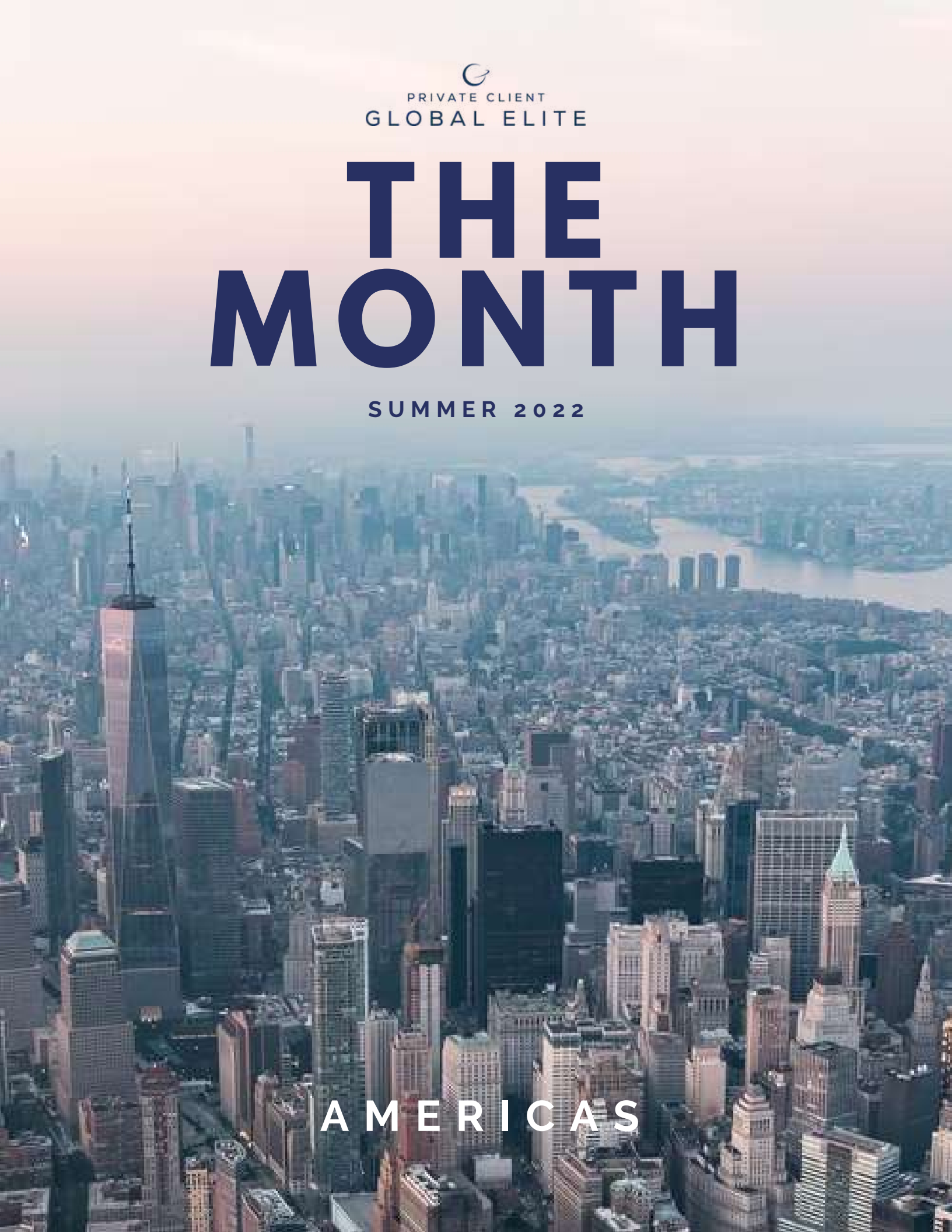
PRIVATE CLIENT
GLOBAL ELITE

# THE MONTH

SUMMER 2022



## AMERICAS

**The Month is a monthly magazine with key takeaways and content driven by our Private Client Global Elite community.**

We welcome ideas and contributions from members of our Global Elite Membership group. If you are interested to contribute please contact **Francesca Ffiske** (fffiske@alm.com)

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# CONTENTS

# NOTE FROM THE EDITOR

We hosted our first Bermuda Exchange this summer, quickly followed by our Private Client Forum Americas in Mexico. As such, we had Americas on the mind, and decided to make this summer edition of The Month focus on them.

We begin in Latin America, first in Colombia with Sergio Michelsen's **Uncertain times in Latin America; Now what?** before moving to Panama with David Mizrachi Fidanque who tells us more about **Bar-Guardians at the Gates: Compliance Roles of Resident Agents in Panama.**

We then move into North America, by way of Florida where Private Client Global Elite interviewed Evelyn Sheehan in an **In The Spotlight Interview** to learn more about her and her practice at Kobre & Kim.

Pedro Fernandez and Alvaro Checa of Kinship also give us a brief European view of the move from LatAm to European countries like Spain.

Scott Weaver and Paul Hunter give us fascinating insight into **Dynamic Governance Structures for International Families: A US Perspective,** which is particularly interesting as it comes from non-legal entity Crestbridge.

Next, we dip even further north into Canada with Margaret O'Sullivan who concisely outlines **Solving the Multijurisdictional Jigsaw Puzzle: Which Law Applies?**

Jay Rosenbaum then shares more about himself and his practice at Nixon Peabody with us in another **In the Spotlight Interview** and puts any child who had a normal summer holiday to shame with his story about why he wanted to become a lawyer.

Last but certainly not least, Darrell King of IQ-EQ shares his perspective on **Family offices are at the precipice of change. Are they ready?**

We hope you enjoy this edition wherever you are (hopefully somewhere by water with a large glass of wine in hand).

See you in September.

**Francesca Ffiske,** Content Director, Private Client Global Elite

# 2022

**3-4 October, Château Saint-Martin, Nice**
**Private Client Exchange France**
Chaired by Beatrice Puoti (Burges Salmon) and Jérôme Barré (Barré e Associés)

**7-8 November, Capella, Sentosa**
**Private Client Exchange Asia**
Chaired by Nicholas Jacob (Forsters) and Vikna Rajah QC (Rajah & Tann Singapore)

**17-19 November, Villa d'Este, Lake Como**
**International Private Client Forum**
Chaired by Basil Zirinis (Sullivan & Cromwell) and Clare Maurice (Maurice Turnor Gardner)

**30 November - 2 December, La Mamounia, Marrakech**
**Trusts & Estates Litigation Forum. International**
Chaired by Tina Wüstemann (Bär & Karrer), Dakis Hagen QC (Serle Court) and Nicholas Holland (McDermott Will & Emery)

**26 January 2023, London**
**Private Client Global Elite Celebratory Dinner**

**12-14 February, Banyan Tree Mayakoba, Mexico**
**Private Client Forum Americas**

**23-24 February 2023, Switzerland**
**Private Client Exchange Switzerland**
Chaired by Tina Wüstemann (Bär & Karrer) and Werner Jahnel (LALIVE)

**9 March 2023, London**
**International Women's Day Luncheon**

**The full Private Client Global Elite 2023 calendar will be in launched in September.**

# PRIVATE CLIENT FORUM AMERICAS 2023

## REGISTRATION NOW OPEN ONLINE

OUR PRIVATE CLIENT FORUM AMERICAS WILL RETURN TO BANYAN TREE ON 12-14 FEBRUARY 2023

**"Overall, one of the best conferences for content and quality that I have attended. "**

**"I can wholeheartedly say that the forum has been one of the highlights of my professional career to date and it will be an experience that I will cherish for years to come."**

# UNCERTAIN TIMES IN LATIN AMERICA; NOW WHAT?

**Sergio Michelsen, Brigard Urrutia, Colombia**

War, market volatility, currency devaluation, inflation, economic recession and change in government are circumstances that all countries are currently facing, which may be a huge setback for global recovery after a two-year pandemic. These are the times when families across the globe choose to diversify their risks in order to protect their businesses and personal assets. This is particularly true in Latin America, where the everchanging circumstances are normal.

The concept of risk diversification is not new in Latin America and many families and individuals have traditionally diversified risk by investing in other countries throughout the region, and saving some money at the financial centers for a "rainy day".

However, Latin American families are now realizing that if they truly want to diversify risk, they must look seriously beyond the region; after all, our countries are facing very similar political and economic risks which may take a toll on their businesses and estates.

In light of the above, as a first step, we are seeing a new trend whereby families are obtaining multiple citizenships, migratory permits, and tax residencies, particularly in North America and Europe. Having several passports in friendly jurisdictions is viewed as an insurance without necessarily having to sacrifice, at least for the time being, their current lifestyle and domicile.

A second passport is particularly useful since migratory barriers and visa requirements imposed on Latin American citizens are elements that could impede or delay families' risk diversification in other countries, sectors and currencies. There are several limits imposed on investments, tax advantages and migration possibilities, which are mitigated through the obtention of European and/or American citizenships, as the tendencies evidence. Obtention of "stronger" passports allow families to access markets that otherwise could have been limited, be able to migrate and re-domicile (if needed) and have less requirements for international travel.

As a second step, once the families obtain additional strategic citizenships, they move on to seek to protect their investments using Bilateral Investment Treaties (BIT). BITs are instruments through which host states grant certain degree of protection to foreign investors that undertake investment projects in their economies. As mentioned, the obtention of another citizenship must be accompanied with restructuring methods and the fulfillment of other requirements for investors to be able to invoke them if any risk is materialized. However, they are certainly risk-mitigating alternatives that Latin American families are interested in and turning to with the purpose of lowering their businesses and personal assets' exposure.

As a third step, some families look

at changing their tax residency from their home country to mitigate the adverse effect of taxes which could be deemed to be confiscatory.

As seen in the 1990s, the general response to crisis adopted by Latin American families has been migration, mainly to the United States and Europe. Back then, Latin America faced one of its history's most significant and rapid diasporas due to the crisis and internal conflicts that the region was going through. However, this time around it has been different. Latin American families have been maintaining their investments in their home countries as well as abroad, while managing to obtain other citizenships, migratory permits and/or tax residencies which allow them to invest in a more robust way than what was previously done. These alternatives allow families to continue living and running their businesses in their home countries while having a plan B with certain benefits, not limited to the abovementioned, that may be used in case of risk materialization.

The current conjuncture of the worldwide situation calls for nothing less than risk-mitigating measures. As Abraham Maslow once said, human beings are oriented towards the pursuit of goals and objectives for the satisfaction of their needs, and in the current context, risk diversification is a primary need. ■

# **BAR-GUARDIANS AT THE GATES:** COMPLIANCE ROLES OF RESIDENT AGENTS IN PANAMA

**David M. Mizrachi Fidanque,** MDU Legal, Panama

Panamanian corporations and other legal entities are no longer the fortresses of confidentiality they once were. This has been the result of progressive changes in the country's compliance and anti-money laundering regime. Rather than embark on a detailed inventory of laws and regulations, I will focus on more practical aspects of Panama's new compliance rules and how they affect the legal profession.

Ever since their inception in 1927, Panamanian corporations (or "companies") where required to have a local resident agent. At the time, such companies were not subject to many other requirements except those contained in the Corporations Law and the payment of a yearly corporate or franchise tax. The role of the resident agent was not well defined, and courts still struggle in determining basic issues such as whether they can accept service of process on behalf of the companies they represent. Eventually it became mandatory that all resident agents be lawyers or law firms.

To combat money laundering and other crimes, Panama enhanced the criminal sanctions against those engaged in such illegal activities, regardless of the legal structure involved. Accordingly, legal entities may be prosecuted virtually for any crime and Law Enforcement and prosecutors have broad discretion regarding their investigation of legal entities, including the ability to "pierce the corporate veil", conduct searches and seizures of corporate records, prosecute agents and generally "look through" any corporate artifice. However, given their limited resources, and the more punitive nature of their functions, it became necessary to focus on the deterrent function which could be provided by other private and public actors, by increasing the level of compliance related regulations.

About three decades ago, resident agents became the "gatekeepers" for the authorities and were required by law to "know their client." In that sense,

Panamanian companies were no longer "anonymous", although their official designation was, and still is, that of "Anonymous Partnerships." Since the resident agent was also a lawyer, the issue arose as to whether divulging company data would be a breach of attorney client confidentiality. That conundrum still awaits a final resolution, although resident agent have certain "fair harbor" protections under the existing reporting laws.

The last two decades witnessed an increase regulatory push towards transparency, both at the internal corporate governance and legal practice levels. On the corporate governance side, bearer shares were all but eliminated, requiring that corporations issuing them adhere to a strict custodial regime and stripping non-complying bearer shares of their corporate rights effective in 2015. Therefore, unless a bearer share certificate is in official custody, the bearer cannot assert its rights as a shareholder. Recently, registered agents became designated by law as an obligated non-financial subject. Thus, resident agents (all of whom must be lawyers) became the subject of very strict regulation by the Superintendence of Non-Financial Subjects ("SSNF" or Superintendence), in addition to their professional regulation by Panama's Supreme Court. This governmental regulator is entrusted with advancing the government's anti-money laundering policy, specifically focusing on the misuse of Panamanian legal entities.

Lawyers acting as resident agents are now required to inform the authorities of suspicious activities, keep a compliance record of each entity, have a clearly stated compliance policy, maintain an updated record of final beneficiaries, submit to on-site and remote audits and many other requirements which until recently were only the purview of financial institutions and other financial intermediaries.

Among the many regulatory requirements for attorneys acting as resident agents is now the requirement to keep copies of the accounting records of many of the companies under their care This is subject to a limited number of exceptions, yet most of the so called "offshore companies" are required to provide its resident agent with that information certified by a public accountant. This will obviously make Panamanian companies more transparent but also more expensive to incorporate and maintain, so the measure will affect the competitiveness of Panama as an offshore incorporation jurisdiction. The new regulations have prompted many resident agents to resign from non-compliant companies.

Panamanian tax laws and regulations provide for very strict sanctions to non-compliant companies. If a company fails to re-appoint a resident agent 90 days following the resignation of an incumbent resident agent, then the company is placed on suspended status, which means it can not undertake many corporate actions, except defending itself in legal proceedings, reappointing a resident agent and otherwise getting back in full compliance, as no law firm may act as a resident agent unless the company is compliant.

The next set of company sanctions are more severe, including provisionally dissolved (struck-off) status and eventual definitive administrative dissolution. As we can see, the administrative sanctions for non-compliant entities are extreme and companies holding assets must be aware of the consequences of non-compliance.

Similar sanctions apply in cases to companies that are not tax compliant, yet it is easier for such companies to become compliant, assuming there are no other governance issues remaining. To enhance and clarify the corporate sanctions regime, the Ministry of Finance recently presented a bill to the Legislature to consider further clarifying such sanctions enacted into the Tax Code to strengthen "international fiscal transparency."

In addition to the company sanctions, resident agents who fail in their function as auxiliaries to the authorities are subject to very stiff fines which are being currently enforced by the SSNF. The onset of the new regulatory rules also raises questions about attorney client confidentiality which are very hard to answer. On the one hand resident agents are required to aid the authorities in ensuring compliance and transparency, yet on the other hand they are required to maintain strict client confidentiality. It is a very delicate balance of equities which must be considered and will probably give rise to many legal dilemmas. ■

## IN THE SPOTLIGHT: EVELYN SHEEHAN
KOBRE & KIM
UNITED STATES

**Why did you become a lawyer?**
As someone who grew up in Latin America, I always loved the intense implications that the law could have on people's lives. I saw individual liberties go up in smoke. People were literally disappearing with absolutely impunity being the usual course. That's what lead me to political science in college and what lead me to law school. Both my time in public service and my current private practice have had the rule of law at their core. Society's constant balance between just enforcement of the law and private citizens' rights to liberty and property.

**What are your proudest professional moments?**
My proudest professional moments are when I'm in a room with brilliant lawyers and I help bring value to a complex problem. I love those moments, especially because most of my clients are facing existential problems that affect everything they've built over a lifetime, including their liberty, assets, and reputation. And their problems often affect the people they love. Finding potential solutions or finding a way to mitigate damage during such stressful times brings me great satisfaction.

**What was your worst day at work?**
My worst day in private practice was after a prosecutor had callously (and unapologetically) dehumanized my client and had lost sight of his job to seek Justice (capital J). I still remember the deep disappointment I felt at my former colleague. It was combined with the realization of the devastating effect his flippant decision would have not only on my client but also his family (including young disabled children). It's hard not to take that stress home, but I take deep satisfaction from finding a way to find the best result possible for my clients and their loved ones during what is often the worst period of their lives.

**Who has had a big influence in your career? Did you have a mentor who supported you in your early career? What was the most valuable thing they taught you?**

I've been lucky enough to find mentors at a number of pivotal moments in my career. Starting with my college mentor who sponsored my honors thesis, to a fellow Yale Law grad who brought me on to his team at a critical time and encouraged me to try public service, to a DOJ colleague who cheerily mentored and promoted me and continues to support my career even after leaving public service. Some of it is luck, some of it is their ability to spot unapologetically nerdy intellectual engagement. I'm deeply grateful to each of them and have made it a point to pay it forward in case I can have a fraction of that effect on younger lawyers.

**What advice would you give a trainee?**
A career is a marathon, not a sprint. There are no shortcuts to good work and deep expertise, and there is no going back if you hurt your reputation with unprofessional behavior. I've been humbled by the fact that a lot of my work is referred by people who were opposing counsel in prior matters. I would also encourage new attorneys to find good mentors (while keeping in mind that good mentors do not have to have similar backgrounds to yours) and to build a good support network because even if you love what you do, this career path is tough and stressful.

**What do you think will be the most significant trend in your practice over the next 12 months?**
I've been saying this for years now, but there is a

steady drumbeat of enforcement focus on professional gatekeepers who allegedly facilitate money laundering or sanctions evasion. This is happening more and more in the United States, Latin America and EMEA. I've also been seeing a concerning amount of erosion of due process when it comes to the freezing or seizure of assets of unpopular groups.

**What is your top box-set?**
Peaky Blinders was one of my favorites. I tend to revisit old series that I enjoyed, so I also circled back to The Wire.

**What do you do when you're not working? Any hobbies?**
I burn off stress with reading, CrossFit, yoga and modern dance. It (arguably) keeps me balanced and ready to take on my intense life. A book on the beach after a good workout is amazing.

**What would you do if you weren't a lawyer?**
I'd find a way to combine my love of food, wellness, and travel.

**What is the book you'd recommend to everyone?**
One book?! Impossible.

**Where can you see yourself in twenty years?**
In twenty years, I will find a way to combine my love of food, wellness and travel. I'd probably still find a way to still practice or consult.

**What song will never fail to get you on the dance floor?**
It's funny because I think and dream in English, but Latin music immediately gets me on the dance floor. ■

# FROM LATAM TO EUROPE

## An increasingly popular journey

**Pedro Jesus Fernandez and Alvaro Checa Rodriguez, Kinship Law, Spain**

If one has the right to move and settle in a country other than that where she is currently living in, then we should all accept that that person freely exercises her right without having to express to others her motives to do so.

Yet, when the move is caused by that person's desire to become subject to a more benign tax system, that quality being measured by her own free judgement, then there arises a suspicion of unfairness, as if that person was not being fair to her fellow citizens, to the community where she has made her wealth.

In this area of international and domestic law, however, the motives do not matter. Only the facts and circumstances. How these are factored into the problem of allocating taxing rights amongst the affected jurisdictions depends upon the laws applicable in each case, namely the departing and the welcoming jurisdictions' domestic laws including the effects of international treaties, notably a possible Double Tax Agreement ("DTA") between them.

In general, I'd even dare to say, as a rule, when there is a DTA, the departing country tends to be more relaxed and accepts the tax relocation to the extent that that person genuinely moves her place of living, even if she retains in the country a place for sporadic visits and a substantial amount of assets, including her main centre of economic activity, provided of course these can be managed remotely, either directly or through agents.

In the absence of a DTA though, those retained substantial assets and sporadic presence would typically cause the departing country to challenge and potentially deny the tax relocation, making it likely for that person to become dual tax resident, with the related potential double taxation costs and issues.

Some wealthy individuals now living in certain countries in South America are reacting to current and prospective changes in their home tax systems by foot voting. Whilst many move to their northern powerful neighbor, an increasing number of them are considering options in European soil. If those tax changes are a significant reason for the move, one cannot be surprised that the tax systems of the European alternatives play a relevant role in choosing where to land.

In this dynamic, some European countries are better poised than others to win these new permanent guests. Besides the two countries who have traditionally welcomed foreign wealthy individuals with preferential limited taxation regimes -the UK and Switzerland, with their well-known resident non-dom's and forfait systems- others have decisively joined the club, notably Italy and Portugal.

Against these lies the case of Spain, whose special limited taxation regime is of no true avail for wealthy individuals who live off their capital and controlled businesses, but which owing to historical and cultural reasons, chief amongst which there is the shared language, stands out as one of the preferred move-to choices.

Beyond those cultural factors, there is the tax point that Spain has more DTAs signed with Latam countries than any of its European peers and, where any of the aforementioned group does have a DTA, one cannot neglect the risk that entitlement to treaty benefits, including the enhanced protection against dual residency, is denied by their home countries' s authorities precisely on the back of the application of those limited taxation regimes.

The backbone of those preferential regimes is that they leave most foreign sourced income exempt upon certain circumstances, i.e. they are de facto territorial regimes. By being subject to these, individuals and families can ignore certain rules that are designed to prevent residents to store wealth abroad, under controlled entity structures, in low tax jurisdictions.

When they move to a country without such an available preferential regime, like Spain, careful planning is required, where at all possible, to anticipate the effects of such regulations which include inter alia tax attribution rules, mandatory mark-to-market of certain assets or gift characterization, taxed at very high rates, of distributions made by certain unowned entities, such as private-interest foundations. Wealth and inheritance taxes are also a considerable variable in the equation which require careful attention, and which strongly impact asset and income structuring.

How sensible is it for a country to grant preferential treatment to foreign capital and business owners who come to live within its boundaries, at least for some extended time period? It is a strategy that certainly adds to their tax coffers as they would otherwise attract far fewer guests but which, as critics warn, may bring a perceived sense of inequality and unfairness with potential negative side effects on the tax compliance behavior of traditional residents.

These policies need to be properly explained in detail, justification must be crafted and shared so that they are bought in. Many of us still marvel at how the Swiss people voted in favor of their preferential regime, mostly unavailable to them, in a referendum! Certainly, the case can be made for that positive discrimination based on certain factors such as, only to list a few, (i) null or low participation

in the political sphere of the host country, especially as they cannot vote, (ii) strong likelihood that they return to their home countries for the final part of their life, where the demand for public health support takes place, or (iii) positive economic effects, other than tax, derived from their presence in the welcoming country. ■

# DYNAMIC GOVERNANCE STRUCTURES FOR INTERNATIONAL FAMILIES: A US PERSPECTIVE

**Scott Weaver, General Counsel and Chief Fiduciary Officer at Willow Street, and Paul Hunter, Director of Crestbridge Fiduciary**

In the wake of the pandemic and in response to the accelerating rate of change to global tax, legal, and regulatory compliance frameworks, families of wealth and their advisors are increasingly focused on questions of governance and compliance.

Static wealth transfer planning is a thing of the past – the focus now for families and their advisors is on engaging in continuous oversight and review of plans, strategies, and implementation to ensure protection against risks presented by wealth transfer structures.

In the current environment, there's no doubt that a dynamic, robust, efficient, and respected governance structure is necessary to identify and manage risk. That sort of approach begins with understanding the challenges of implementing plans and administering entities to avoid inefficient or burdensome administration, or worse, unanticipated tax or legal consequences. There are a number of steps families of wealth can take in adopting a proactive approach to family governance:

- Adopting and adhering to a family constitution or charter
- Educating rising generations around family history, values, and wealth transfer structures
- Establishing long-term, high-trust relationships with sophisticated advisors; and
- Prioritizing family culture – creating a stable set of systems and processes that are supported and respected by family members.

In tandem, proactive families adopt practices with respect to wealth transfer plans, such as:

- Prioritizing optionality when designing or updating wealth transfer plans
- Appropriately introducing wealth transfer plans and strategies to rising leaders
- Planning proactively for succession of entity management and operations
- Identifying fiduciary and management structures that align with the family's values and risk tolerance
- Emphasizing the importance of strictly complying with governing documents and applicable law; and
- Creating replicable and efficient processes for addressing inevitable changes to plans in response to the evolving tax, legal, and regulatory environment

**Solutions**

Families of wealth with a US touchpoint tend to rely primarily on three fiduciary solutions to address the evolving governance and compliance environment - institutional trustees, directed trusts, and private trust companies (PTCs).

Institutional trustees offer families of wealth the benefits of size – in-house expertise and consolidated i

mplementation – but specify the approach to risk management, compliance, and compensation policies.

For families that desire more flexibility, a directed trust whereby an individual or committee of family members or trusted advisers makes decisions regarding investments if often an attractive proposition. An experienced administrative trustee provides implementation and governance services. This structure provides more flexibility and often more efficient delivery of service compared to an institutional trustee but at the cost of shifting some of the fiduciary work, and therefore risk, to family members or trusted advisors.

Finally, families with a strong advisory network or family office may prefer a private trust company. By adding another layer of governance and compliance, however, PTCs create additional risks that must be properly managed. At the most basic, faithful adherence to operating documents, governance, and ensuring a culture of compliance are essential elements of effective PTC risk management.

Nevertheless, a properly administered PTC is a powerful tool in furtherance of dynamic governance by providing a structured forum for ongoing dialogue around family wealth transfer plans.

Separate to these specific structural options is the trend towards revisiting complexity surrounding jurisdictional exposure For many multinational families, the sheer volume of jurisdictions, entities, and reporting requirements can become overwhelming and costly. Consolidating to limit activity to jurisdictions with favorable, robust, and sustainable planning environments can be an appealing prospect.

**New era**

In this new era of dynamic governance, the delivery of advisory services in the cross-border context is a necessarily multidisciplinary and collaborative exercise. Skilled project management and implementation is critical to coordinating the implantation of a holistic strategy.

Entity governance should be informed by a family constitution or charter which articulates the values, goals, and priorities of the family and provides unity of purpose to the family and their advisors. Further, express statements of governance principals may increase the transparency as to where and how decisions are made and provide evidence of substance.

Finally, effective communication is vital. Clear channels of communication among family members, but also directly among advisors and service providers, is critical to ensuring the family achieves the best possible outcomes through strategic and proactive planning and careful implementation.

The indications are clear - families of wealth and their advisors face a future of ongoing change and increasing complexity in the global legal and regulatory framework. By embracing this fact and planning proactively with an emphasis on dynamic approaches to governance and compliance, families and their advisors will be well-prepared to navigate the future in what is an inherently multigenerational process. ■

# SOLVING THE MULTIJURISDICTIONAL JIGSAW PUZZLE: WHICH LAW APPLIES?

**Margaret O'Sullivan,** Founding Partner, O'Sullivan Estate Lawyers

Increasingly, people and their assets have connections to several jurisdictions, rather than just one as in times past. Over the course of a lifetime, many of us will leave a trail behind us of real estate, bank accounts, investment accounts, retirement savings plans and pensions, as well as beneficiaries and other ties spread out in many different places.

But what happens on death to determine which law will apply? The body of law called the "conflict of laws" creates rules to determine the applicable law to govern succession on death. The rules are complex, sometimes vague, and as well, vary significantly between common law jurisdictions, such as the Canadian provinces and territories (except Quebec), the United States, England and Wales, Australia and New Zealand, and civil law jurisdictions such as Quebec, France, Italy, Japan and most Latin America countries, and many more.

Common law countries resolve succession matters based on a two-pronged approach: a deceased person's "domicile", or the location of the asset, in legal terms called the "situs".

Domicile is an intriguing concept, and in short, it means where a person's permanent home is. Everyone must have a domicile, and we are each born with one by operation of law, which is called a "domicile of origin".

Your domicile of origin never changes, but it can be suspended by acquiring a "domicile of choice", for which two elements must be present: the acquisition of a residence in a new place, and the intention to remain permanently there. Determining intention requires a detailed examination of the facts, and there is no precise formula. So, you can see how this can lead to disputes later on if it is unclear whether a person has changed their domicile or not.
In the two-pronged approach that common law jurisdictions use, the other important concept is location of the asset or "situs". Real estate is straightforward – it is located where the land itself is.

For tangible property, like jewelry, furniture and vehicles, the general rule is that it is located where it is found.

For several other categories of assets, including intangible property, such as debts and corporate shares, the rules for situs are more complex.
Under common law rules, the applicable law to determine a succession matter will depend on whether the property is a "movable" or an "immovable". Immovables comprise land and interests in land, such as a lease or life estate. Movables comprise the rest of a deceased's estate, other than real estate, including intangible assets in most cases.

For most succession matters, if the property is a movable, wherever it may be located, its succession will be governed by the deceased's domicile. But if the asset is an immovable, succession will be governed by the place where it is located, or in estate terminology, situate.

For example, if a person dies without a will, who is entitled to their assets on an intestacy will depend on the application of possibly two rules: the deceased's domicile for their movable property and the law of the place where their immovable property is located for their immovable property.

An example based on an actual 2014 case, Vanston v. Scott, is helpful to understand how these rules may apply in practice.

The issue in dispute was which law should apply to determine succession to the deceased's movable property on death. The plaintiff spouse argued it was Saskatchewan, and the defendant's children took the position it was British Columbia.
The children wanted to challenge the will, as the

deceased left most of his estate to his second spouse and excluded the children of his first marriage. British Columbia has liberal legislation that can allow a court to vary the terms of a will, including where adult children have not been adequately provided for. The deceased was born in Alberta (his domicile of origin) and died in Kelowna, British Columbia. He practiced medicine in British Columbia for many years and then moved to Saskatchewan for work. He met his second wife soon after his move, who resided in British Columbia. After several years, she moved to Saskatchewan. The deceased lost his job, and spent several months looking for employment throughout Canada. Without locating a new job, he and his wife moved back to British Columbia, sold their condominium in Saskatchewan, placed furniture in storage and moved a large number of personal belongings to a short-term rental property in British Columbia, and registered their car in British Columbia. After arriving in British Columbia, the deceased and his spouse traveled internationally in search of employment, with a view to working outside of Canada. The deceased died soon after their return from his international job search.

The court held that the deceased had abandoned Saskatchewan as his domicile of choice upon leaving the province, but that although he had acquired a residence in British Columbia, he did not have an indefinite intention to live there. Although the deceased had not lived in Alberta for over 25 years, the court we expected—to the surprise of the parties—found his domicile of origin of Alberta had revived, and that he had abandoned his former domicile of choice (Saskatchewan), without yet acquiring a new one.

Civil law jurisdictions have different rules to determine the applicable law, often based on the nationality of the deceased. On August 17, 2015, the European Union passed the EU Succession Regulation which applies to all EU member states, except Denmark and Ireland, which opted out. In most cases, a deceased person's "last habitual residence" will determine which country's laws will apply. Again, this is a factual determination that can also certainly give rise to disputes.

When it comes to conflict of laws, and estates and deceased persons which cross borders or have

multijurisdictional connections, there is significant complexity and a lot of uncertainty. Solving the multijurisdictional jigsaw puzzle is no easy task, and as we see in the above case, can sometimes lead to surprising results. ■

# IN THE SPOTLIGHT: JAY ROSENBAUM
## NIXON PEABODY UNITED STATES

**Why did you become a lawyer?**
It's funny you should ask because my parents recently shared a letter written from summer camp by a 14 year old Jay Rosenbaum explaining that he had come to the decision to study law following his having read the novel As a Driven Leaf, by Milton Steinberg. That novel, according to one review I just found online, is set in Roman Palestine in the period following the destruction of the Second Temple, and deals with such lighthearted topics as the questions and events that may have led a pious man to apostasy, and "the interdependence of reason and faith". According to his letter, young Jay Rosenbaum also learned lessons about textual analysis and advocacy on behalf of noble causes, both of which seemed to weigh heavily in favor of a legal career.

What is left unanswered is the question of why I was not spending more time playing tennis or piloting a sailboat that summer. In any case, I set a course in the direction of law school, and here I am still practicing law these many years later.

**Who had the biggest influence on your career?**
I'm very lucky to have had a number of terrific mentors and friends in my career, but the one who stands out the most is, to this day, my partner Larry Cohen. Larry took me under his wing when I joined Palmer & Dodge as a lateral associate in 1996, and we have practiced together ever since.

Larry has provided me with what can only be described as career making and career changing support and guidance in multiple ways over the years. What is amazing is that Larry's practice hardly overlaps with mine these days; indeed, he does no cross border work at all. Yet I still attribute so much of my success to his guidance.

At the end of the day the most important lessons I have learned from Larry are not technical but instead in the personal and business realms, areas that are often ignored in law firm mentoring programs. Without Larry's guidance I do not think I could have found the strength and drive to travel as I do while still being a parent and husband; or the self confidence to network and seek business opportunities on a global scale; or the vision to execute on a cross border business plan under the umbrella of a (then) largely domestic enterprise. I will be forever grateful to him for all he has taught me, and for allowing me to find success in my own way rather than insisting that his is the only model. I can only hope that others will look back on their careers and decide I have been as generous with my time and talents.

**What was the most valuable thing your mentor taught you?**
The best advice I got early on was to the get out of the office and be involved in whatever interested me, and that by engaging with the world as a human being the world would engage with me as a professional. He was spot on.

**What advice would you give a trainee just starting out?**
Honestly, I would repeat the advice to be a complete person, and to be that person both in and out of the office. Any half decent actor can play the part of a lawyer. Only a genuine human being can earn the trust of his or her clients and colleagues.

**What are your proudest professional moments?**
I am proudest these days when I watch my younger colleagues being the spectacular lawyers, mentors

friends, parents, community leaders and just terrific people who they have become and who they are continuing to become. There is nothing like the feeling that you are surrounded by and the member of a terrific team, something I am privileged to experience every day. They are good people doing good work for our clients, impressing me day after day after day with their skill, savvy, judgment and good nature.

**What was your worst day at work?**
The day, during the Financial Crisis, that I was informed by the management of my prior firm that we would be downsizing. Holding that information as a young partner in the firm but not being able to communicate it as a friend to those who I knew would be impacted was horrible.

**What do you think will be the most significant trend in your firm's practice areas over the next 12 months?**
Ours is a big diversified firm. With so much economic change happening it is inevitable that there will be shift in activity levels among practice areas. What I do know having been through a couple down cycles is that I am glad to represent ultra high net worth families who seem to keep us all very busy regardless of the general economic trends.

**What is the most unusual or shocking request you've ever had from a client?**
A lovely but somewhat sad and lonely old lady who I looked after for a long time, and who had become accustomed for a variety of reasons to buying people's companionship and loyalty, instructed me to revise her will and put myself in as the sole beneficiary of her substantial estate. I told her that was unnecessary. When she insisted I told her she'd have to fire me and instruct another attorney to make the changes. The discussion never came up again.

**What was your top lockdown box set?**
It was a lot of Nirvana, the louder the better.
Oh, if you're asking about television, nothing was left unwatched. We finished Netflix.

**What do you do when you're not working?**
Exercise: running, HIIT workouts, tennis when my son will play with me, swimming in Cape Cod bay and hoping not to get eaten by sharks.
I'm very involved as a board member and Treasurer of a wonderful charity called JVS. It is the gold

standard in workforce development in Massachusetts, and probably one of the most innovative and effective organizations I know. What JVS does to improve the lives of so many, particularly in immigrant and refugee communities, makes me very proud.

And really just spending time with my family. Now that our kids are not living with us I take every opportunity I can to be with them.

**What would you do if you weren't a lawyer?**
Teach, without question. What's great is that leading a team gives me the opportunity to do this anyway.

**Where can you see yourself in fifteen years?**
I've still got a bunch of good years ahead of me in my practice, and I'm having a lot of fun. If I'm lucky, my days fifteen years from now will look a lot like they do today. If I'm really lucky the balance of my time will have shifted more toward time with my family, but only time will tell! ■

# FAMILY OFFICES ARE AT THE PRECIPICE OF CHANGE. ARE THEY READY?

**With the Great Generational Wealth Transfer on the horizon, as well as increased interest in ESG and crypto investments, wealthy families must reconsider how they utilize family offices and leverage technology to meet the changing needs of the families that they serve.**

**Darrell King, Director of Private Wealth for the Americas at IQ-EQ**

Since the Great Recession of 2007-2009, the number of ultra-high net worth (UHNW) individuals has skyrocketed, growing by a staggering 9% in 2021 alone. At the same time, we are on the cusp of an unprecedented intergenerational transfer of wealth, as over 70 million baby boomers prepare to pass an estimated $15 trillion in assets to the younger cohorts in the next 10 years, with over half that transfer in the US. Adding to the challenge of that wealth transfer: half of family offices in North America "are not prepared" for succession, according to the 2021 RBC /Campden North America Family Office Report.

Family offices work at the nexus of these events, established by UHNWs to manage and safeguard their exponentially growing wealth for future generations, and sensibly pass it to their heirs. Complicating the issues for family offices are the increasingly multinational and ESG-minded millennial generation, difficulty in finding fully capable technology to track, analyze and assess risk across asset classes and geographies (most families have long relied upon legacy systems coupled with manual processes), and tax structures that change with each new administration. Such complexities are also resulting in a convergence between private wealth requirements and traditionally institutional tools and practices, further necessitating a professional approach.

**Single-family office or multi-family office?**

Wealthy families facing an upcoming liquidation event and/or transfer of wealth to the next generation have difficult decisions to make: do they go it alone and build their own single-family office, join a multi-family office or take another approach?

While the single-family office approach provides complete and direct control, it also means the family is responsible to build systems, infrastructure, hire and manage people and find specific investment expertise and other resources to ensure proper and effective care and control of the family wealth. Or rather, do they pool assets with other wealthy families in a multi-family office, where they don't have to worry about day-to-day management, building systems and HR issues, but may have less investment choice and perhaps fewer resources to support wealth transfer.

Or should they take a hybrid approach, establishing a core single (virtual) family office team with certain functions outsourced: systems, reporting, fiduciary services to name a few. This approach is gaining popularity. Often, the quantum and the complexity of the family wealth will determine the approach that is best to take. Regardless, they will want to choose the option that provides the combination of outsourced and insourced resources that best suit their needs, including the critical factors

of tracking, analysis and reporting on assets in real time, and fiduciary structures to support the transfer of wealth to the next generation.

**How wealthy millennials are changing the landscape**

Adding geographical assets calls for an additional level of sophistication, since the NextGen cohort tend to relocate to foreign countries more often, forcing the family office to deal with not only the usual investment decision-making but also an array of complex international regulatory challenges. Further, millennials are famously more socially conscious than their parents and grandparents, with keen interest in ESG-compliant funds and socially responsible investing.

And there's more: family offices must not only be ESG savvy, they need to stay current with new technologies that could impact the family wealth, from digital currencies to the Metaverse.

Cryptocurrency and other blockchain products create complicated trust and liability questions: how you hold it, who has custody and who has the "key" to unlock those assets. New financial technologies present additional complications in tracking, analysis and reporting.

**Why technology is key for family offices to forge ahead**

Given the trends, family offices should refresh their thinking on the role of technology in their infrastructure. They can ready themselves for the Great Generational Wealth Transfer by seeking out a system that enables them to provide the most advanced and comprehensive reporting and risk management, an accurate view of asset values and transactions in real time, and capture of performance and returns at any instant. The globalization of family offices also means they will need standardized and centralized technology to provide fast and efficient reporting across different geographies.

Also, they should be considering fiduciary services technology. In this sense the "technology" is the jurisdictional and statutory advantages that one state offers versus another, or that one country offers versus another. A provider that has the experience of serving wealthy families and family offices from multiple jurisdictions is best able to support families as they move, invest and live in different parts of the world and prepare for their wealth transfer.

Wealth continues to grow – 27.5% for the UHNW community during the pandemic, according to UBS – and baby boomers continue to age, so the popularity and growth of the family office will not ebb soon. Family offices must determine the best configuration for themselves: outsource vs. insource, single family office vs. multi family office vs. virtual family office. They must ensure they understand and have the tools to make effective decisions about investments worldwide, both real and virtual. They must invest in robust tech for tracking and reporting and select fiduciary providers that can provide all important wealth transfer expertise, in addition to jurisdictional flexibility and choice.

The time is now to get in position to provide a smooth transition ahead of the greatest intergenerational transfer of wealth in history. ■

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