

STEP Malaysia

Trust Planning from a Cross Border Perspective



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Agenda

- Trusts as an Estate Planning Tool
- The Cross Border Context
- Key Considerations in International Planning
 - Trust planning
 - Estate planning
- Dealing with the Increase in Transparency
- Scenarios

Trusts as an Estate Planning Tool



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Trusts as an Estate Planning Tool

- Trusts – separation of legal and beneficial ownership
 - Trustees owe fiduciary duties to beneficiaries and can have a wide range of administrative powers
- Letter of wishes – the settlor’s guidance note to trustees
 - Not legally binding but mostly followed by trustees
- Discretionary trusts
 - Flexibility for trustees to deal with changes in circumstances
 - E.g. death/divorce of a beneficiary, changes in tax regimes and legislations
 - Staggered distribution

Trusts as an Estate Planning Tool

- Flexible succession planning
- Efficient tax planning
- Asset (creditor) protection
- Matrimonial property considerations
 - Protecting property against divorce
 - Excluding spouses/future spouses of children
- Protection against forced heirship claims

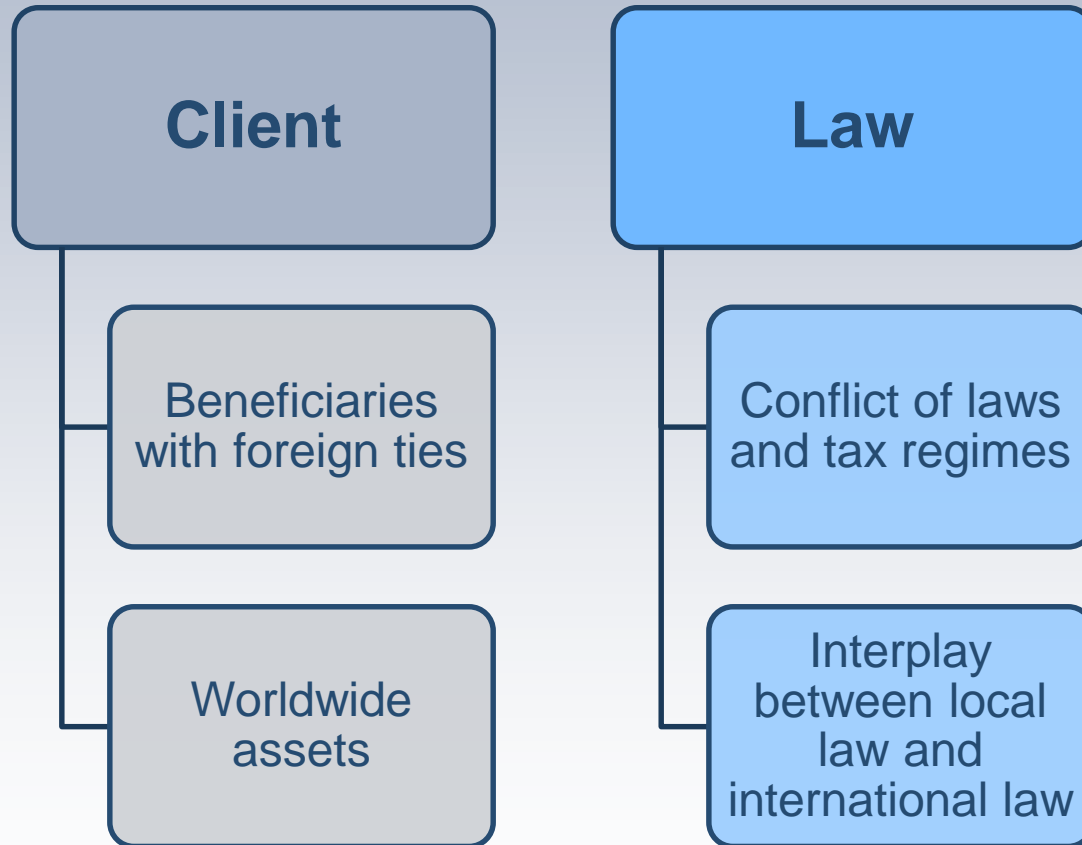
The Cross Border Context



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The Cross Border Context



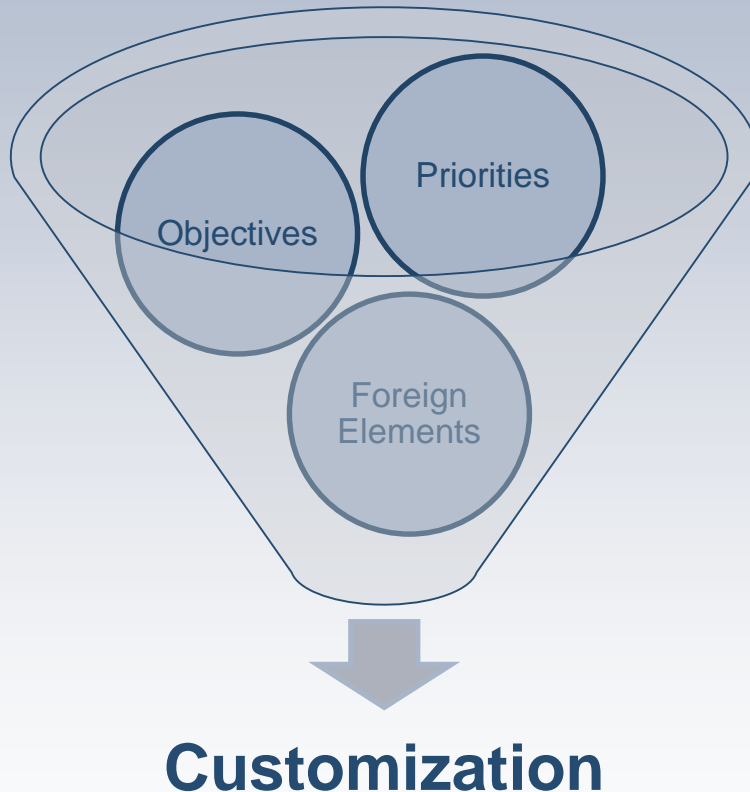
Key Considerations in International Planning



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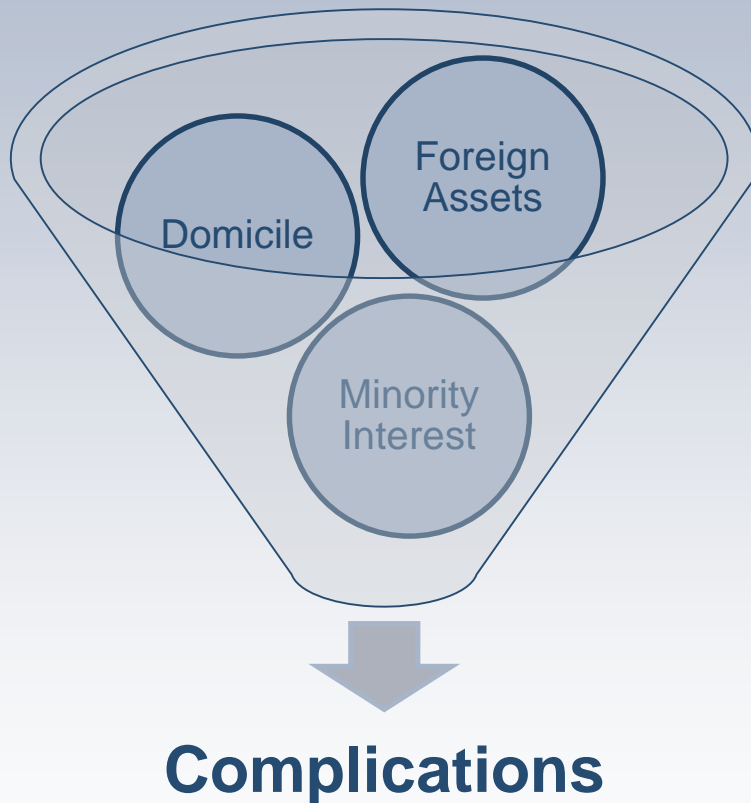
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Trust Planning



- Understanding the client's wishes and concerns
- Identifying the key persons and assets
- Selecting the appropriate structure
- Selecting the appropriate jurisdiction
- Looking into cross border issues at the outset and finding the right experts
 - Tax, conflict of laws...
- Ensuring flexibility to cater for unforeseen circumstances
- Other tools?
 - E.g. Will, prenuptial agreement, family constitution...

Estate Planning



- Dying without a will – Intestacy
 - Loss of control/cannot give effect to the deceased's wishes
 - Law of domicile governs movable assets
 - Situs Law governs immovable properties
 - Further complications if there are foreign assets or minor beneficiaries

Will Drafting in a Cross Border Context

- More complex → engage in discussion to go through the following issues:
 - Assets and liabilities
 - In each country where there are assets, must check:
 - ✓ Matrimonial regime issues
 - ✓ Formal and material validity issues
 - ✓ Tax issues
 - ✓ Administrative issues; powers/rights of executors and beneficiaries
 - Relevant jurisdictions
 - Values and ownership structures
 - Client objectives regarding beneficial interests
 - Client views regarding administrative issues and who do they want to oversee the process
 - Nationality, domicile and habitual residence of key players and whether these are likely to change in the foreseeable future

One Will or Several?

Advantages of Having One Will	Disadvantages of Having One Will
Cheaper to prepare	Concern as to formal validity (Can the Will be proved in every jurisdiction where there are assets?)
No risk of unintentional revocation	The Will probably has to be probated in each jurisdiction sequentially (may cause long delays in dealing with assets post death)
Clarity as to what should be paid from where	Probably needs translation post death
Clarity as to who is responsible for doing what	Administrative clauses etc may be strange to foreign notaries
Easier to manage	Executors may have to take on responsibility for foreign estate (i.e. foreign responsibilities)

★ *Choice of executors is vital!*

Dealing with the Increase in Transparency



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Dealing with the Increase in Transparency

- Organization for Economic Co-operation and Development (OECD)
 - Automatic Exchange of Information
 - Exchange of Information on Request
- Common Reporting Standard (CRS)
- Foreign Account Tax Compliance Act (FATCA)

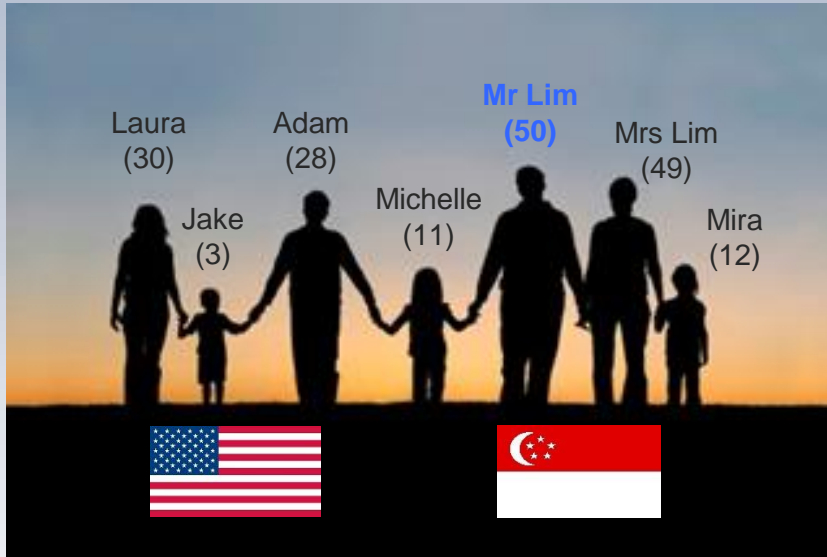
Scenarios

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Scenario 1 – Mr Lim



- Mr Lim, a Singaporean, is a sole proprietor of a thriving business with assets all over the world
- Mr Lim has a loving wife and 3 children
 - Mira, Michelle and Adam
 - Adam lives in the US and has his own family (they are all US citizens)
- Recently, Mr Lim was diagnosed with cancer and he began thinking about his estate planning...

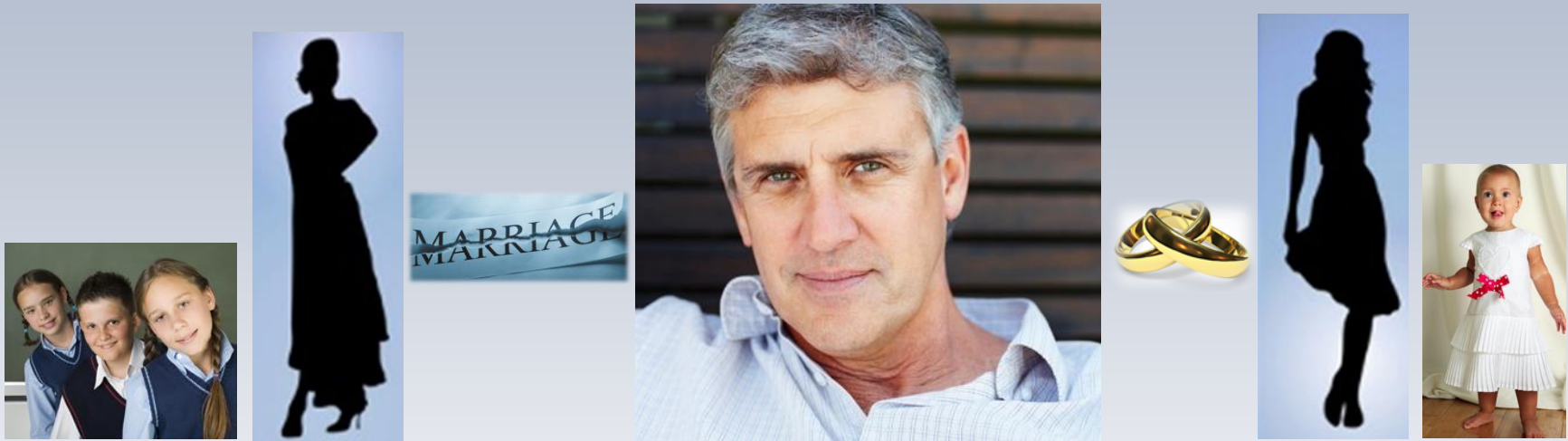


Summer home in England Office units in Malaysia and Hong Kong

Scenario 1 – Mr Lim

- Mr Lim's most important goal is to take care of his family
 - He wants his younger children to receive the best education and pursue their own worthwhile careers
 - He loves his grandson, Jake, deeply but does not trust his daughter-in-law, Laura
 - He is worried Mira and Michelle will marry bad men who are just after their money
- Mr Lim also wants to make sure he has funds available for his cancer treatment
- Mr Lim is concerned with US tax due to his son and grandson's citizenship

Scenario 2 – Mr Smith



- Mr Smith was originally from UK but has lived in Singapore and Malaysia for 5 years since he was appointed the head of the Asia-Pacific Region for a fund management company
- While he was in Malaysia, he met his girlfriend. After 2 years of dating, she gave birth to his daughter. The mother and daughter depend on him financially. Mr Smith may consider marrying his girlfriend.
- The long distance and the affair caused the marriage to breakdown and his wife petitioned for divorce in UK. Despite having had 3 children with her, Mr Smith is convinced that his wife is manipulative and 'evil'.

Scenario 2 – Mr Smith

- Mr Smith views his children as his priority
 - Although he wants to protect his assets against his wife, he wants to take care of their children.
 - If he does marry his girlfriend, he does not want his children from his first marriage to get less than the other child.
 - One of his children is severely autistic and he worries that no one will take care of the child when both parents pass away
- Due to the divorce proceedings, Mr Smith does not feel confident that the love between him and his girlfriend will last forever

Thank You

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