

Generation games

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According to the common saying there are only two certainties in life – death and taxes. However, for many legal advisors whether onshore or offshore. It sometimes feels as though there is a further certainty – disputes between family members. Such conflict is already difficult enough for families and individuals affected, but the involvement of a trust can create extra stress.

However, if properly structured, trusts can also be a mechanism to allow financial issues to be removed from such disputes, hopefully leading to greater long-term harmony.

If family tensions do arise, the involvement of a trust can present problems. Younger generations may feel they are being controlled by previous generations through the mechanism of, and restrictions in, the trust. Older generations may feel that younger generations are wasting family wealth and not usefully occupying their lives. As beneficiaries of a trust established by their parents, siblings could feel forced to be involved in each other's lives.

Many families are harmonious - but, clearly, the death of both parents can be a trigger point for conflict.

As an offshore trust lawyer I sometimes see settlors drafting trusts to control future generations beyond the grave, perhaps by the use of Protectors or limits on distributions. Usually, the initial intentions were good, borne out of genuine concern for the stability of their children's futures. However, the passage of time, the accumulation of greater wealth than originally anticipated and outside influences such as a child's choice of spouse can cause difficulties.

As an advisor, It is not always easy to predict when and how tensions will arise. Sometimes, the settlor's children get on well and a single trust works and it is later generations that struggle with the restrictions, and benefits, of that trust. However, in other families, a parent's death can raise issues that had formerly been suppressed.

The solutions are not always easy, and sometimes create further problems. There are family offices where the education of next generations is strictly controlled and there is an expectation

that family members will work for the business. Some time ago, it was not unknown for a settlor's letters of wishes to express strong preferences as to the type of person whom their children should marry – for example, on grounds of religion. This is less common now, though many trusts do still restrict the ability of illegitimate children to benefit.

The role of the trust adviser is not to influence the settlor's personal views but to help them see the difficulties that trying to influence the future of later generations can create. Conversely, leaving a vacuum after the patriarch or matriarch's death can also lead to difficulties. It can be a fine balance at times.

As the average trust becomes more valuable, the options may, in fact, increase for the settlor, as the trust fund can bear the higher costs of more complex solutions. For example, rather than just prohibiting an action, such as the addition of beneficiaries, this could be made subject to the consent of a family council made up of representatives from each family branch. A recent file I worked on had such a committee, which was surprisingly liberal in agreeing to the addition of stepchildren. This perhaps acknowledged a growing realisation among beneficiaries that, though their individual family may not currently be affected by restrictions in the trust deed, as family units become more fluid, they may, in future, look for support from the other beneficiaries on an issue affecting them.

The use of private trust companies is also becoming more common as a method of retaining family control through the generations, with inventive use of voting rights and committees. This, of course, all needs to be balanced against tax and reporting considerations, as well as practical ones such as family harmony.

But, however good the adviser, it is difficult to plan for family disputes – and, therefore, perhaps the main emphasis should be on maintaining flexibility so that the trustee can react to changes of circumstances and wealth passing through the generations.

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