visas and, after graduation, these children often wish to stay in the US to start their professional careers. Most of these international students hope to obtain an H-1B visa once their post-graduation student work authorisation expires to allow them to work in the US, as the H-1B is a professional visa for positions that require at least a bachelor's degree or equivalent in a relevant field.

However, as demand for H-1B visas in the US reached record levels in 2023, with an approximate 25 per cent selection rate in the H-1B cap lottery, there are a number of other strategies and options for international students who have not been selected in the lottery.

The author recommends that advisors to HNW families consider the contingency options described below.

TEMPORARY WORK VISA OPTIONS

E-1 Treaty Trader/E-2 Treaty Investor Visa

The E Visa category is available to individuals who engage in trade or investment under the terms of a treaty of commerce and navigation between the US and the individual's country. These treaties exist between the US and approximately 80 countries. The company must be at least 50 per cent owned by nationals of the treaty country and the visa applicant must hold the same nationality.

The E visa affords extensive flexibility as it may be used across a wide range of companies. For example, the visa may be used for a start-up company formed and owned by an individual. At the other end of the spectrum, it can be leveraged by a large company that has majority ownership that matches the nationality of the visa applicant.

O-1 Extraordinary Ability Visa

The O-1 visa is reserved for individuals of extraordinary ability who have risen to the top of their field of endeavour. The applicant must have fulfilled at least three of the following criteria, having:

- had critical roles for distinguished organisations;
- received national/international awards;
- published professional articles;
- received media attention;
- commanded a high salary compared to peers in the industry;
- made original contributions of major significance;
- been a member of organisations that

Rachel Beardsley *is a Partner at Fragomen, Del Rey, Bernsen & Loewy*

require high achievement by their members; and/or
- judged the work of others in the field.

Although this would be a challenging standard for a university graduate to meet, an international student graduating with a master's or doctoral degree may be able to qualify for the O-1 visa based on their research and publications during graduate-level studies.

Citizenship-based work visas

Additionally, there are various work visa options based on citizenship, as described below:

- **E-3 Professional Specialty Visa for Australians:** The E-3 visa is available to Australians who will work in a professional role that will require at least a bachelor's degree, and the applicant must have a related degree or equivalent.
- **TN Visa for Canadian and Mexican Nationals:** The TN visa is an option for Canadians and Mexicans in certain occupations, including engineers, lawyers, computer systems analysts and economists. The applicant must generally hold a relevant degree.
- **H-1B1 Visa for Professionals from Chile and Singapore:** Like the H-1B visa, the H-1B1 visa is for professional positions that require at least a bachelor's degree and, similar to the above, the applicant generally must hold a relevant degree or equivalent.

As such, there are many work visa options available to international students, even if not selected in the H-1B cap lottery.

PERMANENT RESIDENCE OPTIONS: PATHWAYS TO THE GREEN CARD

The lack of H-1B visas has presented an opportunity to reconsider visa pathways and strategies, particularly as there are some options to go directly from a student visa to permanent residence (i.e., green card status). Therefore, international students may be able to achieve their goal of remaining in the US by applying directly for a green card from their student visa status. The most common options are outlined below.

EB-5 Immigrant Investor Program

The EB-5 Immigrant Investor category was created to stimulate the US economy through job creation and capital investment by foreign investors. All EB-5 investors must invest in a new commercial enterprise, which is any for-profit activity formed for the ongoing conduct of lawful business. Additionally, the EB-5 category requires that the investor create or preserve at least ten full-time jobs for qualifying US workers.

There is a capital investment requirement associated with the EB-5 category and the investment must be at

'The E visa affords extensive flexibility as it may be used across a wide range of companies'

risk during the investment period. The required minimum capital investment is USD800,000 for a targeted employment area (TEA) or USD1.05 million for non-TEA projects. A TEA is a rural area or an area with high unemployment rates (at least 150 per cent above the national average).

If an EB-5 applicant invests in a TEA, it may be possible to file the EB-5 petition concurrently with an Adjustment of Status (green card) application. This means that an international student could change directly from student visa status to permanent resident status from within the US. Also, an Adjustment of Status application can be accompanied by employment authorisation and Advance Parole travel applications to allow for the green card applicant to work and travel while the application is pending.

Upon approval of the EB-5 petition, the individual will receive a conditional green card valid for two years. These conditions may be removed after the two-year period, so long as the job creation requirements and capital investment requirements have been met.

National interest waiver

The national interest waiver (NIW) is another fast-track green card option that may be available to international students. By way of background, the current administration has signalled it is prioritising immigration options for individuals with education and/or experience in science, technology, engineering or maths (STEM) fields.

Many employers are exploring NIW petitions for STEM-based positions and it is also possible for an individual to directly file (self-petition) for an NIW petition.

In order to qualify for an NIW petition, the applicant must demonstrate:

- the proposed endeavour has both substantial merit and national importance;
- they are well-positioned to advance the proposed endeavour; and
- on balance, it would be beneficial to the US to waive labour certification.

In addition, the applicant must have at least a master's degree or a bachelor's degree and five years of experience. Alternatively, the applicant must show exceptional ability.

NIW petitions may be filed under premium processing, where the US Citizenship and Immigration Services review the filing within 45 calendar days. Also, it may be possible to concurrently file an NIW petition with an Adjustment of Status (green card) application. As described above, this means that an international student could change directly from student visa status to permanent resident status from within the US and simultaneously file work and travel authorisation applications.

Marriage-based petition

If an individual marries a US citizen, the couple may file a marriage-based green card application. The marriage-based green card process is initiated by filing a Petition for an Immediate Relative, together with the Adjustment of Status (green card), employment authorisation and Advance Parole travel applications, as described above.

The marriage-based petition must include evidence of the *bona fide* marriage, such as:

- joint ownership or leasing of property;
- joint bank/investment/credit card accounts;
- joint insurance;
- children born to the couple;
- photos of the couple; and/or
- evidence of travel the couple has undertaken together.

The couple will have an interview with an immigration officer, who will review the application and the *bona fides* of the marriage. Upon approval, if the couple has been married for less than two years, the applicant will receive a conditional two-year green card. The couple must apply to remove the conditions before the two-year green card expires.

CONCLUSION

Although the lack of H-1B visa numbers poses a challenge, HNW families with children studying in the US should not despair. There are a variety of strategies they can pursue to remain temporarily or permanently in the US.

Does the family want to make an investment? If so, the E-2 investor visa would make a suitable temporary visa option for a start-up company, or the EB-5 investor visa would accommodate a pathway to a green card. If the student has a master's or doctoral degree with associated research and publications, then the O-1 extraordinary ability temporary work visa or the NIW permanent resident petition may be options. Finally, other options may be available based on the student's citizenship and/or family relationships.

#INTERNATIONAL CLIENT #INVESTMENT #RESIDENCY OR DOMICILE #US

KEY POINTS

What is the issue?
The question of individual residency is a cross-border and relevant issue for the tax system in any country.

What does it mean for me?
This article deals with a ruling of the Supreme Court of Israel, which discusses the definition of individual residency according to the law in Israel.

What can I take away?
For the purpose of determining individual residency: certain professions should not be examined differently; significant weight should be given to the individual's family ties and less weight should be given to services that can be obtained remotely, such as banking services.

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Facts and circumstances

DANIEL PASERMAN AND SHIMON EFRATI REVIEW THE ISRAELI SUPREME COURT TAX RULING REGARDING THE DEFINITION OF INDIVIDUAL RESIDENCY

Daniel Paserman TEP *is a Partner and Head of Tax and* ***Shimon Efrati*** *is an Associate at Gornitzky, Israel*

Much has been written on the tax residency of individuals in Israel. More than once, disputes have arisen between taxpayers and the tax authorities with respect to the Israeli statutory test for the individual's tax residency: the centre-of-life test (the Test).

In the recently issued judgment in the matter of the Kiryat Shmona soccer team,[1] the dispute revolved around the residency of two of the team's players. According to Israeli tax law, residents of Kiryat Shmona, a town in the northern periphery, are eligible for special tax reliefs. The two soccer players grew up in villages near Kiryat Shmona, about an hour's drive away. One of the players was engaged to be married and the other was married with four children; however, their families have continued to live in the villages where they were born.

According to the *Israeli Income Tax Ordinance* (the Ordinance), a 'resident of a certain town' is defined as an individual whose 'centre of life' is located in that specific town. The heart of the dispute in this case revolves around determining the precise definition of the centre of life for individuals in the context of tax benefits for residents of towns entitled to such benefits. Should we refer to the definition of the Test as stated in the Ordinance regarding residency in Israel or should a different definition of the Test be considered specifically for this tax relief?

THE JUDGMENT

The justices on the panel were divided in their opinions, with the majority decision being that the Test for defining a person as a resident of Kiryat Shmona is the same as the Test used to define a resident of Israel. Hence, it was ruled

'According to the current legislation, an individual is an Israeli tax resident if their centre of life is in Israel'

that the two players were not residents of Kiryat Shmona and therefore they were not entitled to the tax benefits.

The judgment contains several interesting insights, which are worth giving thought to.

First, although the dissenting judge believed that in applying the Test in regards to a town whose residents are entitled to tax benefits, critical weight should be given to the individual's contribution to that town. The majority judges ruled that the Test should be examined the same way residency is examined for state tax residency, i.e., according to the individual's ties, including the family, social, economic and cultural connections. To these, the subjective aspect must also be added, i.e., the location that the individual views as the centre of their life.

Second, the dissenting justice believed that the occupation of professional sport has unique characteristics and therefore, as a rule, he tended to view the village in which a professional sports team plays as the centre of life of the professional player who plays for that team. However, the majority justices ruled that there are no grounds for applying a special law to certain types of occupations and that the centre of life is not a place that a person can 'simply pick up and carry on his shoulders every weekend, when he returns to his family home'. Rather, the examination of an individual's residency should be applied equally in accordance with the material test of the 'centre of the individual's life'.

Third, the court was divided with respect to the weight that should be attributed to the place where the individual's family lives. The dissenting justice believed that the place where the individual's family lives is indeed a tie that must be taken into consideration; however, it is not a decisive factor. The way in which a soccer player combines his professional career with his family life, being a parent and being part of a couple is none of the tax assessor's business. It is most certainly possible that the player would relocate, alone, to Kiryat Shmona, even though his family would stay behind.

On the other hand, the majority justices believed that great weight should be attributed to the place where the individual's family lives, because 'people connect their family to their permanent place of residence'. The majority justices also attributed weight to the fact that one of the players had set up a non-profit organisation to benefit the village he comes from. This also attested to the close connection that he still had with the place he grew up in and where his wife and children live. This social involvement in the village's life is deemed significant in terms of the most significant nexus test.

Fourth, all of the justices agreed that, from an evidentiary point of view, no significant weight should be attributed to the fact that the taxpayers' bank accounts have remained in the town where they were born, given that the physical location of bank branches has become unimportant in today's modern age of technology. However, the majority justices attributed evidentiary and material weight to the fact that the taxpayers had not presented any electricity, water or gas bills, nor credit card statements or any other evidence that they had gone shopping in Kiryat Shmona or with respect to how much time they had actually spent in the town.

From the judgment, it can be seen, yet again, that the test of an individual's residency in Israeli law is a complex factual and circumstantial test, which frequently gives rise to disputes between the Israel Tax Authority and the taxpayers. In addition, it is also evident that even among the Supreme Court justices there are differing opinions regarding the components of the Test, including with respect to the weight that should be attributed to the place where the family lives and the type of the individual's occupation.

In this regard, it is important to mention that on 24 July 2023, the Israeli Ministry of Finance published a proposed Bill addressing the tax residency definitions for individuals under the Ordinance. According to the current legislation, an individual is an Israeli tax resident if their centre of life is in Israel. This facts-and-circumstances test examines the individual's family, economic and social ties. In addition, there are two rebuttable presumptions based on the number of days an individual spends in Israel.

THE PROPOSED LEGISLATION

The new proposed legislation maintains the rebuttable presumptions but also introduces irrebuttable (conclusive) presumptions according to which an individual would be considered a tax resident of Israel or a foreign tax resident.

The new proposed legislation (if enacted) will not apply retroactively; however, previous years could be considered when examining the applicability of the proposed legislation for the years to follow. It should be noted that although the purpose of the new proposed legislation is to increase certainty, it seems that the conditions included in the proposed rules are complicated and the phrasing thereof is not clear enough. It therefore may cause complexities in interpretation and implementation of the rules set therein. However, the new legislative proposal is not yet in effect and could potentially (and hopefully) undergo certain modifications.

#ISRAEL #RESIDENCY OR DOMICILE #TAXATION

1 CA 7719/21 *Saleh Hasramah and others v Haifa Tax Assessing Officer (Supreme Court)* (Nevo 4 May 2023)

Gill Steel TEP

We chat with Gill Steel TEP, who took home STEP's Lifetime Achievement Award at the Private Client Awards in September, about her 40-year career and what she has learned in that time

Tell us about your career
I had wanted to become a teacher but my careers advisor suggested I go on a course organised by law students at Cambridge. The question of sovereignty as we went into the EU had sparked an interest in that and the rule of law. I came back hooked and qualified as a solicitor in 1983, before taking a job with the small but historic firm Faithfull & Bowker in Winchester, which acted for the Tichborne Estate in the famous 19th-century case of the Tichborne Adventurer. It proved to be a great opportunity to work on some significant trusts.

After becoming a partner in 1986 (the first woman) and effecting a merger with White Brooks & Gilman in 1990, I headed up the private client team in the new firm of White & Bowker. In 1995, I left to do an MBA in Legal Practice Management. I set up my own business and fell into consultancy and lecturing somewhat by accident but it took over my life, bringing together my passion for the law and my long-held desire to teach with a bit of acting too for good measure.

Why did you get involved with STEP in the beginning?
While I was at White & Bowker, I tried to encourage an accountant, a surveyor and a wealth manager to join me in making a joint offering to trust clients, recognising that trust and estate work requires different disciplines to work together for the client's benefit. At the time, it proved impossible because of the regulatory constraints. Then, along came STEP, which brought together all those working in trusts and estates. I knew I had to join.

In what ways have you been involved with STEP?
I began by sitting on STEP's Practice Committee. While on the Committee and since in an ad hoc role, I have represented STEP on the HMRC Trusts and Estates Agent Advisory Group. Through this, I have taken part in numerous consultations, inputting into STEP's response. I was also on the practitioner advisory panel to the Office of Tax Simplification review of inheritance tax and contributed to the All-Party Parliamentary Group on intergenerational wealth. I am also attending the STEP meeting with the Law Commission on the supplemental review of the *Wills Act 1837*.

What were some of the highlights during this time?
Lobbying in relation to: the *Trusts of Land and Appointment of Trustees Act 1996*; *Finance Act 2006* changes, in particular the inclusion of the age 18 to 25 trusts; the residence nil-rate band; regulation of will writing; changes to the probate service; and the creation and content of the *Trust Registration Manual*.


The Lake District

What does it mean to receive STEP's Lifetime Achievement Award?
The STEP Lifetime Achievement Award means a great deal to me. To be recognised by my peers is a wonderful honour. I hope I have managed to share what expertise I have for the benefit of the profession, of which I am proud to be a member. The public needs strong professional bodies setting high standards of regulation and customer care for their members. The government needs practitioners to hold them to account, improve legislation and collaborate on rules of practice and procedure for the common good. The best way for it to do this is by working with professional bodies.

What do you think makes a successful, trusted advisor?
A successful, trusted advisor needs empathy; objectivity; organisational skills and attention to detail; resilience in the face of challenging clients and beneficiaries; flexibility to keep up to date in a fast-changing practice area; and the ability to work collaboratively across disciplines for the benefit of the client.

What has been your greatest professional achievement?
Stepping up to act for a family of trusts when a partner/trustee became seriously unwell. This eventually led to me writing the *Trust Practitioner's Handbook* for Law Society Publishing and editing four editions of this book.

What would you say to members considering getting more involved?
Just do it! Giving time to STEP is beneficial to both STEP and also the volunteer. It enables the volunteer to work with others, learn about developments from the start and have the opportunity to influence them. Each volunteer brings their own set of skills to the mix. Seeing things from different perspectives will enhance each volunteer's own understanding of the issues. It also means STEP can be more representative of its members in making contributions to consultations if a wide spectrum of members get involved at every level.

FAST FIVE

1. **If you were not a trust professional, what would you be?**
   An actress or a chef.
2. **What are you currently reading?**
   Bad Actors by Mick Herron. He is a brilliant and funny writer about spooks.
3. **Favourite place to visit in the world?**
   So far, the Lake District but I have a feeling I have yet to discover the best.
4. **What do you do when you aren't advising clients?**
   Cooking for friends and family, and going to the cinema and theatre.
5. **What is your professional philosophy?**
   Work hard and smart but not long. Aim to make a difference.

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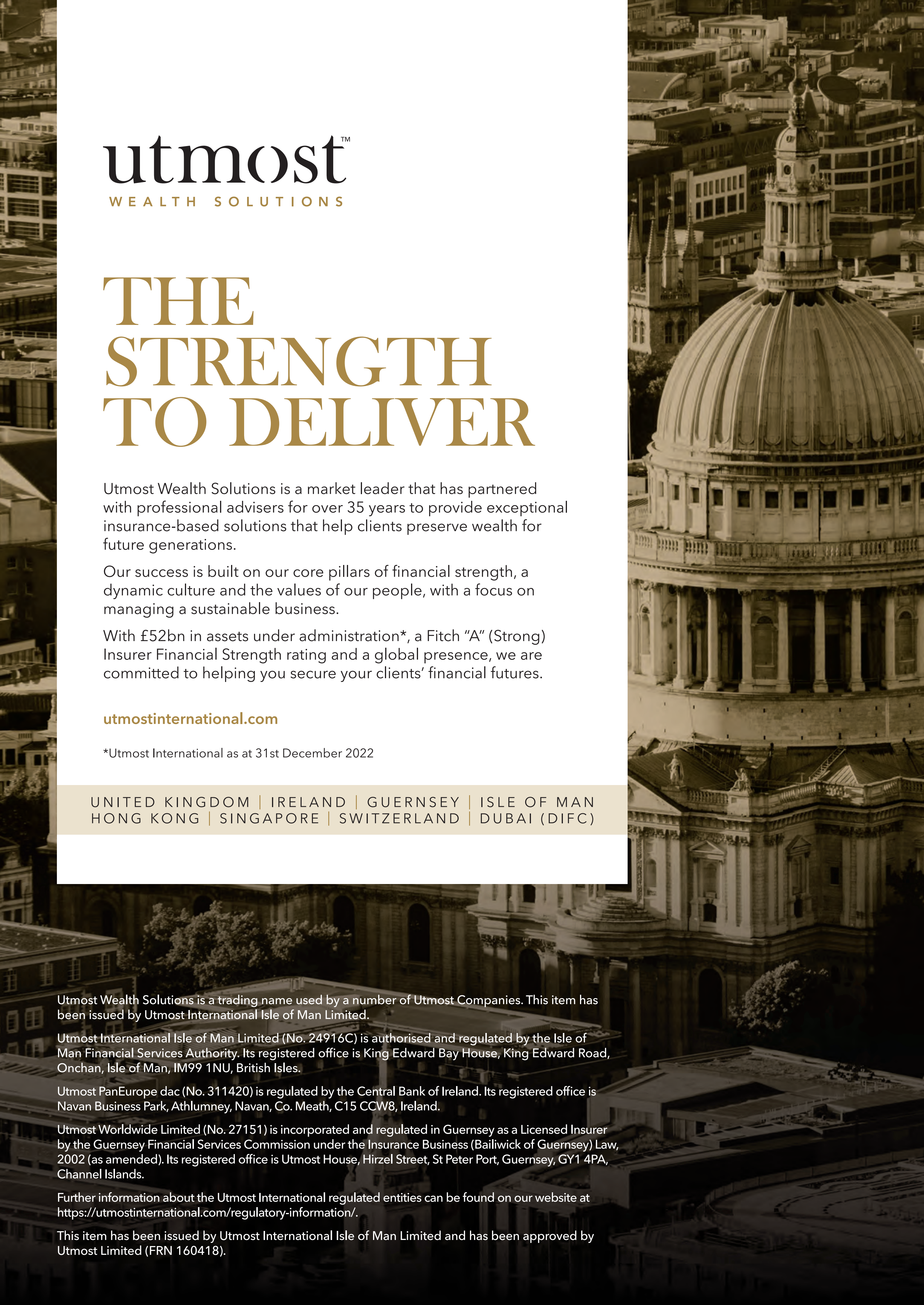

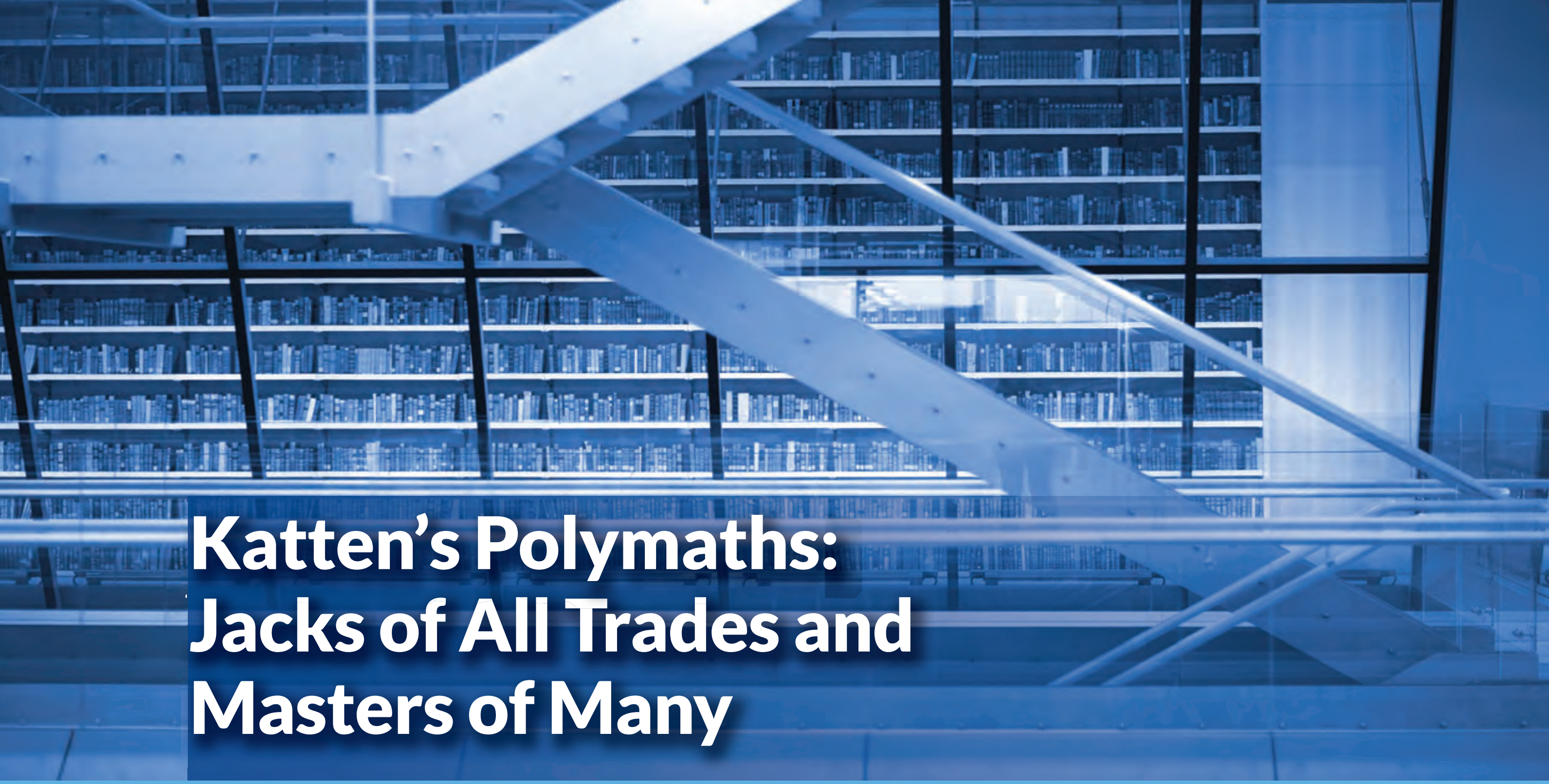

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