

The International Family Offices Journal

Editor: Barbara R Hauser

Editorial

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Thomas J Handler

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Julia Booth and Kirit Javali

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Welcome to the March 2021 issue of The International Family Offices Journal

Barbara R Hauser, Editor-in-Chief

Again, continuing thanks for all the positive feedback on our Journal. Remember this is for the entire family office community – we solicit contributions and comments! As the word continues to spread, we enjoy receiving offers to write for us. We are already starting to fill the June 2021 issue.

The focus of the Journal

We feature articles from leading experts in the field, on a range of topics including the variety of family office models and structures, governance, investment approaches, succession planning, charity projects, family communication and consensus, and next generation issues among others. A key feature of the Journal is its international approach. We value our independence and our commitment to offering content without any conflicts of interest.

In addition to heavyweight substantive articles, we regularly feature in-depth country reports, profiles of family offices, interviews with industry leaders, a luxury corner, technology tips, book or film reviews, relevant news alerts from the Society of Trust and Estate Practitioners (STEP), and reflections by those who have grown up with wealth or advise those who have done so and what it has meant to them or their clients.

In this issue we are proud to include another fascinating variety of in-depth articles. We hope you enjoy them! This year, yet another with the pandemic, is already proving difficult for so many – we are hoping for brighter times ahead.

We begin with some intriguing predictions for the future of family offices by Tom Handler of the Handler Thayer law firm in Chicago, Illinois. Tom predicts that family offices will continue to restructure and reorganise – see our included articles on this very issue. See also his additional predictions.

We are very pleased to present another Country Report by Julia Booth and Kirit Javali of the University of Sydney, Australia, on the intriguing topic of the Hindu undivided family. Their comprehensive detailed article explains the many unusual and beneficial aspects of this tradition.

Next we have a practical article by Guillermo Barandalla of the INJAT private investment office

in Burgos and Bilbao, Spain, describing the process followed for a Spanish new family office. The focus of the project was to establish a robust and reliable investment function. The process they followed should be helpful to a number of family offices.

“The role of elders” is based on continuing reflections by James E (Jay) Hughes of Aspen Colorado about the role of elders in family governance. The first part, identifying elders, was in the June 2019 issue. Here, in his inimitable, thoughtful style he proposes that the elders can play substantial roles – as mediators, as trustees, as ‘elders’ in a family. We thank Jay for this thoughtful addition to the literature.

The next article, by Iraj Ispahani, CEO of Ispahani Advisory, London and Dr Carl Sjöström, Stockholm, Sweden, highlights the necessity for single family offices in the 21st century to “remain fit for purpose”. Their advice ties in with the opening predictions in this issue by Tom Handler.

Dr Alon Kaplan and Meytal Liberman of Tel Aviv, Israel share some of their extensive knowledge on the use of trusts in Israel. They offer a variety of planning tools. As they note: “In the past 10 years, there has been a positive development in the use of trusts under Israeli law, by both Israeli and foreign residents”. They draw from some of Alon’s insights in his book, *Trusts in Israel*. In our opinion there is no more knowledgeable lawyer on this subject.

With a focus on family offices, Peter Lorange, of the Lorange Network Investment in Zurich, Switzerland, addresses the dilemma of how small companies – such as a family office – can achieve good strategy formulation without the same resource base as that which larger corporations might have. He offers a step-by-step process to follow, which is “a speedier, more ‘democratic’ process, where most/all relevant family members might be participating”.

Dr Alexander Bove of Boston, Massachusetts focuses on an intriguing role of the trust protector, “the new bodyguard for the family office”. A recognised expert on the role of protectors (and the author of the book *Trust Protectors – a practice manual*), Alexander reviews the history of protectors, and adds the use

of a protector on an as-needed basis, known as a 'springing protector'. Then if a problem does arise, "the trustee, instead of preparing for court action, can simply call upon the trust bodyguard to deal quickly and privately with the issue".

Christian Stewart, of Family Legacy Asia, based in Hong Kong, contributes a comprehensive study of family meetings and facilitators. Based on his many years of working with families, Christian gives extensive examples of why family meetings are the cornerstone of good family governance. Critical to successful family meetings is the role of a skilled facilitator. Again, Christian offers numerous practical examples of the characteristics of an effective facilitator. His comprehensive report includes a very helpful checklist. We thank Christian for his extensive report.

For a visit to the art world and our Luxury Corner, we have another entertaining piece by our frequent contributor and art consultant, Ronald Varney of

New York. This time the intriguing title is "Nakashima living rooms – the revenge of brown wood".

In our Book Review, Dennis Jaffe, San Francisco, California, reviews the new innovative book on family philanthropy, the *Family Philanthropy Navigator: The Inspirational Guide for Philanthropic Families on their Giving Journey*. The authors, Peter Vogel, Etienne Eichenberger and Malgorata Kurak, of IMD, Lausanne, Switzerland engage family members on an active level. Jaffe comments: "The book is not intended simply to be read, it is to be used. The pages provoke you and ask you to then reach out to family and community and become an active learner."

Lastly, we continue to express our gratitude to STEP for their list of news alerts.

We thank all the wonderful contributors and hope that our readers find value, comfort and inspiration during these unusual times!

Barbara Hauser

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Trusts in Israel

Alon Kaplan and Meytal Liberman

Israel has long been a home for many international families who have found a sense of belonging, as well as business opportunities, in the country. It is well known as the start-up nation as it attracts large companies such as Intel, Google, Apple and Facebook. These sentiments and business opportunities make Israel a preferable investment jurisdiction, mainly in private equity, high-tech, technology and real estate areas.

International families in the modern era of globalisation and movement of people and assets require adequate planning for the holding of assets, investments, cross-generational transfer of assets, cross-border succession issues and similar areas.

Trusts under Israeli law

Trusts remain a legitimate planning option for various international families and cross-border issues in Israel. Israel's Trust Law (1979) governs the creation of a trust similar to common law trusts, which are increasingly popular among non-residents.

The first trust law was legislated in 1923 by the British Mandate (1922–1948) relating to public charities and was based on the common law trust. Private trusts were utilised by Zionist organisations and Jewish families who immigrated to Israel from Europe, the United States, Canada and South Africa, as these were jurisdictions in which individuals and professionals were familiar with the trust regime. Following the establishment of the state of Israel in 1948, court precedents were established in the areas of inheritance, gifts and trusts.

The Trust Law featured several innovations that created interesting practical possibilities: it permitted the creation of trusts without the settlor transferring official legal title of the assets to the trustee; it set no limit for the duration of trusts; and it permitted non-charitable purpose trusts.

Israeli practitioners sometimes chose to create trusts for their clients under foreign trust regimes with such trusts being recognised in Israel.

Trusts governed by the Trust Law may be settled by contract or by deed. Those settled by contract are governed by an agreement that does not require a formal written document (although proving the terms of the trust may be difficult where there is no written agreement). Contractual trusts do not permit generational transfer of assets upon the settlor's demise unless certain requirements set out in the Succession Law and Gift Law are properly satisfied, which effectively cause the settlor to irrevocably transfer the control and ownership over the assets to the trustee during his or her lifetime.

Trusts created by deed, known as '*hekdes*' under the Trust Law, require a deed signed before an Israeli notary. The trust is established upon the trustee obtaining control of the trust assets. The trust, upon settlement and management in accordance with the legal requirements, removes the assets from the settlor's estate, therefore probate or inheritance proceedings are not required upon the settlor's demise.

Testamentary trusts may be settled within an individual's last will and testament. Such trusts must be in writing, executed in accordance with the legal formalities required by the Succession Law, and are valid upon the issuance of a probate court order by an Israeli court.

A valid last will and testament can be made in one of the following forms: a handwritten will; a will signed in the presence of witnesses; a will in the presence of an authority, while the definition of 'authority' includes a court judge and a notary. In certain circumstances, a deathbed will is also recognised as a manner to create a valid last will and testament.

The legal entity of the trust and the underlying company

The *hekdes* is not recognised as a legal entity,¹ therefore the common practice of trustees is to hold

International families in the modern era of globalisation and movement of people and assets require adequate planning for the holding of assets, investments, cross-generational transfer of assets, cross-border succession issues and similar areas.

The real estate market in Israel is in great demand by both Israeli and foreign investors.

the assets of a *hekdesh* via an underlying company incorporated in accordance with the provisions of the Income Tax Ordinance,² thereby creating a designated legal entity to hold the *hekdesh* assets on behalf of the trustee.

According to the Ordinance, such an underlying company is defined as a company that holds trust assets for the trustee, whether directly or indirectly in accordance with the terms set out below:

- It is incorporated solely for the purpose of holding the trust assets.
- Notice of the incorporation of the underlying company is to be provided to the tax authority within 90 days of the underlying company's incorporation where it is an underlying company of the following trusts: (i) an Israeli resident trust; (ii) an Israeli resident beneficiary trust; (iii) a testamentary trust of which an Israeli resident is a beneficiary; and (iv) any trust in which the trust assets are in Israel.
- The trustee holds all of the underlying company's shares, directly or indirectly; the term 'indirect holding' is only a holding through another company which is one that meets the above provisions and all of the shares are held by the trustee.

Trusts and estate planning

Section 8(b) of the Succession Law provides that a gift granted by a donor during the donor's lifetime, when such gift is to be effectively provided to the donee subsequent to the donor's demise, is null and void, unless such gift was included within a valid will.

In the case of *Doe*,³ the Court held that the purpose of the deceased was to set up an arrangement of payments to be executed upon his demise which has not been properly set out in a valid will. Therefore it is not in line with Section 8(b) of the Succession Law, which requires that such arrangements be set up by a will. The court continued and held that in order for a trust to prevail over Section 8(b) mentioned above, the creation of such trust should be done in accordance with Section 17 of the Trust Law.

It therefore follows that in order to use a trust as an effective instrument for estate planning under Israeli law, the trust must be set up properly under a contract with the trustee or as a *hekdesh* under Section 17 of the Trust Law.

The use of real estate trust for investments and holding of property in Israel

Real estate trusts (RETs) have been used in Israel for many years and for various purposes, including legitimate tax planning, asset protection and commercial transactions. RET is a legal structure under which real estate is purchased by a trustee, or is transferred to a trustee, and the trustee acts as a nominee or bare trustee for an identifiable beneficiary. Israeli law, namely the Real Property Taxation Law and the Trust Law, provide the legal structure for such an RET. These laws allow the registration of the trustee as the legal owner of the real estate while the beneficiary of the real estate is considered as the real owner, similar to a beneficiary of a bare trust in the common law.

Under the Real Property Taxation Law, two main taxes are imposed upon a sale of real estate: a capital gains tax on the seller, and a purchase tax on the purchaser. The capital gains tax is calculated in accordance with the increase in the value of the property since its purchase, the time period during which the seller owned the property, and the existence of other real properties owned by the seller. The purchase tax represents a certain percentage of the purchase price. This percentage is set in accordance with other real properties owned by the purchaser.

The real estate market in Israel is in great demand by both Israeli and foreign investors. Some investors choose to hold properties they purchase in the name of a trustee. This structure may be found particularly useful and efficient for non-Israeli families that decide to invest in real estate in Israel or have a second home in Israel.

Conclusion

In the past 10 years, there has been a positive development in the use of trusts under Israeli law, by both Israeli and foreign residents. Immigration to Israel over the years has brought with it a diverse population from various countries in the world that requires the special services of trusts, estate and succession planning. These services require expert advice relating to international taxation aspects.

Recent developments in the field of anti-money laundering, including exchange of information, the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS), require

professionals to pay special attention to details when providing such services.

The matters discussed in this article present a bird's eye view of the issues that should be considered when engaging in trusts, estate and succession planning in

Israel. It is recommended to broaden one's knowledge more about the subject through professional literature, such as *Trusts in Prime Jurisdictions* and *Trusts and Estate Planning in Israel*. It is also highly recommended to consult with experts in the field.

Dr Alon Kaplan, LLM (Jerusalem), PhD (Zurich), TEP, practises law in Tel Aviv and specialises in trusts and estates. He is the founder of STEP Israel in 1998 and is currently its President. He is also an academician of the International Academy of Estate and Trust Law and a member of the American College of Trust and Estate Counsel. Alon also advised the Israeli Tax Authority on trust legislation. He is the general editor of Trusts in Prime Jurisdictions (5th edition, 2019), the Israel Country Correspondent for Oxford Journals' Trusts and Trustees, and author of Trusts in Israel: Development and Current Practice (Helbing Lichtenhahn Verlag, 2015) and Trusts and Estate Planning in Israel (Juris Publishing, 2016). Alon may be contacted at: alon@alonkaplan-law.com.

Meytal Liberman, LLB (Bar-Ilan), LLM (Tel Aviv), TEP, was admitted to the Israel Bar in 2013. Meytal has been a member of the Society of Trusts and Estates Practitioners (STEP) since 2015, after she had completed two years of studies and earned a Diploma in International Trust Management. Meytal is the general editor of and contributor to Trust in Israel: Theory and Practice by Alon Kaplan, which was published in Hebrew in 2017, and a contributor to Trusts in Prime Jurisdictions (5th edition, 2019). She has also authored articles in publications such as Trusts & Trustees and STEP Journal. Meytal may be contacted at: meytal@mliberman-law.com.

- 1 PCA 46/94 Zacks-Abramov v Land Registry Officer 50(2) PD 202 [1996] (Isr).
- 2 Income Tax Ordinance (New Version), 5721-1961, 6 DMI 120 (1961) (Isr).

- 3 File no 7033/15 Supreme Court, Doe v Doe (1 September 2016) Nevo Legal Database (by subscription) (Isr).

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