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appeals to premium trusts and estates practices, and changes in estate taxes are likely to reduce those ranks further. The present $1 million individual estate tax exemption, itself a recent jump from $600,000, is scheduled to increase to $1.5 million next year and hit $3.5 million by 2009. Republicans in Congress would like to completely eliminate the estate tax by the end of the decade.

Though repeal is by no means certain, the enlarged exclusions are more likely to remain in place. With a couple able to exclude $7 million by 2009, a huge number of wealthy people will likely be departing the active client lists of trusts and estates lawyers.

Mr Adams said the most successful trusts and estates practices are targeted at individuals and families who are rich enough that estate taxes will be a continuing concern and also will have a large number of other issues and interests that can generate legal work. Over 80 per cent of his clients are worth more than $20 million, and at least 25 are worth more than $1 billion.

Two of the younger members of the Pritzker family, which owns the Hyatt hotel chain among other businesses and is one of the nation's richest families, are currently embroiled in an inter-generational litigation.

But there are risks as seen with 18-year-old Liesel Pritzker and her 20-year-old brother Matthew who are accusing Mr Eisenberg, the family's lawyer since at least 1985, of breaching his fiduciary duty as a trustee by conspiring with their father Robert and other relatives to divert funds from their trusts to other family members. Mr Eisenberg served as co-trustee for many of the trusts and designated Robert a trustee as well.

Liesel is being represented by Lazar Raynal of McDermott Will & Emery in Chicago, which also possesses one of the nation's leading trusts and estates practices. Mr Raynal said Mr Eisenberg's decision to serve as trustee was unusual, noting that trusteeships were usually held by banks or other financial management companies. "There's no doubt in anyone's mind that if a bank did what Marshall Eisenberg did, people would say, 'What the hell is going on?'" said Mr Raynal.

Mr Raynal said most law firms have procedures in place to prevent lawyers from taking actions similar to those taken by Mr Eisenberg.

But Lewis Kaster, counsel at the New York office of Bryan Cave and an emeritus lecturer on partnership and trusteeship law at Columbia Law School, said it was very common for lawyers who have long histories serving wealthy families to take such roles.

"They know better than anyone else all the complicated transactions that have taken place over many years," said Mr Kaster. Difficulties like the Pritzker situation arise, he said, over how and to whom the trustee may interpret their duty.

Mr Zabel also said he thought Mr Eisenberg's conduct likely stemmed in part from his very close identification with the elder members of the Pritzker clan. "It's a common problem that the family lawyer grows so close to the family members of their generation," he said.

Mr Dadakis said one aim of his practice was to involve younger family members in managing family wealth, frequently by getting them to participate in family foundations.

Viewpoint

Simplicity is the characteristic of Panama's trust law

By Sandra C. Vázquez, Head of Legal Department MMG Panazur Ltd. S.A, A Morgan & Morgan Group Company

Law 1 of 5th January 1984, defines the Panama Trust as "a juridical act by virtue of which a person named settlor (trustor, grantor) transfers property to a person named trustee to manage or dispose of it in favour of a beneficiary(ies), or a class of beneficiaries, who may include the settlor himself". It is described as an "act" in order to avoid the problems deriving from Civil Law countries where trusts are classified as a "contract" or "mandate" for which additional regulations already exist in our Civil and Commercial Laws. In comparison to the first legislation creating the institution of trust in 1925, subrogated in 1941, the Panamanian Legislator created by Law 1 of 1984 a simple, easy to understand, ordinance. The concept of trust is of common law legal tradition. In their absence, people used to leave their properties in management or administration of third persons, usually for the benefit of their family. From this practical approach has arisen the juridical concept. It rests on the principle of dividing property into legal ownership vested on the trustee and the so-called real or equitable ownership by the cestui que trust or beneficiary(ies) over one and the same trust property. It means, in effect, that the rights or claims of beneficiaries are protected by the rules of equity whilst the (formal) ownership lies with the trustee. This splitting of ownership was not known to Roman law and was therefore initially considered foreign to continental European thinking.

Today's purposes for setting up a trust can have several motivations, such as the conservation, management, administration or investment of property for succession reasons or in order to protect beneficiaries. Trust structures also can be created to generate tax, estate, inheritance and/or income advantages. Furthermore, protection of privacy and secrecy can be expected from such a structure as well as the avoidance of expropriation risks. Trusts also may be used for voting shares, as mutual funds and to guarantee certain obligations. Any purpose is accepted as long as it is not contrary to morals, the law or public order.

A trust can be set up for settling the entire settlor's property or only for parts of it. Trusts on real estate property, located in the Republic of Panama, must be created by notarial deed and registered in a public office. The intention to set up the trust must be expressly stated in writing. Trusts can be revocable or irrevocable, depending on the settlor's needs and the contents of their deeds. Trusts can be classified as "inter-vivos" or "testamentary" ("post mortem") ones, depending on when they enter into effect. In case of "living" trusts, property is transferred to the trustee while the settlor is still alive. In the testamentary case, the transfer of property occurs through a document with the content of a "will". Such a trust will enter into effect when the "triggering event" takes place, which in the "testamentary" trust is normally the settlor's death (or any specific defined event after the settlor's death). Panamanian trust legislation provides also for the possibility to transfer the jurisdiction

of a trust or its assets to the laws or jurisdiction of another country ("flee clause", or "Cuba clause") under the condition that this clause is part of the deed.

If the deed is created by means of a private document, the settlor's and trustee's signatures, or those of their attorneys, must be authenticated by public notary of the jurisdiction where the deed is signed. In this regard, it should be noted that declarations of trust (ie, a unilateral declaration of the trustee without mentioning the settlor's name or showing his signature) are not possible in Panama. Any failure to comply with these formalities could, if a dispute arose, lead a court to decide that the trust would be void. The legislator decided to assign to the Superintendencia de Bancos (Banking Commission), the responsibility to supervise and ensure a proper operation of the trust business in Panama. They decide on award or cancellation of trust licences, on the reports to be submitted to the commission, on the activities and investments prohibited to trust companies, on trust secrecy and on other important and necessary rules to assure a proper trust business.

In some highly taxed jurisdictions, for the trust to become a separate estate from the rest of the settlor's property, the settlor must lose a certain amount of control over such assets. Panamanian law does not contain such a requirement. This is why citizens who are taxed on their world-wide income by their countries of origin should consult specialised legal advice in their own countries when drafting a trust according to Panamanian Law.

We are of the opinion, that in general, the trust is a very flexible and versatile juridical instrument for which many practical applications can be found. Any jurisdiction worldwide that recognises the institution of trust under its legal system is suitable to harbour a trust, but the simplicity of Panama Trust Law is a decisive factor in attracting international trusts to Panama. Other important reasons are the very strict secrecy laws for banking and corporate matters, the attractive tax structure, and the social and ideological stability throughout Panama's history, making the Panama trust a unique, simple and effective juridical instrument.

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A Royal mess

Hindsight is never clearer than when it is applied to the results of litigation and never more colourful than when it concerns the rich and famous.

Newspaper reports which appeared in the summer on the troubles facing the charitable trust set up as a memorial to the late Diana, Princess of Wales is one such event. Even making allowances for journalistic licence, sometimes called mistakes, one feature shines through as a potential discussion point on the nature of trusts.

The facts are complex and the following does not pretend to be a complete or even precise summary as it was taken from the *Sunday Times* of 13th July 2003 but will be adequate for our purposes to raise a point about trustee liabilities. There is no intention to doubt the quality of advice the fund and its trustees received, rather to suggest that however prestigious is the advice obtained and however thorough the setting up of a trust may be, there is always something that can go wrong through some unexpected consequence.

The fund engaged in worthwhile causes; hospices and children's charities featured highly in the priorities of the trustees. The fund's assets were reduced by £15 million due to stock market losses but the greatest hazard was the trustees' belief that it had the duty to protect the commercial use of the name of the Princess of Wales: an action therefore was brought against an American company which had produced dolls with the appearance of the late Princess. The case was lost. An earlier case on similar principles aimed at protecting the rights to use the name of Elvis Presley, had failed in 1997 in the English High Court. The fund nevertheless decided in 1998 to bring the action in the US. It lost and the result is that the US company is bringing an action against the fund alleging malicious prosecution, claiming damages of £22 million. The fund is mounting an action to have this action overturned. Even with a reserve of £46 million the fund has frozen its charitable distributions causing widespread comment against the trustees for abandoning the causes which depend upon it.

So a noble cause descends into expense and perhaps paralysing litigation. Money which was intended for worthwhile charitable causes is diverted into endless fees and charges. The fund's assets are frozen pending a resolution. This brings us to the glaring point from the trust point of view of where the setting up of the fund may have been flawed. A charitable trust is a trust notwithstanding its charitable status. This status is valuable for the tax relief granted to an English charity and indeed is essential to make a purpose trust a valid trust. With the absence of beneficiaries who can enforce the terms of the trust the trustees of a charitable trust may feel that their job will be trouble free. Certainly an English charity is under the supervision of the Charity Commissioners but their attitude is fairly benign so long as the trustees honestly carry out the purpose of the charity. The distinguished panel of trustees may have been surprised at the litigious nature of the international charitable trust industry. Unfortunately, the interpretation of the liabilities of trustees of a charitable trust receive no leniency from the law because their duties are freely given for noble purposes.

The principle can be concisely stated: "If the charity takes the form of a trust, contracts which it enters into are entered into by the charity's trustees. Both the charity's trustees and the charity's assets are therefore potentially at risk" (*The Law of Charities*, Peter Luxton, Oxford University Press page 747-748).

JGG