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Responsibility of Advisors

Tales of the Unexpected



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Co-Panelists

Ellen Kratzer and Markus Zwicky



Substitute Panelist

Markus Zwicky



Corporate, Commercial and Private Client Law in Zug, Switzerland, with an emphasis on international family law. Advising and litigating.

Certified Specialist SBA Inheritance Law. Fluent in DE, GB, ES, FR, IT and some BE, frequently moderating and speaking at seminars and events.

Panellist

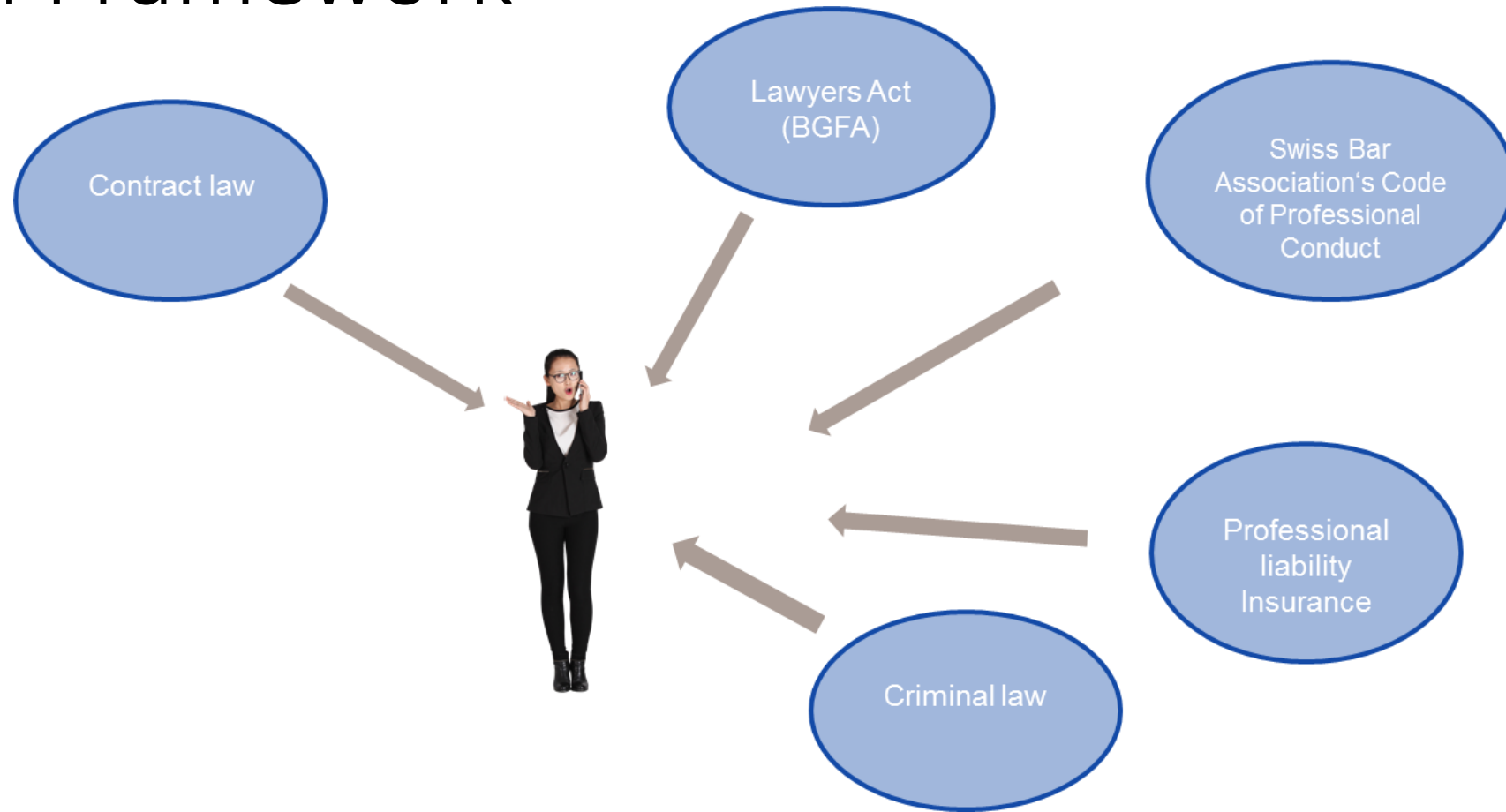
Tendon Dahortsang



Specialized in inheritance matters as well as estate and wealth planning, including advance care directives, as well as advising clients on the administration and division of estates, both in national and international contexts, and extensive experience in corporate and contract law.

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Client-Lawyer Relationship Legal Framework



Civil Liability of Lawyers

- Damage
- Breach of Contract
- Casual link between the breach of contract and damage
- Debtor's fault (assumed)

Professional Discipline

- Lawyers Act (FMLA)
- Swiss Bar Association's Code of Professional Conduct

Professional Liability Insurance

- Minimum requirement according to Lawyers Act
- Liability restrictable by contract law?

Legal Standards to take changes into account?

- Duty of care is key
- Proper documentation (specific wording in engagement letters?)
- In the event of unexpected changes, act quickly and diligently and be transparent with the client

Panellist Tendon Dahortsang



Get well soon!

Panellist

Rachel Mainwaring-Taylor



Rachel advises individuals, families and trustees, both in the UK and internationally, on issues including personal tax and succession, wealth structuring and governance. She has a particular focus on cross-border estate planning, finding practical solutions to complex conflicts of law.

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Rachel Mainwaring-Taylor, Partner, Farrer & Co



Solicitor's Responsibility Legal Framework

- Solicitors Conduct Rules – set the professional standards we are all to uphold
- Law of negligence – primarily contractual duties but also tort
- Consumer rights legislation
- Limited specific legislation governing e.g. trustee duties

Main duties will be contractual, unlikely to be extended by consumer laws, but limitation periods may be extended by claim in tort.

Mitigating Exposure

- Engagement letter
 - Limiting level of potential liability – not below £3m
 - Limiting level of exposure (WIP)
 - Clearly defining scope of work – recent case law focuses on purpose of advice
- Advice
 - Relevant facts and assumptions
 - Based on law at specific date
 - When to seek further advice

Panellist

Rachel Mainwaring-Taylor



Thank you very much Rachel!

Panellist

Ellen Kratzer



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Ellen Kratzer, Managing Director at Fiduciary Trust International in New York City, works with individuals, families and their advisors, providing wealth management and planning solutions to U.S. and international clients. Prior to joining Fiduciary Trust in 1995, Ellen was a portfolio manager at Brown Brothers Harriman & Co. on Wall Street. Ellen is currently serving on the Society of Trust & Estate Practitioners “STEP” Worldwide Council; she previously served as chair of STEP New York and chair of STEP USA. Ellen is a member of the Private Client Tax Committee of the International Bar Association and of the Estate Planning Council of NYC. She is a member of the International Women’s Forum. An active community volunteer, Ellen is a past president of the New York Junior League, an organization dedicated to improving communities and training women for civic leadership. She also served as president of the Association of Junior Leagues International, comprising 150,000 women volunteers in 295 Junior Leagues in the U.S., Canada, Mexico, and the U.K. Ellen is a former chair of the USA Board of the United Nations High Commissioner for Refugees and of the Council for Canadian-American Relations. She is a member of the Advisory Board of the Hospitality Committee for United Nations Delegations. Ellen has served as a governor of the Shaw Festival Theatre in Ontario and as a member of the boards of the YWCA of NYC, New York Youth At Risk and Grosvenor Neighborhood House Y. Ellen is a member of the Princeton University Planned Giving Advisory Committee and is the founder of the Orange & Black Ball, a Princeton event in NYC. Ellen earned an A.B. in Comparative Literature from Princeton and an MBA from New York University. Her graduate work included studies at Vienna University of Economics in Austria. Ellen received the Wall Street Women of Excellence award in 2013; the National Council of Jewish Women-NYC Women Who Dared award in 2014; the New York Business Journal Women of Influence award in 2018; the STEP Founder’s Award in 2020; and the Citywealth Powerwomen Inspirational Woman of the Year Award in 2021.

Ellen Kratzer, Managing Director, Fiduciary Trust International



Changes to watch for

- Personal:
 - Marital Status
 - Children – natural and adopted
 - Residence – state and country
 - Competence
- External:
 - Tax
 - Reporting
 - Valuation of Assets
 - Claims against Assets



Inadequate Communication

- Not sharing information
- Client hides from you



Beware when clients relocate!

States have different standards for taxing trusts based on nexus:

- Contact with the decedent
- Contact with the trust grantor
- Contact through trust administration
- Contact with the trustee
- Contact with the beneficiary



Lifetime Exemption Amount

The Federal lifetime exemption is an amount of property or cash that you can give over the course of your entire life without having to pay a gift tax. The exemption is shared with the value of your estate at the time of your death, combined by a tax provision called the unified tax credit.

As of 2023, lifetime exemption amount is \$12,920,000 per person (\$25,840,000 per married couple). However, in 2026 it will be dropping back to \$5 million, adjusted for inflation.





Ellen Kratzer, Managing Director, Fiduciary Trust International

Source: upon request





Ellen Kratzer, Managing Director, Fiduciary Trust International

Source: upon request



The Prudent Investor Rule Created the Need for New Principal and Income Rules

Prudent Person Rule

Safety of Principal



Production of Income



Risk Aversion



Individual Asset Evaluation



No "Skill" Requirement



No Delegation

Prudent Investor Rule

Preserve Purchasing Power

Total Return

Risk Management

Asset's Contribution to Overall Strategy

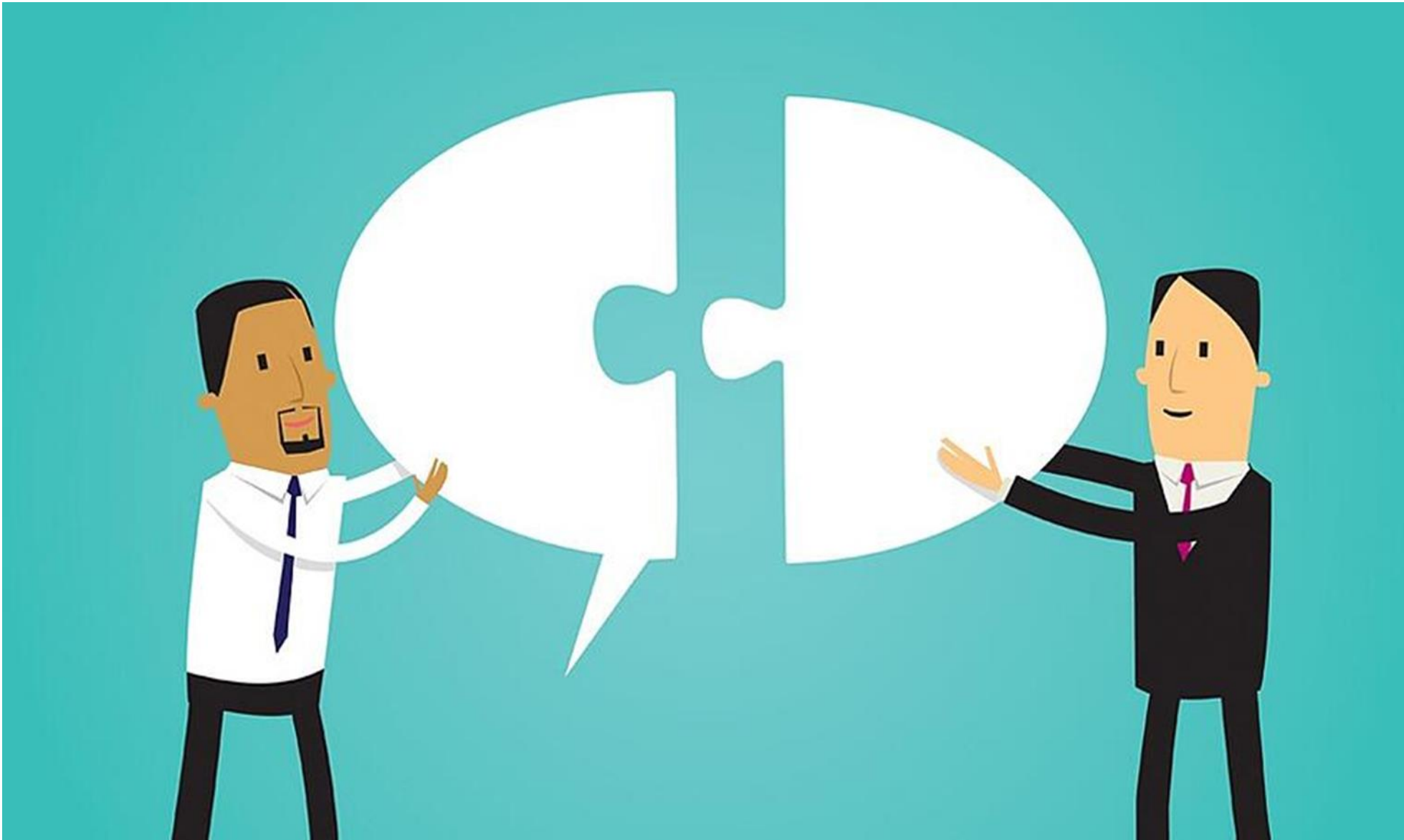
Skill is Required

Delegation Authorized



Resource

- American College of Trust and Estate Counsel (ACTEC)
- Guide to Engagement Letters
- https://www.actec.org/assets/1/6/ACTEC_2017_Engagement_Letters.pdf?hssc=1



Ellen Kratzer, Managing Director, Fiduciary Trust International

Source: upon request



Panellist Ellen Kratzer



Thanks a million, Ellen!

Panellist

Stella Strati



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Stella Strati is the Corporate, Tax and Private Client Partner at Patrikios Pavlou & Associates LLC. Stella is also the Deputy CEO of Pageserve Limited, an Administrative Service Provider, authorised by CySEC to provide corporate services. She specialises in tax law and private client matters and she advises local and international companies (both public and private) on all aspects of financial and commercial cross border transactions and on security matters. She has been involved in major corporate restructuring and reorganization projects. She is often engaged in providing advice on derivative and securities lending transactions, involving GMRA, GMSLA, ISDA, and other master agreements. Her clients include major international banks, financial institutions, multinational organisations and HNWI. Also, Stella has extensive experience in corporate law as well as in mergers and acquisitions, joint ventures, shareholders' disputes and commercial law in general, across a wide range of industries. She is a member of STEP and of the International Bar Association. Furthermore, Stella is a member of the Legal and Tax Committee of the Cyprus Fiduciary Association (CFA).

Cyprus Legal Framework

- Advocates Law, Cap. 2
 - No express provision.
 - Obligation for Professional Negligence Insurance: “no license to practice the legal profession shall be issued or renewed, unless the advocate maintains a valid insurance policy... against professional negligence...”.

Cyprus Legal Framework

- Code of Conduct

Advocates:

- are obliged to strictly abide by the code of conduct and by the legislation in force at the time.
- are obliged to defend their clients' interests in the best manner possible.
- advise and defend their client within a reasonable time period, conscientiously and diligently. They personally assume responsibility for the mandate entrusted to them.
- do not accept to undertake a case if they know or ought to have known that they do not have the necessary competence to handle it.
- should be constantly and within reasonable limits covered by professional liability insurance, considering the nature and extent of the risks undertaken in the exercise of their activity.

Cyprus Legal Framework

- Case Law
 - Twofold liability: (a) contractual duties; and (b) duties in tort.
 - The origin of advocates' duties is the retainer/engagement agreement between themselves and the client.
 - Tort of negligence – standard of skill and care expected by the average professional.
 - In out of court matters, an advocate is not obliged to travel outside the instructions and made investigations which are not expressly or impliedly requested by the client.
 - The main duties is to diligently advise the clients and to bring to the client's attention any problems and risks, to warn the clients about such risks and to protect their interests.
 - Increased duty to ensure that all legal conditions are met and that the clients interested are protected. No duty to advise on economic or business matters or for the taking of any business risks.
 - Predicting changes in law: A detailed research to identify all pending changes in statute or pending appeals is not required.

Can Advisors avoid Responsibility?

- Limitation of liability clauses in Engagement Letters.
- Qualifications in legal memos or opinions.
- Clear words are needed to restrict rights arising by operation of law.
- The Cyprus Supreme Court has stated that prudent advocates should ensure to collect clear written instructions from clients and that such instructions should be limited to specific matters.
- Some liability should be accepted: A clause that purports to exclude all liability, if taken literally, could strip the contract of all effect
- Usually the liability of the advocate for willful misconduct, gross negligence or fraud remains unaffected.

Panellist Stella Strati



**Thank you for your presentation,
Stella!**

Discussion



Source: [Wallpaper Flare](#)



Source: [Iceland the beautiful](#)



We learn best from mistakes!
So:



Stella Strati



Examples

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Stella Strati, Partner – Corporate Finance, Tax, Private Client, Patrikios Pavlou & Associates LLC



The Case with EU Sanctions and Restrictive Measures



TRUSTS



CITIZENSHIPS

The Case with Trusts after Sanctions

- Since the amendment of the Cyprus International Trusts ('CITs') Law, back in 2012, a number of CITs have been established with Russian nationals HNWIs as settlors and/or beneficiaries.
- Commonly such CITs included a Russian national settlor, a Cyprus trustee and Russian national beneficiaries (the settlor and his/her family members).
- Introduction of sanctions → removal of sanctioned beneficiaries.
- **Prohibition of trust services:** Article 5m of EU Regulation 833/2014 (as amended) introduced a prohibition of the provision of trust related services to trusts or similar legal arrangements, having as a settlor or a beneficiary, among others, Russian national or natural persons residing in Russia, legal persons, entities or bodies established in Russia.

The Case with Trusts after Sanctions

- **Exception** of paragraph 4: the trustor (settlor) or beneficiary is a national of a member state, of a country member of the EEA or Switzerland, or a natural person having a temporary or permanent residence permit in a member state, in a country member of the EEA or Switzerland.
- EU clarified through the Frequently Asked Questions that the exception is applicable only where the trust has one settlor or one beneficiary.
- Are advisors liable for advice provided after the introduction of sanctions but BEFORE the introduction of article 5m?
- Are advisors liable for advice provided after the introduction of article 5m but BEFORE the publication of the FAQs on trust services?

Revocation of Citizenship

- Cyprus Law, currently, makes it possible to deprive a person of his/her citizenship in case such person is subject to **sanctions**, within 10 years from naturalisation.
- However the relevant provision was introduced in the Cyprus Civil Registry Law, in 2020.
- Previously the status of a citizen could be removed in specific cases including fraud, false representation, concealment, in cases of dishonesty towards the Republic of Cyprus, criminal conviction in any country for a particularly heinous offense and in cases of commitment of hostile acts towards the Republic and/or cooperation with an enemy in any war carried out by the Republic.
- It is important to note that the revocation of citizenship due to sanctions is only applicable to individuals and members of their family, who obtained their Cyprus citizenship through investment.

Revocation of Citizenship

- The Cyprus citizenship by investment programme was suspended as of 01 November 2020.
- The Council of Ministers has informed a number of individuals, who have been designated under EU Regulation 269/2014, of its intention to revoke their citizenship.
- Can such rule apply **retrospectively**?
- Case law and Cyprus Law on Interpretation (Cap. 1): Retroactivity in legislative provisions is not implied nor does it exist unless explicitly stated.
- Is an advisor liable for advice provided for naturalizations before the introduction of the new rule?

Ellen Kratzer



Examples

What could possibly go wrong?

- Cases in the Trusts & Estates industry are on the rise
- Reporting has become a significant burden





Ellen Kratzer, Managing Director, Fiduciary Trust International

Source: upon request



Practice Tips

- Confer with other professionals in the relevant jurisdictions as needed
- Document your conversations and update your file promptly



Rachel Mainwaring-Taylor



Examples

Potential Pitfalls

- Client's personal circumstances change:
 - Family changes – marriage, divorce, children, deaths in family
 - Jurisdiction – residence, domicile
 - Wealth – increases or decreases, assets acquired or disposed of
- Changes in the law:
 - Duty to foresee?
 - Duty to inform and advise proactively?
 - In what circumstances is there an ongoing duty of care?

Markus Zwicky



Examples

The Swiss Offshore Company



Dr. Markus Zwicky, Zwicky & Partner, Zug, Switzerland



Grandpa's Misconceptions



The International Super-Estate



Discussion



Source: [Wallpaper Flare](#)



Source: [Iceland the beautiful](#)



Many thanks



Source: [VidaXL](#)



Title



Source: [Adobe](#)





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