

The International Family Offices Journal

Editor: Barbara R Hauser

Editorial

Barbara R Hauser and Nicola Saccardo

The EU Unshell Proposal – possible impact on family governance structures

Constantijn Verhaeren and Rick van der Velden

The inheritance effect – guidance to avoid the unintended consequences of estate planning on future generations

Judy Lin Walsh and Steve Salley

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We both welcome you to the June 2022 issue of The International Family Offices Journal

Barbara R Hauser and Nicola Saccardo

The time has come to pass the Editorship on to a new outstanding star – Nicola Saccardo. Barbara will step down after six wonderful years and will be fondly included in our masthead as the Founding Editor.

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 great offers to write for us. We are already starting to fill the September 2022 issue.

The focus of the Journal

We continue to 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, relevant legal and tax changes 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 valuable 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!

In “The EU Unshell Proposal: possible impact on family governance structures”, Constantijn Verhaeren and Rick van der Velden, of the law firm Loyens & Loeff, provide timely comments on a very important proposal for an EU directive meant to prevent tax avoidance and evasion through the use of EU resident entities without adequate substance (the Unshell Proposal). To this purpose, the Unshell Proposal provides for reporting obligations and exchange of information. The Unshell Proposal is expected to enter into force from 1 January 2024. The authors set out examples of the material impact of the Unshell Proposal on family structures. It is therefore recommended that families and family offices start

assessing the impact of the Unshell Proposal in relation to their structures and take appropriate action well ahead of its entry into force.

In their article “The inheritance effect – guidance to avoid the unintended consequences of estate planning for future generations”, Judy Lin Walsh and Steve Salley analyse the impact that inheriting a substantial amount may have on the young generation. They provide guidance for the senior members of the families as well as for practitioners, stressing the importance of preparing for the transfer of inheritance and that, besides addressing the legal and tax aspects, the greatest care must be devoted also to dealing with the emotional and psychological aspects.

We are pleased to include a jurisdiction update from Bermuda, by Claire van Overdijk of the Carey Olsen law firm. She begins by noting that Bermuda continues to leverage its well-earned reputation as a leading trust and private client centre to firmly position itself as an ideal location to establish and/or operate a family office. She lists a number of factors that make Bermuda an excellent jurisdiction for a family office. One key advantage has been the well-established legal system. This in combination with Bermuda’s stability both politically and economically provides a high degree of confidence as to the predictability of decision making in the Bermuda courts. Bermuda also works to stay current with legal developments by competing jurisdictions. For example, in 2020 the 1989 Trustees Act was amended to modernise Bermuda’s so-called ‘firewall’ legislation, which aims to protect properly established and funded Bermuda law trusts. Firewall provisions are an important feature of trust law as they protect the trust assets from attacks based on orders of a foreign court under foreign law. A very current committee is working to draft a Family Office Act, so keep an eye on Bermuda.

In “Protecting family reputation, privacy and security – war stories and lessons”, Tim Robinson, of the law firm Schillings, uses his military front-line and political experience in problem-solving to advise families and provide a cocktail of solutions for family offices in how to avoid or manage a crisis that threatens reputation, privacy and security. Too often these risks are addressed only once a crisis happens, without investing enough in the prevention of the issues in the first place. The article provides a number

of helpful and practical recommendations to family offices, from the author's experience.

In "Listening to women of wealth – what their stories reveal about women, families and creating a legacy", Amy Hart Clyne, of the Pitcairn Family Office, shares findings from a number of personal interviews with wealthy women in Canada and the United States. She and Dennis Jaffe began with a few interviews which soon grew to book length – available as *Finding Her Voice and Creating a Legacy*. Some of the interviews are also available by video, on request. The women were glad to be interviewed and to tell their stories. The article concludes that by hearing their stories, "we learn about families that have been able to grow and innovate, at a time when resiliency and adaptation is necessary for every family enterprise. We hope that every family enterprise can learn from these stories, and even measure themselves against some of the yardsticks that the families in our study have proposed".

In "There is no 70% rule – improving outcome research in family wealth advising", James Grubman provides a critical analysis of the Williams and Preisser longstanding assertion of a 70% failure rate of wealth transfer from the first generation to the second, plus other outdated statistics and proverbs including "shirtsleeves to shirtsleeves in three generations". He sets out parameters that could guide research in the field, hoping that family wealth advising will continue to evolve and support the longevity of today's complex diverse families.

In "Crypto assets – what trustees and family offices need to know", Niklas JRM Schmidt, of the Austrian law firm, Wolf Theiss, contributes an enlightening summary of the many facets of crypto-currency issues of which trustees should be aware. He sets the stage succinctly: "There are younger beneficiaries who want investments to be made into crypto assets, an asset class which did not exist a decade ago, which has a low correlation with traditional assets, which is highly volatile and about which the beneficiaries are very enthusiastic. There are older trustees and board members who are administering a decades old structure, who have no idea what crypto is all about and who are therefore quite fearful of entering this brave new world."

As he notes, education is sorely needed. The purpose of his article is to give a very high-level introduction to crypto assets and how to hold them. On a personal note, I found this to be the clearest and most interesting explanation of crypto assets that I have ever seen. He clearly knows all the intricate details – he even founded a Crypto Academy, an educational initiative where he has trained more than 1000 lawyers – but is very good about distilling the points that trustees and family offices need to know. As he concludes: "Crypto assets are an exciting new asset class that trustees and family offices need to know about ... including the two most important

crypto assets, and how these should be custodied and what has to be taken into consideration when choosing a custodian.

Barbara Hauser provides an enlightening article entitled "The benefits of applying the rule of law in family governance". The piece is an abstract from her recent PhD thesis at the University of Zurich Law School. If a country benefits from the rule of law, a family must benefit too! Barbara elaborates on the meaning of the rule of law and concludes that the application of the rule of law will imply that all family members will accept to be bound by certain procedural rules and will be guided by three overriding principles: transparency, accountability and participation. She also provides examples of the successful application of the rule of law in family governance.

James E Hughes Jr and Vaughan Scott, in "Trustee versus trustee – a critical distinction in supporting good joint decision making", elaborate on the duties of trustees. They point out that a Trustee, with an upper case T, serves the greater good of families holistically, universally and unwaveringly and takes different roles such as serving on the board of directors of companies or being a responsible shareholder. They analyse each of the duties of trustees pointing out that, while the legislation may change from country to country, the general meaning of such duties is fairly universal.

We close this issue with "At least diamonds are forever – art and divorce", another charming set of stories from our special contributor Ron Varney, an art consultant based in New York. Ron notes that the grand auction houses depend on a natural trio for their consignments: death, debt and divorce. He includes some great stories, as usual, including a butler carrying out a theft of a painting at the divorcing wife's behest and placing her proceeds in envelopes on her breakfast tray.

Then there's the vengeful recent divorce – including a court-ordered auction of the art collected over some 56 years of marriage by New York real estate mogul Harry Macklowe and his wife Linda, who was the true collector. But as her marriage to Mr Macklowe fell apart, with no amicable resolution possible, it was left to a judge to order the entire collection valued and sold at auction.

Ron adds a gloss: "while Mrs Macklowe seems to have comported herself with dignity throughout this cruel ordeal, her husband took a more gloating, cringeworthy approach. On the sides of a new apartment tower that he had developed on the corner of Park Avenue and 55th Street, he displayed, *billboard-style*, two large colour photographs of himself and his new wife."

And there's more. And once again we thank Ron! We hope you enjoy this issue.

Barbara R Hauser and Nicola Saccardo



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