INTERNATIONAL FAMILIES

Wealth planning in globally uncertain times

FORSTERS

FOREWORD

THE TIME FOR "WAIT AND SEE" IS OVER; HOW CAN INTERNATIONAL FAMILIES ACT NOW TO FUTUREPROOF THEIR WEALTH?

International families are faced with numerous uncertainties, relating to an ever-changing external global outlook and evolving internal family dynamics, that make wealth planning hugely challenging. Families with connections to the UK are currently dealing with acute levels of uncertainty as a result of Brexit, which looks to continue for some time yet. During these times of uncertainty, it can be tempting for families to hold back from making succession plans, when it is arguably even more important to have plans in place, to mitigate against these increasing risks. Therefore, international families must shift their mindset from "wait and see" to "act now", in order to utilize current planning opportunities to safeguard their wealth.

This document explores the issues currently facing international families, including the potential impact of recent legislation changes in the UK to capital gains tax for non-residents.

CONTENTS

INTERNATIONAL FAMILIES, A GLOBAL OVERVIEW

INTRODUCTION

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1

As advances in technology and communication contribute to an ever-shrinking world, people are increasingly living an international existence, owning property in several different jurisdictions and dividing their time between them. At the same time, their children are moving to different places and starting lives and relationships in countries with widely differing cultures and legal and tax systems.

Wealthy people who are deciding where to live or invest, or both, tend to make their decisions according to a number of factors that remain largely true across the world. Some of these (in no particular order) are:

- stability of the economy and tax system
- security of the person and property within the jurisdiction and a strong rule of law
- respect for family life and a developed education system
- a thriving environment in which to do business.

In many cases, not all of these factors will exist in the same jurisdiction. For example, a country may be a good place in which to do business but not necessarily an ideal place to bring up a young family or to own

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GOVERNMENTS REALISE THAT AS THEIR CITIZENS INCREASINGLY HOLD BUSINESS AND PERSONAL INTERESTS IN DIFFERENT COUNTRIES, THE REACH OF THE TAX SYSTEM ALSO HAS TO BECOME INTERNATIONAL.

property. Furthermore, the attributes of jurisdictions can change over time, the impact of Brexit on the UK being a pertinent example.

With this in mind, many wealthy people divide their lives and investments between different jurisdictions. As a result, they find that they may be regarded as resident in more than one country for the purposes of tax, and that different systems of law apply to the succession of their property in different jurisdictions. For example, an individual's domicile may be the critical factor in determining succession to his or her property in one jurisdiction, while nationality or habitual residence may be the key determinant in another. One country may permit complete freedom of disposition over an individual's estate, while another has strict rules as to the categories of heirs who may inherit property, and in what shares.

Accordingly, it is vital that wealthy families understand the impact of family members moving to, or investing in, property in a new country on the family's long-term wider wealth and succession plans.

Wealth trends

For many generations, the developed countries of the West were the primary focus of private client lawyers and other professionals focused on individual and family wealth. It was in the West that concepts such as trust law in the common law world and the civil law foundation developed as vehicles to protect and manage wealth for the benefit of generations to come.

This has been changing for many years and, since 2015, Asia-Pacific has continued to lead both North America and Europe in terms of its high net worth population and overall wealth, with Japan and China remaining significant drivers of growth.

In these jurisdictions, as well as those of the Middle East, Latin America and Africa, there is often a focus on strong family values and a tendency to be first-generation wealthy, which leads to difficulties in ceding control by the family patriarch or matriarch to the successor generation and an awareness of the vital importance of a stable jurisdiction in which to locate their wealth.

Particularly in the case of non-common law countries, the law imposes strict inheritance rules upon their assets, either through shariah law in the case of Muslim countries, or a civil law system of forced heirship. While many wealthy individuals are happy to comply with these rules to a greater or lesser degree, they may, nevertheless, wish to maintain some degree of control over the disposition of their property.

Accordingly, they may choose to invest in jurisdictions without such rules and seek wealth structures that can assist them to plan as they wish to. For individuals in all of these jurisdictions, and as a general rule among the wealthy wherever they live, confidentiality and privacy are of great importance.

This tends to lead to a focus on careful structuring of assets through asset-holding vehicles to maintain privacy and protection in the context of a global political climate that is placing increased emphasis on transparency.

Tax and the global fight against its evasion and avoidance

Over the past decade the fight against tax evasion and avoidance and the drive for transparency have become global. Governments realise that as their citizens increasingly hold business and personal interests in different countries, the reach of the tax system also has to become international. In the years since the global banking crisis in 2008, the subsequent recession and ongoing financial problems within certain EU countries and elsewhere, the need for individual countries to refresh their coffers by extracting as much tax revenue as possible has added to their determination to seek out sources of additional tax.

The early targets of the fight were the international offshore finance centres providing low-tax safe havens for international assets. The efforts of the Organisation for Economic Co-operation and Development (OECD), the Financial Action Task Force and more recently the E.U. have borne fruit, forcing such jurisdictions to comply with stringent international regulatory requirements and information exchange obligations in order to avoid being blacklisted as uncooperative tax havens.

The OECD in particular has done much to encourage jurisdictions, whether 'tax havens' or otherwise, to sign tax agreements enabling exchange of information between countries regarding the ownership of assets. Initially, in the United Kingdom and other countries, 'tax amnesties', both unilateral and bilateral, such as the Liechtenstein Disclosure Facility and offshore disclosure facilities between the United Kingdom and each of its Crown dependencies (the Isle of Man, Guernsey and Jersey), enabled taxpayers to repay their undisclosed tax liabilities, particularly those offshore, with lower rates of interest and penalties than would otherwise have been the case. In the United Kingdom, all remaining beneficial terms ended on 30 September 2018 when new sanctions under the 'Requirement to Correct' legislation came into effect in relation to past undisclosed offshore tax liabilities. For the future, new multilateral transparency agreements seek to ensure that taxpayers comply with their tax obligations going forward.

Conclusion

Given the international mobility of wealthy families and the ever-changing global environment it is vital that families put in place plans to safeguard their wealth and ensure their tax affairs are in order. When uncertainty is the only certainty, families cannot afford to "wait and see" before taking action.

AS A GENERAL RULE AMONG THE WEALTHY WHEREVER THEY LIVE, CONFIDENTIALITY AND PRIVACY ARE OF GREAT IMPORTANCE.

THE IMPACT OF THE 2019 CHANGES TO NON RESIDENT CGT ON UK PROPERTY

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2

In line with the global trend over the last decade to seek out additional sources of tax, particularly from overseas, the UK government continues to target UK non-residents for tax revenue. The most recent change is a widening of the types of UK real estate that are subject to capital gains tax in the hands of UK non-residents. Xavier takes a look at the wider context of the new rules that took effect in April 2019 and gives his thoughts on what might come next.

What is the objective of the new rules?

The government's stated intention was to level the playing field between domestic and overseas investors in UK property. The government had already taken steps to do this in relation to residential property: in 2017, non-UK domiciled individuals became subject to inheritance tax on indirectly-owned residential property; and since 2015 non-residents have been subject to capital gains tax on disposals of residential property.

The new rules do two things:

1. they extend the tax on residential property to gains made indirectly – on disposals of interests in property-holding companies; and

2. they bring into charge direct and indirect disposals of commercial property.

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THE UK REMAINS A HUGELY ATTRACTIVE PLACE TO LIVE AND DO BUSINESS, OUR NON DOM REGIME STILL KEEPS US COMPETITIVE.

This may be seen as fair and reasonable, levelling the playing field between UK and overseas investors. But it is part of a shift over the last few years away from a policy which was very deliberately aimed at encouraging inward investment and migration, towards a system which essentially looks to treat everyone in the same way. This may be in line with the prevailing mood, particularly with increasing media focus on tax avoidance and even tax mitigation.

The challenge will be to ensure that these new policies do not deter overseas investment into the UK: investment which for many years has generated a great deal of growth.

To put things in context, the changes this year are the latest of a series of reforms that have targeted property as a source of taxation. Not just bringing non-residents into capital gains tax, and bringing non-domiciled individuals within the scope of inheritance tax, but also a series of changes to stamp duty land tax (SDLT) which have increased significantly the cost of acquiring property.

Bricks and mortar have clearly been targeted as a source of tax revenue, and reforms have been a relatively easy sell to the public, in the context of historic double-digit house price growth and press attention on tax avoidance. Combined with uncertainty over Brexit, the result has been a marked slowdown in residential property activity. It will be interesting to see to what extent that happens now in relation to commercial property.

What are the new rules?

In essence, everyone will now pay tax on UK property gains. Non-residents will be subject to tax on all UK real estate gains:

- direct disposals of directly-held property; and
- indirect disposals of property-rich companies – i.e. disposals of interests in companies that derive 75% or more of their value from UK real estate.

Tax is charged on persons who hold at least 25% of a property-rich company (aggregated with related parties).

There is rebasing, as we've seen in the past with non-resident CGT:

- For disposals that weren't previously subject to tax, property values are re-based to 5 April 2019. This includes indirect disposals of residential property, and all disposals of commercial property.
- Residential property that was previously subject to non-resident capital gains tax continues to be rebased to 5 April 2015.

The rates of tax:

- Individuals are subject to capital gains tax at the following rates:
  - Residential property at 28%
  - Commercial property at 20%
- Companies are subject to corporation tax at 19%, reducing to 17% in April 2020.

ATED-related CGT, which was introduced in 2013, has been repealed.

There are some exemptions:

- **A trading exemption** for sales of property-trading companies available to corporate and non-corporate shareholders. Relief is available where up to 10% of the assets in a property - trading company are non-trading.
- **The substantial shareholding exemption** will continue to apply for sales of trading companies by other holding companies. This is only available to corporate shareholders and there is a 20% threshold for non-trading elements. There is no trading requirements if the company is owned by a qualifying institutional investor.
- **Funds and Jersey property unit trusts (JPUTs)** have various elections, exemptions available that aim to prevent double taxation. Previously the scope for taxation occurred both at the level of the fund when it disposed of its investment and at the level of the investor when the investor disposed of their units in the fund.
- **Funds** (ie pension schemes, collective investments schemes) can elect to not be subject to tax at fund level
- **Unit trusts** (including JPUTs) can make a transparency election so that gains are treated as arising to the underlying investors

So what next?

There are some certainties. We know that, in 2020:

- rental income for non UK companies will become subject to corporation tax rather than income tax;
- for large property-holding companies with debt where the interest exceeds £2 million, the ability to deduct interest from taxable profits will be restricted.

Moving into more speculative territory as to what else might happen: the direction of travel seems to be to remove all of the tax benefits that were previously available to non-resident investors. If that is the case, what is left to align? The two remaining anomalies are:

- non-residents can still limit their income tax liability on rental income to a flat rate of 20% - by interposing a non-resident company; and
- non-domiciled individuals are not currently subject to inheritance tax on UK commercial property held through a holding company.

Could this change? Only time will tell.

What about SDLT on transfers of shares in property holding companies? Ironically, the residential property reforms started in 2013, with the so-called three-pronged attack

launched by the then chancellor, George Osborne, with the purpose of stopping people saving SDLT by selling shares in property-holding companies. Yet, it's still possible to do.

Beyond taxation. There have been many newspaper articles about the ability of the super-rich to reduce their exposure to inheritance tax through tax loopholes. This scrutiny is part of an established trend and a mood that will not go away soon. Ironically, the so-called loopholes are the result of deliberate government policy such as business property relief, and the ability to make lifetime gifts under the seven year rule (which may now be reduced to a five-year rule), all accepted by successive governments. Governments respond to the public mood as much as they contribute to it: if one looks at the reforms to enveloped properties in 2013, it's well known that the changes stemmed from papers leaked to the government and drawing attention to the apparent widespread practice of trading shares in property owning companies to avoid tax, which in fact was the case in only a tiny minority of cases.

On to the good news...
There's every reason to be positive. Whilst investing in UK property isn't the tax-free jackpot that it used to be (the days when non-residents could invest in UK property, pay no capital gains tax, no inheritance tax, and income tax at 20%, are gone), the impact of the changes have not been as negative as originally predicted. There was great concern that the reforms would have a significant impact on economic growth, but the evidence gives us reason for optimism.

Whilst economic growth has slowed, there are many reasons behind that, and tax reform is certainly not the primary cause. We are still seeing inward investment, we are still seeing people moving to UK (granted, it's slower), but wealthy people are still coming to the UK and those pull factors still apply.

Despite the current turmoil in Westminster, the UK is still seen as having a stable political framework. London remains one of the best cities in which to do business. For people who are thinking about where they are going to move to, equivalent alternatives are limited. Absent "pure" tax havens (the Bahamas, Jersey, with all their drawbacks in the real world), what are the onshore options? Italy's non-dom regime is quite attractive at the moment, but it lacks the political and business factors. Switzerland perhaps, but that's a very expensive place to live. The US is of course a big competitor. The UK remains a hugely attractive place to live and do business, our non-dom regime still keeps us competitive. So, for as long as we maintain those pull factors, tax changes can be absorbed and the UK will continue to be a hugely welcoming place for wealthy people to invest and live.

IT IS PART OF A SHIFT OVER THE LAST FEW YEARS AWAY FROM A POLICY WHICH WAS VERY DELIBERATELY AIMED AT ENCOURAGING INWARD INVESTMENT AND MIGRATION, TOWARDS A SYSTEM WHICH ESSENTIALLY LOOKS TO TREAT EVERYONE THE SAME.

HOW INTERNATIONAL FAMILIES CAN USE FAMILY GOVERNANCE TO SAFEGUARD AGAINST UNCERTAINTY

More people are earning more wealth than ever before and that means that they need to think about how they pass on that wealth in the future. You only need to look at the newspaper headlines to see stories where a failure to plan has led to wealthy families battling over money and businesses. Infamous family feuds between the Ambanis and the Hos highlight the importance of transitional planning and the consequences of not having a plan in place.

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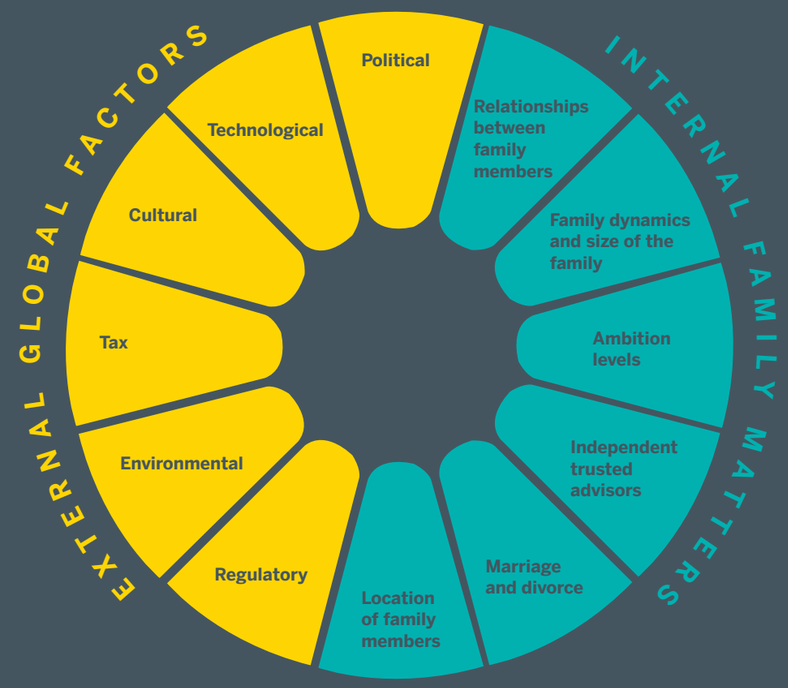
Uncertainties

There are many uncertainties and potential changes that a family faces. In addition to global uncertainties, uncertainties specific to a family are numerous:



It is these uncertainties that a family need to plan for and from which to protect their wealth. With the fast changing regulatory environment and the global mobility of family members becoming more diverse, having a robust succession plan is more important than ever. Whilst families can't necessarily anticipate what will happen in the future, they can consider and plan for the things that might happen.

Too often tax and testamentary based planning doesn't take into account the holistic aspects of the transition of wealth from one generation to another. People react differently depending on how they inherit wealth and the different levels of responsibility involved. Succession planning must consider the effect of that wealth on the recipients.

As both the world and a family changes, so too must a succession plan; it is a long term, dynamic process. It is not a one off plan to be kept in a drawer, it needs be flexible and be reviewed on a regular basis.

Issues the family need to face

How do you get the patriarch to think about succession? Patriarchs often think they are immortal and that they can rule from the grave. What are the difficult issues that a family need to face when considering succession planning?

The act of preventing future family disagreements from breaking up the business is difficult to do but that is the essence of what is trying to be achieved. Adopting a vision for the future in a world that is so fast moving.

When the head of a household has built up a successful business, have they considered all these issues? Unless they are taken through that process, then most likely no.

Fairness within the family

How can a family be fair between different family members? When you have different generational levels, and different skills within the different family members, a lack of planning makes it very difficult to achieve fairness.

How are you fair to those who work in the business and those who don't work in the business? It's very unlikely that all of the next generations will work in the business. Usually parents want all their children to benefit to some degree from what they've built up but those who work in the business will inevitably want a larger share.

Opportunity
Often half the battle centres around opportunity. If everyone is given the opportunity to contribute, they can't complain if they later choose not to. Fairness does not necessarily mean equality. Fairness is in the eyes of the holder, and that's why siblings need to understand the reasoning behind their parents' decisions. An annual gathering for the family is invaluable to ensure that everyone in the family has the opportunity to contribute and understands the way the patriarch and/or matriarch is dealing with family assets.

What does family governance seek to achieve?

Family governance will deal with many details such as:

How and when control is passed onto family members as they grow up

Controlling the benefits that the next generation receive

Dealing with confidentiality matters regarding trust registers, beneficial ownership registers, CRS and more

Provide a mechanism for family members to exit their shares and/or holdings

Family governance seeks to deal with all these issues and uncertainties; putting in place a framework that protects the family's wealth and business for the future. A mechanism for avoiding family battles; prevention rather than cure of family disagreements. A succession plan provides peace of mind that the uncertain future is not left to chance; protecting the family against the dissipation of wealth from risks such as divorce, creditors, litigation and family disagreement.

It is often only through the process of drawing up a succession plan that the issues a family needs to face come to light.

Bringing the younger generation into the discussion is also incredibly important so they feel involved with the process and understand their role in the future plan.

What is the process?

So what is the process to get families to deal with all these issues?

In many ways, the process itself is more important than the end result. Going through the process, getting families talking and discussing these issues, is the most important part. They will agree on many aspects, disagree on other parts, so working out how to deal with the disagreements can help bring into harmony the family members' aims for the future.

It is not, a question of filling in the blanks on a standard family constitution, family charter, of other off the shelf agreement. Every family is different and a succession plan should reflect that. Trusted advisers, need to be empathetic and sensitive, to be able to understand the family dynamics and be trusted by all the family members. Generally speaking, families will buy into one person, whether a lawyer or not, to take the whole family through the whole process in a reasonable amount of time.

Psychology and tangibility. The majority of the process involves psychology as opposed to the legal or technical aspects. It's spending the time to understand the family members, how they think, what they want, what they do and don't say and how they say it. They'll often speak more honestly during individual discussions as opposed to open family forums.

But, it's not just about talking; finding a resolution that provides constructive solutions in relation to incapacity and death, is crucial, even if these need to be reviewed on a regular basis. Once the document has been put together and agreed, everybody needs to understand what's been done and how it will work for the future, ideally discussed in a family meeting. Then an annual or biannual review for the family as a whole is very important.

There are many ways of dealing with a family constitution. There is nothing sacrosanct about what goes into one, it's what the family wants to go into it and what it will mean to the family afterwards, that is important. It is not always recommended that constitutions are made legally binding, as you can't force a family member to engage in a constitution in which they have not had a part in drawing up but you can help them to buy into it by involving them at a young age.

FAMILY CONSTITUTIONS

Conclusion

Many families have done absolutely no planning or have only considered who might own the shares in the future, but that is hardly sufficient transitional planning. The very exercise of facing up to the issues, of handing over control to the next generation, is incredibly enlightening for family members. Dealing with potential disagreements and facing the difficult issues may be daunting but the consequences of not dealing with them at all is far more dangerous.

Whilst, family governance cannot account for every uncertainty that will ever arise, having a framework in place will help a family to work through uncertainties. The families, undoubtedly, as a result of that exercise will be much more advanced in their thinking about how they can contribute meaningfully to the future generations.

THE USE OF NUPTIAL AGREEMENTS FOR INTERNATIONAL FAMILIES & THE IMPACT OF BREXIT

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Nuptial agreements are a crucial component of wider family wealth planning. They provide financial and jurisdictional certainty in the unfortunate event that a marriage break down. They are particularly important for international couples with links to England.

Simon considers the many benefits nuptial agreements for international families, and why they are more important than ever in the context of Brexit.

The risks

Wealth protection strategies are devised to reduce the risk of wealth being dissipated or lost, and to mitigate any risks that can be identified. For example, the risk of currency fluctuation can be mitigated by hedging, the risk of losing key personnel can be mitigated by life insurance, and the risk of incurring unnecessary tax can be reduced by careful structuring.

Divorce can pose a significant risk to a family or individual's wealth. Recent publicity suggests that Amazon founder Jeff Bezos will pay his wife MacKenzie Bezos in the region of $35 billion, following the breakdown of their 25-year marriage. Multi-million pound divorce settlements are far from uncommon in England: not for nothing is London referred to as the "divorce capital of the world".

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A WELL-DRAFTED NUPTIAL AGREEMENT CAN SIGNIFICANTLY REDUCE THE RISK OF JURISDICTION SHOPPING.

For a family seeking to ensure that wealth is preserved for future generations, a divorce can be hugely expensive and disruptive. The emotional toll on all concerned is well-known. Legal fees can be significant. The cost of the settlement can significantly deplete the family finances. But there are other, hidden, costs: a protracted divorce can lead to business paralysis. Injunctions may be granted, severely curtailing business operations. Trusts, family businesses and trusted advisers may be required to disclose documents or even joined as parties to the proceedings. The most hard-fought divorce cases may last for two or three years, causing significant disruption.

The role of nuptial agreements

A nuptial agreement can reduce or mitigate these risks.

A common perception of nuptial agreements is that they are designed to limit the extent of one party's financial claims. Whilst they can be used in that way, their greater utility in this context is their ability to reduce uncertainty, and therefore risk.

Jurisdiction

Wealthy families are increasingly mobile, and many will have connections with several countries. A great deal of thought may have been given to where individual family members reside, where they are domiciled, and where assets and structures are located.

The rules regarding jurisdiction for divorce are complex, and vary from country to country. It is highly likely, however, that a party seeking a divorce will have a choice of jurisdictions, and that choice can hugely affect the size of the likely award, as well as the likelihood that payment of any sums due under the award can be enforced. The practice of "shopping" for the most favourable jurisdiction is well established, and can lead to protracted litigation in multiple jurisdictions.

A nuptial agreement can fix jurisdiction in one state. Alternatively, it can be drafted so as to be effective in each state that may have jurisdiction. A well-drafted nuptial agreement can significantly reduce the risk of jurisdiction shopping.

Asset definition

A nuptial agreement will typically define which assets form part of each party's separate property, and which constitute joint property. The agreement will then establish rules for how the different classes of assets are to be divided in the event of divorce. The rules may be very broad, or very detailed.

A well-drafted nuptial agreement can provide certainty about the extent of the parties' assets, and how they are to be divided in the event of divorce.

Wealth preservation

A nuptial agreement can ensure that fair provision is made for the economically weaker party on divorce, whilst nonetheless preserving family wealth for future generations. For instance, a home can be settled subject to a life interest, rather than by outright transfer, or a separate structure can be established from which maintenance is paid during the recipient's lifetime, with the structure later reverting to family ownership.

Existing structures

A nuptial agreement should be drafted with existing asset structures in mind. For instance, the agreement should set out the mechanism whereby trustees are to be requested to assist in the event of divorce.

Equally important is that existing structures are "stress-tested" to ensure they are sufficiently robust if they are challenged in the event of divorce. As specialist family lawyers, we have extensive experience of the way in which the family courts approach complex structures, and will be able to advise what steps should be taken to reduce or mitigate risk.

Nuptial agreements and family culture

Family dynamics can be complex. It is rarely easy for one family member to suggest to another that they should obtain a nuptial agreement. Trusted advisers have a key role in ensuring that nuptial agreements are discussed, and the advantages are understood.

Older generations can encourage future generations to enter into nuptial agreements by making it clear in letters of wishes that trustees are to look more favourably on those who have done so.

Similarly, family constitutions can be drafted so as to confirm an expectation that family members wishing to share in the family wealth are expected to enter into nuptial agreements.

Predictable outcome

A nuptial agreement should provide a couple, and their wider families, with certainty about the financial consequences of divorce.

A nuptial agreement is likely to be upheld by the English court, provided both parties had disclosure of the other's wealth, and had independent legal advice about the consequences of entering into the agreement. The agreement must also make fair provision for the economically weaker party, and neither party must feel unduly pressurised to sign the agreement.

Provided those criteria are met, the parties can be reasonably certain that the agreement will be upheld. This greatly reduces the likelihood of costly and time-consuming and expensive litigation, if the marriage does break down.

Particular considerations for international couples

Legal and cultural attitudes to prenuptial agreements vary greatly from one country to another. In many countries, nuptial agreements are commonplace. In others, they are virtually unknown. In many EU and Latin American states, couples will routinely elect a matrimonial property regime when they marry, which will determine how their property will be divided, on death as well as on divorce.

FOR EU FAMILIES WITH ENGLISH CONNECTIONS, A NUPTIAL AGREEMENT CAN PROVIDE THEM WITH CERTAINTY IN UNCERTAIN TIMES.

FAMILY DYNAMICS CAN BE COMPLEX. IT IS RARELY EASY FOR ONE FAMILY MEMBER TO SUGGEST TO ANOTHER THAT THEY SHOULD OBTAIN A NUPTIAL AGREEMENT.

International couples should not assume that the English courts will uphold a nuptial agreement or a matrimonial property regime entered into in another state. The English court will apply the same level of scrutiny to such an agreement as it would to an English prenuptial agreement.

Couples who know at the time of marriage that they will have a footprint in more than one country are strongly advised to consider a nuptial agreement. For such couples, there are broadly speaking two options:

- The first is to enter into a series of separate, but cross-referenced, nuptial agreements in each country. The advantage of this approach is that each agreement will be drafted so as to have the strongest possibility that it will be upheld by the courts in the relevant country. The disadvantage is that such agreements can be cumbersome and expensive.

- The second is to have one "lead" agreement, which includes clauses that require a review, or a new agreement, if the couple move and are no longer able to rely on that state's jurisdiction. The advantage of this approach is that it is flexible, and allows for the fact that future plans may be uncertain. The disadvantage is that it can lead to further negotiation and expense in the future.

Brexit

Whilst the outcome of Brexit is not yet known, the current impact for international couples is increased uncertainty.

The rules for establishing jurisdiction where a couple could potentially divorce in more than one EU member state are a matter of EU law. In very broad terms, they provide that the divorce should proceed in the country where proceedings are first instigated. This is the so-called "first-in-time" rule. Whilst frequently regarded as unfair, this rule has the advantage of providing certainty, and avoiding litigation in more than one country.

We do know that if Britain leaves with a deal then the existing family law regime will continue between the UK and other EU states for a transitional period, until new arrangements can be negotiated and put in place.

If the UK leaves with no deal, then the UK government has prepared a series of statutory instruments which will attempt to replicate the existing family law legal arrangements between England and the EU. However, as far as each individual EU state is concerned, England will become a non-EU state, and their national law will then apply to questions of divorce jurisdiction. There is no certainty that the "first-in-time" rule will continue to apply as between EU member states and England.

WHILST THE OUTCOME OF BREXIT IS NOT YET KNOWN, THE CURRENT IMPACT FOR INTERNATIONAL COUPLES IS INCREASED UNCERTAINTY.

For EU families with English connections, a nuptial agreement can provide them with certainty in uncertain times. A nuptial agreement drafted now, while the outcome of Brexit is unknown, can be drafted to take account of different outcomes.

EU families who have an existing nuptial agreement would be well advised to have it reviewed. Until two years ago, the idea that Britain might exit the EU was not seriously contemplated and therefore nuptial agreements were drafted on the basis that the status quo would continue. Such agreements should be reviewed to ensure they are future-proof, whatever the outcome of Brexit.

To find out more about nuptial agreements please check out our guide at: www.forsters.co.uk/nuptial-agreements

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