

The International Family Offices Journal

Editor: Nicola Saccardo

Editorial

Nicola Saccardo

Foreign trusts, effective dispossession and tax liability: lessons from the Argentine courts

Gabriel Gotlib, Fernando M Vaquero and Santiago T Mazzilli

Latest insights into global attitudes to wealth

Emily Deane

Birthstones – from aquamarine to tanzanite

Alexandra Morris Robson and Thomas Meadham

Beyond the offer: helping rising-gens make confident decisions about joining the family office

Paul Edelman

Capital in transition: tax, structuring and real estate across borders (Part Two)

From tax shift to asset shift: real estate, yields and structuring across the United Kingdom and United Arab Emirates

Ryan Dixon

Trusts and trial: navigating the crossroads of divorce

Steven Malech and Miranda Fisher

Governance, succession and control: UAE foundations as strategic tools for global families

Hermione Harrison and Yann Mrazek

Leaving the stars and stripes behind: a guide to expatriation and US tax obligations

Ada K Colomb

Involving the next generation: how family offices can support the transfer of wealth across generations by using Liechtenstein private label funds

Thomas Marte and Benjamin Vetterli

The adviser's guide to culturally agile wealth and ownership structuring

Suzanne Lauritzen

Mobility planning in an uncertain world

Myriam Soto

News section

Selection from STEP News Digests

September 2025 • www.globelawandbusiness.com

STEP
ADVISING FAMILIES ACROSS GENERATIONS



The International Family Offices Journal

Contents

Volume 10, Issue 1, September 2025

Editorial _____ 3 Nicola Saccardo	Trusts and trust: navigating the crossroads of divorce _____ 26 Steven Malech and Miranda Fisher
Foreign trusts, effective dispossession and tax liability: lessons from the Argentine courts _____ 4 Gabriel Gotlib, Fernando M Vaquero and Santiago T Mazzilli	Governance, succession and control: UAE foundations as strategic tools for global families _____ 32 Hermione Harrison and Yann Mrazek
Latest insights into global attitudes to wealth _____ 8 Emily Deane	Leaving the stars and stripes behind: a guide to expatriation and US tax obligations _____ 39 Ada K Colomb
Birthstones – from aquamarine to tanzanite _____ 15 Alexandra Morris Robson and Thomas Meadham	Involving the next generation: how family offices can support the transfer of wealth across generations by using Liechtenstein private label funds _____ 47 Thomas Marte and Benjamin Vetterli
Beyond the offer: helping rising-gens make confident decisions about joining the family office _____ 21 Paul Edelman	The adviser’s guide to culturally agile wealth and ownership structuring _____ 56 Suzanne Lauritzen
Capital in transition: tax, structuring and real estate across borders (Part Two) _____ 24 <i>From tax shift to asset shift: real estate, yields and structuring across the United Kingdom and United Arab Emirates</i> Ryan Dixon	Mobility planning in an uncertain world _____ 66 Myriam Soto
	News section _____ 72 Selection from STEP News Digests

Welcome to the 37th issue of The International Family Offices Journal

Nicola Saccardo

As we turn towards the Autumn, this can indicate the start of a busy few months, but also a time for reflection. I hope that this latest issue of the Journal will help ease everybody back into business mode with some thought-provoking articles.

Gabriel Gotlib, Fernando M Vaquero and Santiago T Mazzilli introduce some interesting insights into the treatment of trust structures in Argentina and, in particular, in what circumstances trusts qualify as opaque for tax purposes and when they do not. In this article the authors examine a number of cases heard in the Argentine courts, offering understanding of the Argentine approach to trusts.

Next, Emily Deane presents some fascinating research undertaken by STEP to understand attitudes and views on wealth taxes and higher taxation rates among high-net-worth and ultra-high-net-worth individuals, drawing on responses from trust, estates and taxation practitioners worldwide. The recent undertaking by STEP outlines some noteworthy trends globally in relation to taxation and asset protection views.

Alexandra Morris Robson and Thomas Meadham tell readers about the exciting world of luxury jewels, in particular birth stones! Something to give pleasure but also offer investment opportunities.

Engagement with Generation Z and the 'next gen' is vitally important in the family office sphere. As such, it is something we often consider. Paul Edelman explores how 'rising-gens' can be guided and coached to make confident decisions in a family office context. He explores five key considerations: identity and autonomy; skills and timing; role clarity; cultural fit; and fair compensation. A focus on the next generation is also explored by Thomas Marte and Benjamin Vetterli in their examination of the use of Liechtenstein private label funds. They explore how funds of this kind can be used to streamline wealth management, safeguard assets and create sustainable framework planning across generations.

Those working in family offices, and connected third-party advisers, understand how critical communication is in this context. Suzanne Lauritzen explores how cultural considerations and dimensions impact how we communicate and provides a practical framework to help advisers

uncover what lies beneath discussions with family members. Suzanne brings these issues to life using a number of examples.

Ryan Dixon provides some jurisdiction-based insight in his exploration of real estate structuring across the United Kingdom and the United Arab Emirates. This follows on from Craig Ritchie's piece in the 36th issue of the Journal. He observes that while the United Kingdom is still an attractive jurisdiction for purchasers, Dubai is increasingly gaining attention and traction for international multi-jurisdictional families. Hermione Harrison and Yann Mrazek also shine the spotlight on the United Arab Emirates. This time the focus is on foundations. They explore how UAE foundations can act as a platform on which long-term strategies can be built together with an introduction on how they operate and are taxed.

Matrimonial issues can often cause a great deal of pressure and stress in a family office set up. Steven Malech and Miranda Fisher explore the challenges facing principals seeking to protect wealth. The international nature of many families can lead to uncertainty as to divorce proceedings, including the jurisdiction in which those proceedings occur. In this article Steven and Miranda explore pre-divorce planning, asset division and litigation in both the United Kingdom and the United States.

Myriam Soto explores how families and those advising them are increasingly focused on contingency 'just in case' plans, should they need to relocate their family or their assets urgently. She explores physical relocation planning and asset relocation planning including a focus on US trusts and the impact on these structures if one or more party connected to a trust becomes resident in another country. Ada K Colomb explores expatriation and US tax in her article, drawing on her experience across border estate planning and probate. She notes that US tax laws surrounding expatriation can have significant consequences and lead to unexpected results.

Lastly, we include the news selection from STEP News Digests in the usual way.

Trusts and trial: navigating the crossroads of divorce

Steven Malech and Miranda Fisher

Like the economy, many successful families are global: they have businesses and family members in multiple jurisdictions, within a single country like the United States, or across borders and continents. While the matriarchs and patriarchs of such families often engage in extensive estate planning in their home countries, it is difficult to predict with any precision where they or their heirs will ultimately reside, whether they or their married heirs may ultimately get divorced and how the laws of the jurisdictions in which they live may impact the disposition of trust assets in the event of a divorce.

Why does this matter? Because people typically prefer to retain their wealth. And, when they want to transfer a portion of that wealth to their heirs through a trust interest, they typically want to ensure that their wishes are followed. Yet, laws and court rules applicable to divorce proceedings often vary by state (within the United States) and by country. This variance leads to questions such as: Will the court consider a trust interest in dividing marital assets, setting alimony or setting child support?¹ What type of discovery can be sought from the divorcing parties and the trustee(s)? Will the variance in applicable law and rules between jurisdictions impact the divorce proceeding or its potential outcome? Can advanced estate planning minimise or eliminate these risks? If so, how? What, if anything, can be done in advance to limit the reach of the divorce court insofar as trust interests are concerned?

These issues can often be complex and require counsel in the specific jurisdiction(s) involved. But, in our experience, the first stop for such questions is typically the family's trusted advisers – the manager of their family office, accountants and personal legal advisers. Therefore, trusted advisers should be aware of the potential issues that can arise when a trust beneficiary gets divorced – both in terms of planning and litigation. This article provides a brief introduction to some of these issues and related considerations from both a US and UK perspective.

US perspective

Pre-divorce planning: designing a US situated trust

In broad strokes, three categories of trusts exist in the United States: revocable trusts, self-settled irrevocable trusts and irrevocable trusts settled by a third-party. In determining which category of trust best suits the

needs of a particular client, considerations often include balancing competing goals of asset protection and accessibility/control, as well as potential state and federal estate, income and other taxes.

A revocable trust provides the settlor with accessibility to, and control over, the trust's assets. Such a trust typically contains three parts: planning for the potential incapacity of the settlor, privacy, and the avoidance of probate following the settlor's death. Because the settlor retains control over the trust's assets, such trusts have historically not provided any asset protection to a settlor going through a divorce. As a result, a court may consider such assets in dividing marital property, and determining child and spousal support obligations, if any.

Irrevocable self-settled trusts essentially allow the settlor to 'have his cake and eat it too', at least in some contexts. Such trusts typically allow the transferor to divest him or herself of title to various assets, but to retain a beneficial interest in them. Commonly referred to as domestic asset protection trusts or DAPTs, such trusts offered no protection against creditors under the common law.² Over the last couple of decades, however, approximately 21 US states have enacted statutes changing the common law rule by providing varying degrees of protection from potential creditors. While some of these statutes offer no asset protection in the case of a divorce, those that do may contain specific requirements (ie, the trust must contain a 'spendthrift' provision, distribution decisions must be discretionary and made by an independent third-party, etc). Some statutes may also distinguish between pre-marriage and post-marriage transfers.³ Exceptions also typically exist for fraudulent conveyances or transfers.

Irrevocable trusts settled by a third-party, or family trusts, are established by someone other than the beneficiary, typically a parent or grandparent. Depending on their terms, such trusts can provide significant protection to a beneficiary in a divorce. Possible trust terms warranting consideration should include, but are not limited to: (i) distribution standards and the amount of discretion given to the trustee to distribute principal and income; (ii) duration of the trust and trust 'lifecycle' events; (iii) trustee selection and succession; (iv) inclusion of a spendthrift provision; and (v) geographic considerations such as governing law, trust situs and trustee location.

Asset division paradigms and related issues

In determining the extent to which a divorcing spouse can reach the other spouse's beneficial interest in a spendthrift trust, two general paradigms exist. We refer to them as the 'Connecticut Style System' and the 'New York Style System'.

Under the Connecticut Style System, a court will generally include a spouse's interest in a trust in dividing marital property, unless an independent trustee has discretion regarding whether, and how much, principal and income to distribute to a beneficiary.⁴

By contrast, under New York law, "property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse" is considered separate property.⁵

Whether a court can consider a trust interest in determining the division of marital property is a separate consideration from the extent to which such assets can be considered in determining the amount of child and/or spousal support, if any. As explained in the leading trusts and estates textbook, "[j]udgements for child or spousal support, or both, can be enforced against the debtor's interest in a spendthrift trust in a majority of states and under UTC § 503(b)(10), p. 706".⁶

UK perspective

From the perspective of the English courts, let's work backwards and consider first the role that trusts may have in English divorce proceedings before looking at potential pre-divorce planning.

The court's approach upon divorce

Armed with statutory powers to make a variety of potential orders, the court has broad discretion to do what it considers to be fair in all the circumstances of the case, giving first consideration to the welfare of any minor children. There are two main ways in which the English divorce courts may deal with trust interests:

- *Nuptial settlements* – One of the statutory powers the court has (under Section 24(1)(c) of the Matrimonial Causes Act 1973) is the power to vary a nuptial settlement where one is found to exist. These powers are very broad and include,

for example, the power to exclude beneficiaries, to transfer an asset outright to a non-beneficiary or to carve out a sub-trust.

The logic for the court having such a power is that it may no longer be appropriate for such financial arrangements as may have been in place during a marriage to remain when the marriage no longer subsists and therefore it is in the interests of the parties and children that the court has the power to change those arrangements where appropriate.

- *Non-nuptial settlements* – Where a settlement is not considered to be 'nuptial', it may still be highly relevant as a 'resource' of one of the parties. In other words, as a means by which the beneficiary is able to support his or her own capital and/or income needs. In such circumstances, although there is no direct route to sharing in the trust assets, an order can be made against the beneficiary spouse at such a level that it is intended to provide 'judicious encouragement' to the trustees to come to the party's financial aid.

It can be seen that the position is very different according to whether or not a settlement is found to be 'nuptial', with significant consequences for the parties. All of which does rather beg the question: What is a nuptial settlement? Unhelpfully, there is no definition. Rather, what is necessary is that the structure has a 'nuptial quality' to it. Assessing whether or not this is the case is not always clear and will require an assessment of all relevant facts.

What is clear from the case law is that the definition is applied widely and often rather creatively. Provided an arrangement is 'made on the parties to the marriage' and is a disposition of assets making some form of continuing provision for either or both of the spouses, it will qualify. Indeed, the arrangement need not necessarily be a classic trust structure; for example, a small family private company pension scheme, a licence to occupy property and a shareholder's agreement relating to a family company have all fallen within scope. So too has the second of two trusts set up after the marriage, despite the husband, wife and children of the marriage having

Armed with statutory powers to make a variety of potential orders, the court has broad discretion to do what it considers to be fair in all the circumstances of the case, giving first consideration to the welfare of any minor children.

With an understanding of the approach to trusts on divorce and the powers the court has available, it is important for settlors, spouses and their professional advisers to bear this in mind at an early stage.

been specifically excluded as beneficiaries of that trust (as a tax driven step). In the latter case, the court found that the second trust formed part of the same scheme of arrangements as the first trust, of which the family were beneficiaries, so both trusts formed part of a variable post-nuptial settlement.

Early protection

With an understanding of the approach to trusts on divorce and the powers the court has available, it is important for settlors, spouses and their professional advisers to bear this in mind at an early stage. After all, proverbially, prevention is always better than cure.

There are two main things to consider in this respect. First, when establishing a trust, it will be wise to take careful specialist advice at an early stage and to bear in mind what might be done to protect an arrangement from qualifying as a nuptial settlement capable of variation by a potential future divorce court. It can be helpful to create a settlement prior to marriage – although there are ante-nuptial settlements – or to create a settlement for a reason that is independent from any marriage, eg, on the establishment of a business. The language used can be important as can the jurisdiction in which the trust is established. So too can the range of beneficiaries, for example whether the spouses and children are included and who else alongside them. A court may be less inclined to vary a settlement if it would deprive minor children of their potential entitlement. These are all important considerations for anybody seeking to settle assets on trust.

Second, a pre- (or post-) nuptial agreement may make specific reference and provision in this respect. As part of such an agreement it is not uncommon – indeed where relevant it is advisable – for parties to specifically declare that an existing settlement will not be regarded as a ‘nuptial settlement’, to disclaim any potential interest in an existing trust and to confirm that in the event of a subsequent divorce they shall make no application to vary under Section 24(1)(c) of the Matrimonial Causes Act.

In either case, early, specialist legal advice is required and can make all the difference as to how the court’s powers are executed in the event of a subsequent divorce.

US and UK shared considerations

The divorce: discovery, disclosure and admissibility

Typically, divorcing spouses must make mandatory disclosures, particularly regarding financial matters. However, in some cases, particularly those involving valuable businesses or trust interests, the non-trust beneficiary spouse may request additional discovery.

It is axiomatic that American discovery rules are typically more extensive and invasive than in other countries. In Connecticut, for example, “[d]iscovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure. It shall not be ground for objection that the information sought will be inadmissible at trial if it appears reasonably calculated to lead to the discovery of admissible evidence”.⁷

Non-beneficiary spouses sometimes seek to include the other spouse’s trust interests for purposes of dividing marital property, setting child support or determining alimony. In such circumstances, the non-beneficiary spouse may try to obtain documents and other information from the spouse or third-parties, such as the trustee. This typically leads to disputes that often result in objections and motion practice concerning whether, and to what extent, such discovery should be allowed.

As a threshold matter, if the beneficiary has a vested interest in the trust and/or has otherwise received regular distributions during the marriage, a court could very well permit discovery regarding the pre-divorce administration of the trust. However, disputes can arise as to whether the trust interest has actually vested or that interest is subject to the trustee’s discretion. Disputes can also occur to the extent that the interests of non-party beneficiaries, such as parents, siblings and children, will be disclosed to a hostile, soon-to-be ex-relative.

The disclosure requirements in England and Wales are no less onerous – they are broad and ongoing throughout the lifetime of proceedings. Parties to divorce proceedings must provide full, frank and clear disclosure of all financial and other relevant

circumstances and failure to disclose may lead to a subsequent order being set aside.

Potential trust interests clearly fall within this and the court prescribed disclosure form has a specific question that requires disclosure of trust interests (including interests under a discretionary trust), stating your estimate of the value of the interest and when it is likely to become realisable. If you say it will never be realisable, or has no value, give your reasons. When undertaking its discretionary exercise upon divorce, the English court is required to take into account all 'resources' of a party to proceedings, even if they do not fall within their ownership or control.

Litigation considerations

In the United States

A divorcing party seeking discovery from a trustee should assume that the trustee will object, at least in part, and should also assume that a discovery motion will likely be made (either by the requesting party to compel production/testimony, or from the trustee to quash or limit the discovery requests). If such a scenario occurs, the requesting party should consider:

- court deadlines and workloads;
- the likely outcome of motion practice;
- the potential cost;
- the potential to negotiate the scope of the request; and
- the applicable law.

By way of illustration, in one case, a trustee produced information and provided pre-trial testimony under oath with respect to the trusts from which the husband received distributions during the marriage. However, the trustee objected to providing information concerning discretionary trusts from which the husband never received a distribution.

The divorce litigation took place in Connecticut. The trustee lived and worked in New York.⁸ The non-beneficiary spouse ultimately initiated a proceeding in New York to compel compliance with a discovery subpoena. However, the initial hearing in the New York proceeding only took place approximately four weeks before the divorce trial was scheduled to begin in Connecticut. The New York judge told the non-beneficiary spouse's counsel that he had "230 motions to decide first". The judge also refused to truncate

statutory deadlines on the grounds that doing so would be a violation of the trustee's constitutional rights. As a result, the discovery efforts proved to be futile.

Another consideration in litigating the extent to which trust assets should be at issue in a divorce proceeding involves the choice of applicable law. After all, in situations like the one described above, in which the trust is governed by the law of one jurisdiction, the trustee lives and/or works in a different jurisdiction, and the beneficiary lives in yet another jurisdiction. For example, in a case a few years ago, the divorce was pending in a Massachusetts court. The trust was governed by California law and the trust's primary asset, an interest in real property, was also located there. And, the trustee lived and worked in Connecticut, while the beneficiary moved to Florida.

The Massachusetts court essentially issued an order prohibiting the sale of any assets until the divorce proceeding was resolved. The trustee, however, relying on California law, planned on selling the real property and distributing the net sales proceeds due to the beneficiary's trust to the beneficiary in Florida – putting them beyond the reach of the Massachusetts court. The non-beneficiary spouse obtained an injunction in Connecticut prohibiting the trustee from making the distribution. In this case, the non-beneficiary spouse had sufficient time to seek the intervention of the Connecticut court.

In any event, given the broad scope of discovery and risk of the proverbial clock 'running out', parties should be mindful of the difference between the seeking of information (which may still be objectionable for a variety of reasons) and the admissibility of that information. Parties may also want to consider whether alternatives exist, such as the provision of sworn statements regarding the nature and extent of the trust interest in lieu of extensive discovery or deposition testimony, the use of a confidentiality agreement, or the limited production of pertinent parts of the trust instrument(s) (sufficient to show the nature and extent of the trust interest). And, while beyond the scope of this article, a trustee may have the ability to intervene in the divorce action in order to oppose discovery.

This extract from the article 'Trusts and trial: navigating the crossroads of divorce', by Steven Malech and Miranda Fisher, is taken from the 37th issue of *The International Family Offices Journal*, published by Globe Law and Business.

www.globelawandbusiness.com/journals/the-international-family-offices-journal.



The International Family Offices Journal introduction offer

Subscribe today and receive a 20% discount.

Email 'The International Family Office Journal introduction offer' to jenny@globelawandbusiness.com



STEP
ADVISING FAMILIES ACROSS GENERATIONS

