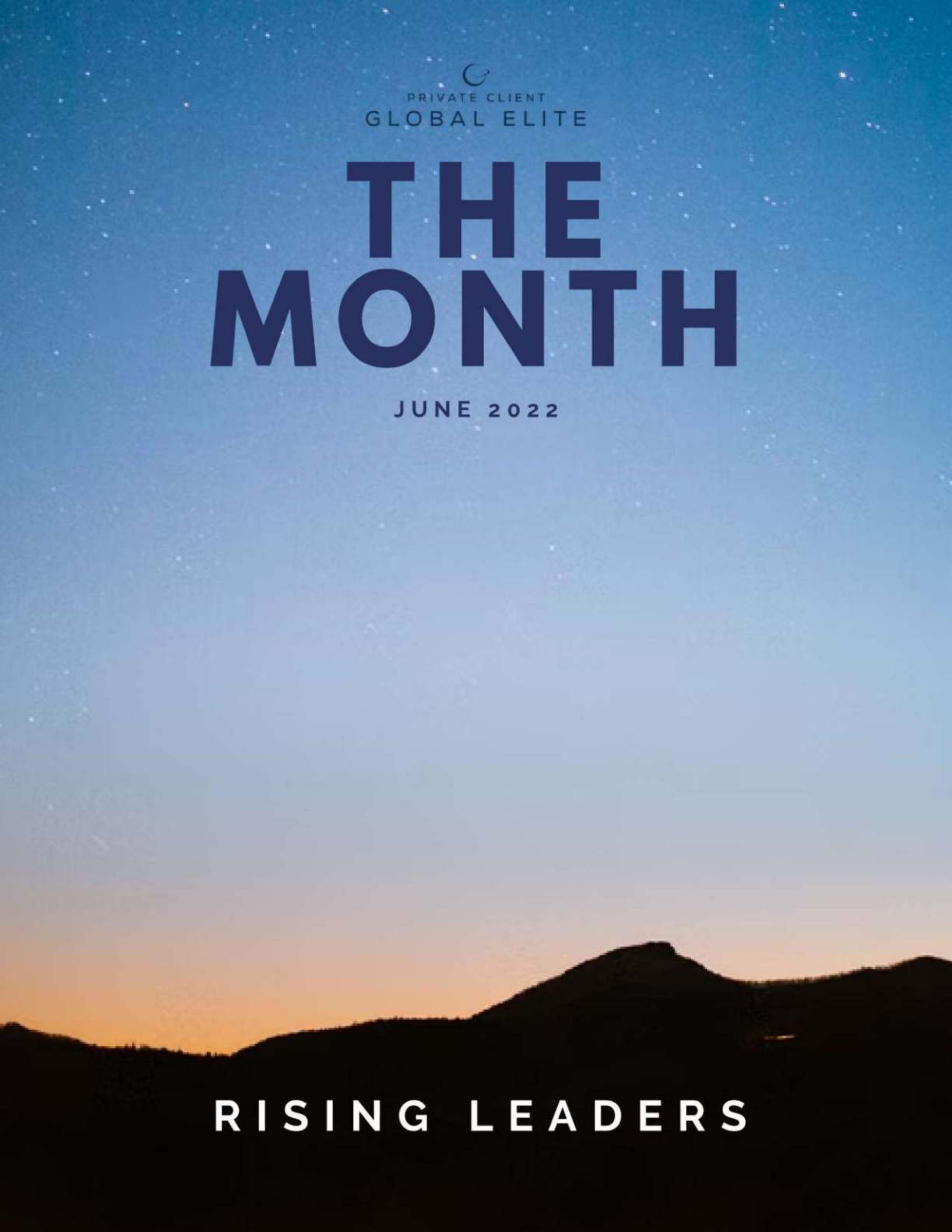
PRIVATE CLIENT
GLOBAL ELITE

THE MONTH

JUNE 2022



RISING LEADERS

The Month is a monthly magazine with key takeaways and content driven by our Private Client Global Elite community.

We welcome ideas and contributions from members of our Global Elite Membership group. If you are interested to contribute please contact **Francesca Ffiske** (fffiske@alm.com)

For more information about membership with the Global Elite contact **Helen Berwick** (hberwick@alm.com)

For information about our events, or if you need help registering, contact **Rachael Toovey** (rtoovey@alm.com)

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NOTE FROM THE EDITOR

We are lucky enough to come into contact with some really spectacular lawyers of the next generation - who we call Rising Leaders (or Rising Stars... hence the rather on-the-nose artwork for this edition!).

This edition comes the month after our inaugural residential Rising Leaders Exchange It was wonderful to see thirty of our Rising Leaders from around the world (from as far as the USA and Brazil) come together to share their ideas on the management of a lawfirm, as well as key issues in the practice today.

We are looking to launch much more for our Rising Leaders, including two new events in 2023 and a Rising Leader specific membership. If you are interested in this please get in touch with my colleague Helen Berwick (hberwick@alm.com).

On to this edition. We kick off with a write-up of some of our Rising Leaders thoughts on **what makes a law firm run successfully?** We must thank Camilla Baldwin of Camilla Baldwin Attorneys for her work in collating their thoughts on this.

Next, Ioanna Stefanaki from Zepos & Yannopoulos shares her thoughts on **should lawyers be their clients' concience?**

In that vein, Anita Shah of McDermott Will & Emery has written a great article outlining **can trust investments in digital assets and cryptocurrency markets co-exist with the ESG growth trend?** It is a refreshing angle on a topic which has come up a lot in recent memory, so I would highly recommend reading this one.

Next, we break up this edition with an **In the Spotlight interview of Kathryn Purkis**, who shares her thoughts and advice for our Rising Leaders as well as filling us in on her new role as Chambers Director at Serle Court.

Michael Rutili of Stephenson Harwood then gives us a great article on **Wealth taxes - a quick fix or an impossible balancing act?** This is a hot topic globally at the moment - especially since the pandemic.

With a more litigious focus, Emma Holland and Jemma Goddard of Stewarts share a recent case update in their **The importance of storing your will safely.**

Finally, to round off, Daniel Channing of Crestbridge gives us the down-low on **Middle East hubs,** which are **proving the sweet spot for family capital.**

Francesca Ffiske, Content Director, Private Client Global Elite

2022

28-29 June, St Regis, Bermuda
Private Client Exchange Bermuda
Chaired by Vanessa Schrum (Appleby) and Hector Robinson QC (Mourant)

13-15 July, Banyan Tree Mayakoba, Mexico
Private Client Forum Americas
Chaired by Joshua Rubenstein (Katten), Rachael Reynolds QC (Ogier), Gilead Cooper QC (Wilberforce Chambers), Carola Trucco (Barros & Errázuriz)

3-4 October, Château Saint-Martin, Nice
Private Client Exchange France
Chaired by Beatrice Puoti (Burges Salmon) and Jérôme Barré (Barré e Associés)

7-8 November, Capella, Sentosa
Private Client Exchange Asia
Chaired by Nicholas Jacob (Forsters) and Vikna Rajah QC (Rajah & Tann Singapore)

17-19 November, Villa d'Este, Lake Como
International Private Client Forum
Chaired by Basil Zirinis (Sullivan & Cromwell) and Clare Maurice (Maurice Turnor Gardner)

30 November - 2 December, La Mamounia, Marrakech
Trusts & Estates Litigation Forum. International
Chaired by Tina Wüstemann (Bär & Karrer), Dakis Hagen QC (Serle Court) and Nicholas Holland (McDermott Will & Emery)

TBC February 2023, Switzerland
Private Client Exchange Switzerland
Chaired by Tina Wüstemann (Bär & Karrer) and Werner Jahnel (LALIVE)

TBC February 2023, London
Private Client Global Elite Celebratory Dinner

12-14 February, Banyan Tree Mayakoba, Mexico
Private Client Forum Americas

WHAT MAKES A FIRM RUN SUCCESSFULLY?

Our Rising Leaders give us their thoughts...

With thanks to Camilla Baldwin, Founding Partner of Camilla Baldwin Solicitors

Leadership

Success relies on not just having one leader, but instead having many. Each individual should feel empowered to take responsibility for their own contributions, and needs to have the confidence to hold themselves accountable for their own decisions. In order to achieve this, those in managerial positions need to take a proactive interest in the strengths of those they manage, as well as have the humility to recognise that their team may have strengths that they as an individual do not.

Motivation. A firm's ability to service their clients and attract new clients is entirely reliant on staff. Therefore, a firm needs to be sure to look after their staff in order to retain good talent.

Communication. Transparency and clear communication are key for those in managerial positions to lead, to sustain a narrative and ensure employees can connect with the wider vision. Some managers can retreat in times of stress or crisis, but it was identified that sustaining an open communication leads to trust and greater care. This has been particularly important over the pandemic.

Positivity. Sowing misery will never do anyone any good - maintain a positive outlook with a clear business plan for your employees to follow.

Individual support. Everyone will have personal problems crop up - good management was identified as being someone who would offer support rather than expect them to work on robotically.

Crisis

We have learnt in the last couple of years how easily the world can fall into crisis. Crises and their effects are hardly predictable. However, the management of the firm should continuously monitor the situation and evaluate measures that mitigate the consequences of the crisis for the company, its employees and clients.

Regardless of the type of crisis we are confronted with, the most important thing arguably is to convey to the client or employee that their affairs are being dealt with in the best possible way in order to provide some level of security in uncertain times.

Besides that, a crisis can offer new business opportunities, as crises usually lead to a high demand for legal advice. From the entrepreneurial point of view, a crisis therefore requires a stronger focus on business

development. It can be thus advisable for the management of a firm to focus on business development, HR and other management tasks during a crisis and to delegate the day to day tasks to other members of the firm.

Employees

Making sure that those on the team are talented, effective and happy was identified as the key to success. Our Rising Leaders said that it is absolutely key to ensure they are nurtured in their role, as it would only take one unsuitable member of staff to create friction and discord among the whole team.

Mental wellbeing. This can be a very stressful industry, it is key that employees are able to speak up when they are struggling and be met with the support they need.

Transparency and Collaboration

Communication has already been mentioned, but an environment of collaboration and transparency in a trusted team was mentioned as being key to the success of a group - as it leads to greater care of the whole team, rather than those individuals soldiering on.

Keeping work in silos can be ineffective and cause unnecessary delays. A more fluid approach to running cases could be more effective.

Flexibility

Something that was brought up a lot is the importance of management to accept the 'new way' of working since the pandemic, and remain as flexible as possible. Many of our Rising Leaders stated that it was one of the only good things to come out of the pandemic, and is something to be treasured. By adhering to the 'old way' of working, good talent may go elsewhere.

Clients

Of course, the management of clients is key. They should not be forgotten in times of crisis,

but must be held as central to the practice.

Never overpromise and underdeliver, or that client would happily go elsewhere.

Do not be afraid to be honest with clients and give them a realistic time-frame, it is better than not delivering. ■

SHOULD LAWYERS BE THEIR CLIENTS' CONSCIENCE?

Ioanna Stefanaki, Partner, Zepos & Yannopoulos

How far should lawyers go in pursuing their clients' interests? Should there be limits to the duty of confidentiality owed to clients? Should lawyers act irrespective of moral considerations? Answers to these perennial questions have varied through the changing times. According to legal positivists, law should be divorced from cloudy issues of morality. The underlying principle was that the study and practice of law should not be influenced by less "scientific" disciplines and considerations. As a consequence, lawyers were expected to operate in a moral vacuum. However, even before the dominance of legal positivism in the 18th century, the stereotypes associated with lawyers were often negative. The Bible portrays lawyers to be cunning and conniving, while numerous lawyer "jokes" can be found in Shakespeare's plays. Is it realistic to argue that the radical changes the legal profession has undergone in more recent years can reverse this deep-rooted conviction about lawyers?

It is true that the absolute position of legal positivists on the relationship between law and morality is no longer dominant; the process of that change has been slow and arduous. Historically, it is the advent of the legal realism school of thought that challenged the most salient precept of positivism: the idea that morality is not a necessary condition to legal validity. The illusion that legal work could be conducted in isolation from moral issues. That illusion has served as a convenient excuse to discount moral factors in legal decisions. The contemporary mindset is that we should stop pretending that law and morality are separate, and that lawyers can practice in moral neutrality. Apart from not being pragmatic, such ideas are damaging and serve to perpetuate the

stereotype of lawyers as amoral at best, and even immoral.

Of course, the above shift is welcome and in line with society's growing expectations for transparency and adherence to high ethical standards by those in positions of power. However, entering the realm of ethical considerations is to walk through a moral minefield. There are often no categorically correct answers to complex ethical problems. It follows that the task of ensuring that lawyers are committed to acting morally will raise the question of who dictates what is moral. Furthermore, the lack of readily available answers to moral questions is an excellent justification for knowingly not doing the right thing. To some extent the ostensibly insurmountable difficulty in requiring that lawyers act in a morally acceptable way has been regulated; we now have the enactment of laws that incorporate what once would have been regarded as moral considerations. Anti-money laundering, anti-bribery and anti-discriminatory laws are fine examples of that trend. Just a few short years ago, even if deemed reprehensible, discrimination on the basis of race, sex or age would not amount to an illegal act. Furthermore, the absolute protection of the sacrosanct client-attorney relationship, which allowed lawyers to swallow objections when faced with ethical dilemmas, has been seriously eroded. Lawyers today are not only expected to use professional skills and knowledge in a morally acceptable way for the benefit of society; they are increasingly under an obligation to do so.

Ensuring that lawyers adhere to those obligations is not an easy task. First of all because professionals who make a living by finding ways around inconvenient rules are well equipped to come up with creative solutions. Secondly, laws cannot be exhaustive, especially in view of the rapidly changing nature of the legal practice and its social context. In other words, legal provisions and codes of conduct do not suffice. Lawyers should be educated and trained so as to help develop their moral character. If we expect them to be honest, fair and trustworthy, should that not be part of their training? The goal being that they should respect the rule of law and fully understand why maintaining its utmost integrity is important for the justice system. Clearly, if they fail to do so they will end up in reducing ethics to a matter of risk analysis and management.

In view of the above, claiming that lawyers should be their clients' conscience is not only far-fetched, it is also too big a burden for lawyers to shoulder. If one extreme has lawyers pretending that moral considerations are irrelevant to legal practitioners, and the other extreme sees them substituting clients in taking into account moral considerations, there is a middle way. Lawyers should be encouraged to use their skills and persuasiveness so as to shape the opinions of their clients. Given their ability in defending their beliefs and promoting their ideas, they are particularly suitable to the task of nudging clients towards morally acceptable decisions. In short, the days when moral considerations were irrelevant to the practice of law are long gone. Lawyers are not only expected to abide by scores of regulations that aim to ensure that high ethical standards are maintained, they are also expected to rely on their own conscience as the touchstone against which their own actions are measured. Reconciling their own conscience with that of their clients' is a fine balancing act. But then again, what isn't in the legal profession? ■

TRUST INVESTMENTS: CAN TRUST INVESTMENTS IN DIGITAL ASSETS AND CRYPTOCURRENCY MARKETS CO-EXIST WITH THE ESG GROWTH TREND?

Anita Shah, McDermott Will & Emery

The tide is changing in the trust arena. There is a growing movement away, for many wealthy families, from the premise that money should be invested simply to make more money. For many of these families, the historical selection of investment managers has been based on their ability to navigate amongst traditional assets and make decisions that are underpinned by the selection of investments that will generate the highest returns whilst taking the fewest risks.

Instead, there is an increasing trend for some, or certain parts of, wealthy families to invest with purpose. Environmental, social and governance (ESG) investing is increasingly on the agenda in the trust arena as wealthy families seek ESG data and its incorporation into trust investment objectives and strategy. Requests from settlors and beneficiaries to consider factors such as climate change or for certain industries to be excluded from investments because of their environmental impact are becoming more popular.

This trend coincides, perhaps paradoxically, with the growing appetite of wealthy family offices to invest in NFTs, digital assets and cryptocurrencies, despite the somewhat punishing turbulence seen noticeably in recent months. Alongside this, there is now an expectation that trustees can meet a higher bar of navigating these volatile markets and make more high-risk investment decisions.

With wealthy families now having strong personal drivers for investments that are either rooted in ESG criteria or that can ride the

crypto-waves, there is likely to be an increase of conflicts on the horizon between beneficiaries with competing objectives that on first glance seem diametrically opposed. The question then arises: can trust investments in digital assets and cryptocurrency markets co-exist with the ESG growth trend as well as trustee obligations at equity?

Legal

We need to begin with the current legal landscape. The trustee is obliged to preserve and enhance the trust property to provide for the beneficiaries for the lifetime of the trust. Investments for other "political" purposes such as ESG which result in less growth for the trust are risky for the trustee and can result in a trustee being required to compensate the trust for such lost growth. There is recent authority in the charities sphere where the trustees of charitable trusts administered to benefit the environment were permitted to invest the trust assets to benefit those purposes and not just for financial performance; however, we would suggest caution in relying on such authority to permit the trustee to administer a trust for the furtherance of ESG purposes at the expense of economic performance. Such jurisprudence may come, even imminently but we do not have it yet.

Consequently, trustees mindful of such objectives should look to the language of the trust deed and their indemnities and exoneration clauses when considering such investments.

Environmental

Cryptocurrencies have developed a reputation as being environmentally unsound due to their significant energy consumption. Data suggests that the annual energy consumption of Bitcoin is equivalent to the total electricity produced in the Netherlands, and selling just one NFT on Ethereum has a carbon footprint equivalent to a one-hour flight.

However, new initiatives are said to be emerging which improve the crypto industry's energy credentials. Most notably, the Crypto Climate Accord, an initiative to decarbonise the cryptocurrency industry by 2030, has been established. More than 45 companies have already signed on, committing to net-zero by 2030 and there is already a growing emergence of alternative, eco-friendly cryptocurrencies that include carbon footprint offsetting and renewable energy protocols.

Social

Social investors use social factors with the intention of making an improvement in the world, whether it is by investing in educational outfits, private projects, or companies shaped by a diverse culture. While on the one hand cryptocurrencies may be thought to be incompatible with social good owing to their susceptibility to money-laundering transactions stemming from their anonymous nature and global ease of movement, on the other hand, there may be some alignment with social investment goals. Blockchain and cryptocurrencies promise to offer greater financial inclusion by paving a way to increase access to financial systems and more affordable cross-border transactions without the need for intermediaries. The social FinTech sector is still very fragmented, however an increasing number of FinTech start-ups are seeking to create new ways to make a positive impact in society, by generating access to financial inclusion, gender equality and environmental sustainability focusing on those who lack access to formal financial services.

Governance

Investing in governance either in nations or companies refers to investment decisions focused on logistics, decision-making and different regulations with references to practices designed to prevent corruption and bribery, manage risk and crises, and progress values in stakeholders and corporate governance. As most cryptocurrencies use blockchain networks that are decentralised, there is an innate sense that cryptocurrency defies good governance. However, the global focus on new crypto regulations and the recent positive steps of UK law enforcement and US federal agencies cements the growing recognition that cryptocurrency and digital asset investments are here to stay. Increased legal infrastructure and regulatory clarity are being prioritized as essential tools in the fight against the misuse of cryptocurrencies as well as in preparing for the wider institutional adoption of digital assets and technologies. Therefore, with growing coherence on the classification of digital assets and the parameters in which cryptocurrency can operate, further evolution of digital asset transactions and technologies can be expected and are even likely to be embraced when looking to the future.

Final thoughts

We are still very much in the early stages of ESG alignment with crypto and digital assets investments, and therefore trustees tasked with environmentally and socially cautious investments need to be vigilant when it comes to finding harmony with crypto in their trust portfolios. Risk management and expert investment management advice, together with the trust deed's provisions, need to be at the forefront of trustees' minds when considering the investment objectives of wealthy families, and pro-active engagement with advisors is crucial in identifying and subsequently minimising exposure to the challenges and risks associated with the new age of digital and ESG compatible investments. ■

IN THE SPOTLIGHT:
KATHRYN PURKIS

Kathryn Purkis is the newly appointed Chambers Director at Serle Court. We wanted to learn more about her, including her advice to our Rising Leaders.

PCGE: **What is your background?**

My parents emigrated to South Africa when I was a child, so I grew up there and studied English and Politics at the University of Cape Town. I knew from an early age I wanted to be a lawyer, but not in that legal system (it was pre-1994), so I returned to the UK and read law at Balliol College, Oxford. I have been a barrister ever since, both in independent practice from Lincoln's Inn, mostly at Serle Court, with a long interlude in partnership in Jersey where my partner and I spent a very happy decade. I practised as a Jersey Advocate from Collas Crill.

On returning to Serle Court in 2016, I became involved in Chambers' management, most recently as chair of the Management Committee. I had for a time been joint Managing Partner of the Jersey firm and knew that I loved the dynamic activity of running a business.

PCGE: **Why did you choose to take on the new role of Chambers Director at Serle Court?**

I was ready for a new challenge! It is a fantastic opportunity to be involved in taking Serle Court forward in the next decade. I am pretty uniquely positioned to do the role – I know chambers and all its people as a member, as a client, and as a manager; and I know many of our clients too, their expectations both professional and organisational, and the market in which we are operating. I also understand the unique culture of a barristers' chambers.

There are many reasons why a job like this is exciting. I have seen at first-hand how law firms must constantly improve and innovate to keep ahead, and with some foresight and braveness can position themselves to take opportunities for growth and advancement. The more sets of chambers are perceived as and become brands and entities in their own right, the more they need to think about behaving in a similar way. At the same time there are increasing expectations from our clients that chambers can respond as firms or companies would do - e.g., is our information technology where our clients need it to be? Are we operating as sustainably as possible? If not, what do we need to change? The same is true of our regulator - we have to think about whether we have robust systems in place to facilitate true diversity in our workplace and equality at work. These are all things we at Serle Court want to do for their own

sake and are doing, but the business structure and sometimes the culture of a barrister's chambers is quite an interesting starting place for change of this kind.

As a gay woman in a leadership position, I'm also very pleased to be visibly championing diversity in Chambers and the wider legal profession.

PCGE: What sets Serle Court apart?

For those who work there, it is the culture. It is a quietly confident and happy place, strongly bound by ties of friendship and mutual respect. Feedback shows that our clients see that in action and experience it in their own interactions with members of chambers and the staff.

In the private client marketplace, excellence and strength in depth are two differentiators, of course. Otherwise, what sets us apart is that we are the most commercial of the chancery/commercial sets. We are of a size to be able to field large teams and often do so on both or all sides of the larger cases (we are doing that now in the Wang litigation). We are experts in equity, and our trusts offering is very much a strong suit, but the depth and range of our commercial and corporate expertise means that we are very much at home in the most complex of business structures, be they trusts, companies or other investment vehicles. In addition, we understand how to attack and defend assets in those structures, because we do a lot of asset recovery in the context of our civil fraud practice. We know all the offshore jurisdictions very well indeed, which tends to help in these cases wherever they are being litigated, and however they present (as trusts disputes, or ancillary relief claims, or business ventures gone wrong). Finally, the principal complementary expertise required for these disputes lies in the conflicts of law, where our practice is undoubtedly pre-eminent.

PCGE: What are your priorities in the next 12 months?

Some of them are quite dichotomous! To maintain a vibrant and collegiate workplace whilst embedding hybrid working. To make the case for some strategic growth whilst keeping our special culture and accessible working style. To see if we can continue to function as a 21st century workplace in a 17th century building!

Otherwise, I want to bring energy and drive to the various projects we have on the go to ensure equality, diversity and inclusion within chambers and in the wider justice community. Most importantly of all, I need to make sure our clients, old and new, are always happy with us – that has to be central to everything we do.

PCGE: For those at the beginning of their legal careers, what advice do you have that you wish you had been given?

What I wish I had been told 30 years ago was:

- Work hard and take as many opportunities as you can in the first 7 years – it sets the foundations for your practice.
- Relax and be yourself. Clients want to work with people they like, and they'll like you if you are friendly, accessible and authentic.
- One day, it won't be a big deal to be gay, and you won't be the only woman in the room.

I am not sure if these points need making so much today: my sense is that this generation is gender-blind, much more confident and open, and they have learnt to be incredibly hardworking already whilst competing to enter the law.

I would now say: don't panic, there is plenty of time for you to do everything you want! Enjoy the ride. And don't bother comparing your progress to others, because people blossom at different speeds. There really is room for everyone, and a range of talents and interests. ■

WEALTH TAXES

A quick fix or an impossible balancing act?

Michael Rutilli, Stephenson Harwood

The extraordinary measures that have been put in place to tackle the economic and social effects of the COVID 19 pandemic have required a level of public spending that many of the world's largest economies have never witnessed before. Just when governments were starting to grapple with how to start reducing such staggering deficits (by way of example, public borrowing in the UK rose to just over £300 billion in 2020/21), many western economies have found themselves under renewed pressure to increase spending to combat the effects of rising inflation and the Russian invasion of Ukraine and the consequential pressure on household budgets.

The UK government appears to already be losing the low taxation credentials which are usually associated with a Conservative administration by being one of the first OECD economies to put up taxes as we start to recover from the pandemic. National Insurance Contributions have already increased in this tax year and UK corporation tax is set to rise to 25% in 2023 (a step in the opposite direction if one thinks of the Conservatives' post-Brexit commitment of ensuring a low tax environment for businesses). Nevertheless, there is a feeling that with increased pressure on the government to step in to soften the effects of the current economic uncertainties, there will soon be pressure to look for additional sources of revenue. Following widespread pressure, the Chancellor has already announced an additional tax on energy firm profits but that might not be enough.

Instinctively, governments are looking at the lessons from the global financial crisis a decade ago. During that period, countries such as France and Italy leaned heavily on raising taxes to plug the hole in public finances. In the UK, by contrast, the majority of measures were directed at cutting spending. That said, another round of austerity would be politically costly to the UK government that therefore seems to be coming to the conclusion that tax increases are going to be the lesser of two evils going forward. But tax rises are never easy and governments know they do not win votes. In light of this, the idea of a wealth or property tax as a means of shifting more of the financial burden onto the wealthiest in society appears to be meeting wider approval than in the past. Such a tax has not been imposed in the UK in modern times but there are plenty of examples of it being a well-trodden path across Europe.

The term 'wealth tax' can refer to a broad range of taxes. However, the most common feature is that they target and are calculated by reference to capital rather than a person's ability to produce income. Such a tax can also be implemented without there being a conditional event, such as with a transfer of assets with Inheritance Tax ('IHT') or an increase in the value on disposal with capital gains tax ('CGT'). Some European countries, such as Norway and Spain, impose a net wealth tax on residents. Others, such as France, impose a property tax in respect of real estate assets only (although it did impose a tax in relation an individual's net wealth prior to 2018).

Wealth taxes should be implemented cautiously. Whilst they can ensure a steady stream of revenue, they also risk becoming a false economy if they end up encouraging wealthy and internationally mobile individuals to vote with their feet. The French experience provides an almost textbook example of the difficult science (or art!) of finding this balance.

In France, it is reported that at least 10,000 left the country to avoid paying the wealth tax, which was introduced in 1998 and has since been significantly reformed (it currently applies only in relation to real estate exceeding a value of €800,000) by Emmanuel Macron in 2017. French economist Eric Pichet is widely quoted on this topic. He estimated that the wealth tax ended up costing the French Government almost twice as much as what it brought in due, in part, to the loss of other tax revenue from wealthy individuals who are no longer tax resident in France. At the same time, however, it is widely believed that it was in fact the 75% tax rate temporarily imposed under François Hollande in 2012 on income in excess of one million euros that really drove the wealth exodus from France in the early 2010s.

Probably due to France's notoriety among the jurisdictions with wealth taxes, it is often forgotten that wealth taxes are not the preserve of what would be regarded as high tax jurisdictions. Many are often surprised when they are reminded that Switzerland, the land of the forfait regime, receives approximately 3.5% of its tax revenue from wealth tax (the highest percentage across OECD countries which impose a wealth tax). It is levied at a cantonal level and the rates vary between roughly 0.10% and just under 1% according to canton.

In light of the above, could a one off levy be a more palatable option? As was concluded in the Wealth Tax Commission report finalised in late 2020, a single strike wealth tax could produce revenues that far exceed the additional income anticipated by the newly introduced energy windfall tax. A flat 1% wealth tax on the net wealth of the UK's wealthiest individuals for a limited period of 5 years, is estimated to be able to produce additional tax income in the hundreds of billions, compared to the anticipated £5bn that will be raised by the energy windfall tax.

However, caution should be exercised when introducing such kind of wealth tax. Across Europe there has been a tendency for such 'one off' wealth taxes to remain in place long after the originally proposed emergency period has ended. When Italy found itself having to raise new emergency funding when hit by the Eurozone crisis in 2011/12, it sought to target the flight of capital and investments out of Italy by taxing Italian tax residents on real estate located abroad (known as the Imposta sugli immobili situati all'estero, 'IVIE') and on foreign financial investments (the Imposta sul valore delle attività detenute all'estero, 'IVAFE'). These levies currently remain still in force at respectively 0.76% and 0.2%. In Germany, in an attempt to cover the cost of covering the reunification process in 1991, a solidarity surcharge (Solidaritaetszuschlag) was introduced. The solidarity surcharge is an additional levy that is applied in addition to income tax, capital gains

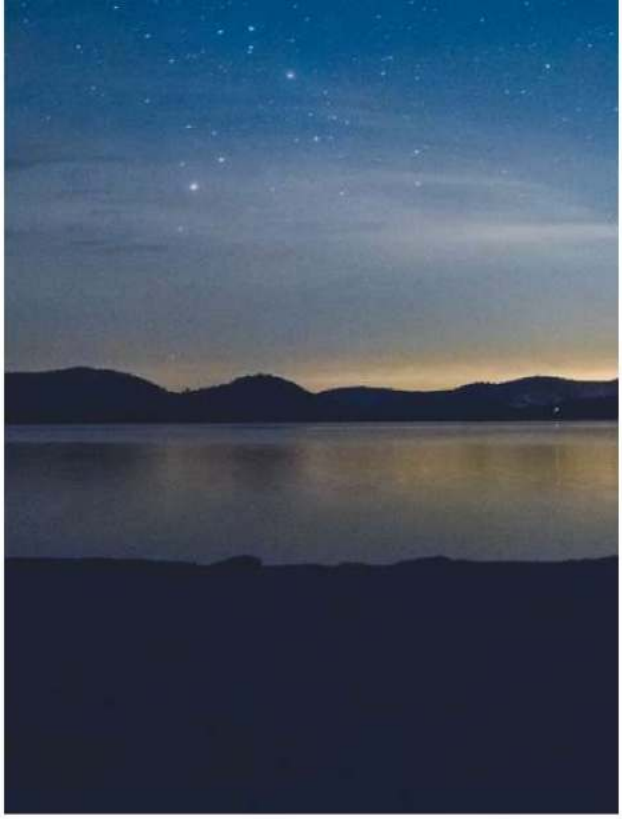
tax and corporate tax in Germany. Some 30 years after its introduction, it remains in operation today being applied as an additional tax as a 5.5% surcharge. However, many have argued that the Solidaritaetszuschlag is not truly a 'wealth tax' as, whilst it taxes against individuals as a flat levy, it does not specifically target the wealthiest taxpayers.

Coming back to the UK, a wealth tax on real estate could be less of a fundamental shift in UK taxation. The UK already has a system which imposes higher or additional taxes on sellers and purchasers of second properties. For example, a stamp duty land tax ('SDLT') surcharge of 3% is imposed on purchases of second properties (unless the purchaser buys the property to replace his or her main residence and sells that main residence within three years). Furthermore, relief from CGT is not available on the sale of a property which is not the seller's main residence. CGT is charged at 28% (higher rate) on residential property other than one's main residence. It is also the case that the higher rates of SDLT have increased materially in recent years. UK residential properties are of course also generally subject to Council Tax. Despite its relatively recent history, Council Tax has not been immune for calls for reform, not least because of the fact it generally targets occupiers as opposed to owners and the bands are historical rather than a reflection of current property values. A net wealth tax can be difficult to implement, this being one of the reasons it was abandoned by France in favour a property tax. A property tax would be an easier option for the UK government but then it would be sensible for it to consider the SDLT, CGT and Council Tax regimes holistically.

There is arguably an inherent Anglo-Saxon suspicion towards anything called a 'wealth tax'. At the same time, it is often forgotten that, for example, UK rates of IHT are amongst the highest in Europe (whilst 'wealth tax jurisdictions' such as Italy offer some of the most generous inheritance tax exemptions in Europe and many Spanish regions do not impose any tax on death). Considering the examples of wealth taxes across Europe, the real lesson is that we must look beyond the simplistic 'one size fits all' label of 'wealth tax' and instead focus on which taxpayers such a tax would affect, its scope and remit and how much it would actually raise. Only with these considerations in mind might a wealth tax become a way of attempting to square the circle of ensuring sufficient additional tax revenue whilst not alienating the wealth producing sections of society and jeopardising the UK's attractiveness to the internationally mobile. ■

THE IMPORTANCE OF STORING YOUR WILL SAFELY

Emma Holland and Jemma Goddard, Stewarts



The importance of making or renewing your will is often discussed. What is often overlooked, however, is the potentially disastrous implication of relatives being unable to find the original signed version on the testator's death. If the original is lost, the starting point is a presumption that the deceased intended to revoke it. It may not always be easy to prove the contrary, particularly if there are opposing views as to what the deceased intended.

The dangers of not storing your will in a place where relatives can easily find it are demonstrated by the recent case of Cooper v Chapman [2022] EWHC 1000 (Ch).

Background to the case

Dr Cooper died on 20 July 2019. He had two children aged 16 and 14 with Ms Cooper, his ex-wife, who acted as the children's litigation friend.

Towards the end of 2014, Dr Cooper suffered a "very sudden and catastrophic decline" in his mental health and was admitted to hospital as a psychiatric patient. He was discharged in January 2015 but continued to suffer mental ill-health for the rest of his life. By the time of his discharge, Dr Cooper's marriage to Ms Cooper had broken down, and she began divorce proceedings in February 2015. Ms Cooper moved out and bought a new home. From around the same time, Dr Cooper ceased to have contact with his children, and in November 2017, the Family Court barred Dr Cooper from having any direct or indirect contact with them.

Since shortly after the breakdown of his marriage until his death, Dr Cooper's partner had been Ms Chapman.

A will dated 4 June 2009 (the "2009 Will") left Dr Cooper's entire estate to his children, contingent on them reaching 21 years old.

However, Ms Chapman said that Dr Cooper had created a subsequent homemade will on about 27 March 2018 (the "2018 Will"), which had since been lost. Ms Chapman submitted as evidence a draft of the 2018 Will, which she claimed to have found on a computer used by Dr Cooper. Data showed that the 2018 Will was, in fact, created on a different computer on 24 January 2018, last modified and saved on 20 March 2018 and then transferred to the computer on which it was found by Ms Chapman on 4 February 2019.

The 2018 Will appointed Ms Chapman as executrix of Dr

Cooper's estate, left a £1,000 pecuniary legacy to Bolton School and the residuary estate to Ms Chapman or, if the gift to her failed, to the "Royal Manchester Childrens' Hospital" [sic]. The document made no provision for Dr Cooper's children, recording instead:

"I am fully aware that I have given nothing to my two estranged children... and do not wish them to receive anything from my estate. They were fully provided for during the financial settlement of my divorce from their mother and I made that arrangement with this in mind."

Ms Chapman submitted that Dr Cooper signed the 2018 Will in the presence of two witnesses, Dorothy Hartley and James Hartley (Ms Chapman's uncle), each of whom attested and signed the document in Dr Cooper's presence.

The children sought to prove the 2009 Will. Ms Chapman was the first defendant, and the second and third defendants were the executrixes named in the 2009 Will.

As well as proving that the 2018 Will had been duly executed, Ms Chapman needed to establish that it had not later been destroyed by Dr Cooper, thereby revoking it. In that regard, Ms Chapman firstly pointed to the fact that the 2018 Will was made shortly before Dr Cooper died, and there had been no material change in circumstances in the interim. Secondly, she said the revocation of the 2018 Will would have benefitted the children at the expense of Ms Chapman, which is not what Dr Cooper had wanted.

The children denied that Dr Cooper or the purported witnesses had signed the 2018 Will. They pointed to various particularised matters, including Dr Cooper's meticulous record-keeping, careful spelling and grammar (the draft will had several spelling and grammatical errors) and the fact that Dr Cooper made no provision for the children in the divorce, so it was incorrect for the document to state that he had done so.

The children also contended that even if Dr Cooper had signed the 2018 Will, Ms Chapman could not establish that he had not destroyed or intended to revoke it. They pointed in support of this to Dr Cooper having already made significant lifetime gifts of £95,000 to Ms Chapman and having nominated her as a beneficiary of his occupational pension death benefit after March 2018. The children also alleged that the relationship between Dr Cooper and Ms Chapman was not "stable, permanent or full time". However, Ms Cooper (as litigation friend) was unable to give much useful direct personal testimony because from January 2015 onwards, she only engaged with Dr Cooper through lawyers or at court hearings.

Ms Chapman gave evidence that Dr Cooper understood that Ms Cooper's home was put in trust for the children. (In fact, although Ms Cooper's home was put in trust, the children were not prospective beneficiaries.) Ms Chapman also said the children would benefit from Dr Cooper's occupational pension (again, Dr Cooper had been mistaken about this).

Ms Chapman gave evidence that Dr Cooper first raised the possibility of a new will in January 2018. Dr Cooper drafted the will, which he told her was to be a temporary measure to protect Ms Chapman and his money until such time as he and Ms Chapman could instruct a professional to prepare wills for both of them (which never happened). Ms Chapman recognised the 2018 Will as the same as the draft he prepared in January. Ms Chapman acknowledged that Dr Cooper had been very organised and methodical but said he was less so in later years.

Consideration of the issues

The court ordered a trial of three preliminary issues:

1) Whether Dr Cooper executed the 2018 Will in accordance with the formalities of section 9 of the Wills Act 1837, and, if so

2) What the contents of the 2018 Will were, and

3) Whether, in the absence of an executed original of the 2018 Will, it should be presumed to have been destroyed by Dr Cooper with the intention of revoking it.

Section 9 of the Wills Act 1837 provides that for a will to be validly executed, it must be in writing, signed by the testator (or by some other person in his presence and by his direction), intending by his signature to give effect to the will. The testator's signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and each witness must either attest and sign the will or acknowledge his signature in the presence of the testator (but not necessarily in the presence of any other witness).

As to that issue, His Honour Judge Klein rejected the children's contention that Mr and Mrs Hartley had not witnessed such a document on or about 27 March 2018. He accepted Mrs Hartley's evidence in this regard, which included that she had asked Dr Cooper why he had not made provision for the children, and he responded that they had been provided for in his divorce. Mr Hartley's evidence confirmed Mrs Hartley's version of events on the substantive issue of whether the two of them had witnessed the 2018 Will. The judge was satisfied that the 2018 Will was executed in accordance with section 9 of the Wills Act 1837.

As to the second issue, in the judge's view, it was improbable that a different document was executed in March 2018 on the basis that no evidence had been found of an alternative draft. The draft in question was saved only a week before the 2018 Will was executed, and its terms were almost accurately reported by Mr and Mrs Hartley.

As to the third issue, the judge acknowledged the presumption of revocation in respect of lost wills. However, on balance, having considered all the evidence in the round, he thought it

improbable that Dr Cooper would have destroyed the 2018 Will with the intention of revoking it. The judge found there had been a degree of chaos at the end of Dr Cooper's life but that he probably had a continuing wish to benefit Ms Chapman (which was consistent with him having made large lifetime gifts to her, as opposed to that tending towards the opposite conclusion) and there had been no deterioration in their relationship to suggest otherwise. The judge also concluded that Dr Cooper would have preferred to benefit Bolton School and Royal Manchester Children's Hospital over the

children, so he would have been unlikely to revoke those gifts.

The judge therefore concluded that Dr Cooper did validly execute the 2018 Will, its terms were the same as the draft submitted as evidence by Ms Chapman, and Dr Cooper did not destroy the 2018 Will with the intention of revoking it. The 2018 Will therefore stood as Dr Cooper's last will.

Judge's comments and analysis

As observed by the judge, this was a particularly sad case involving "the most tragic of circumstances".

The litigation endured by Dr Cooper's family and partner following his death and the consequential legal costs incurred will likely only have exacerbated tensions.

The case highlights the importance of safe will storage and ensuring that at least one person, ideally an executor or trustworthy family member, is made aware of its whereabouts. Where possible, instructing a professional to prepare and then store the will is the best way to avoid any such issues after death. ■

MIDDLE EAST HUBS ARE PROVING THE SWEET SPOT FOR FAMILY CAPITAL

Daniel Channing, Director, Crestbridge

In February this year, the Dubai International Finance Centre (DIFC) reported its highest ever annual revenue and operating profit.

Meanwhile, in Saudi Arabia, Riyadh is focused on morphing from an oil and gas powerhouse into a business, commerce and finance hub, with experts forecasting that Saudi Arabia will become the preeminent finance hub in the Middle East within the next three years.

On the ground

This is a strong indication that key hubs in the Middle East, such as the DIFC and Riyadh, are being successful in diversifying their proposition and setting out their stalls as global players in cross-border investment.

From an international service provider perspective, it's long been the case that centres in the Middle East have been active in the private client and family office market – but this is now broadening with investors in the region looking for increasingly sophisticated support to enable them to achieve their global investment aspirations.

At the same time, investors and family offices elsewhere in the world are looking more and more at the cross-border structuring and professional support services available through Middle East hubs like the DIFC and Riyadh to support their international ambitions too.

As local, regional and global investors increasingly put their faith in these Middle East hubs, it is our responsibility as service providers with the experience and expertise in cross-border structuring to support that trend with the same quality service and knowledge that we have applied in other markets too.

It has certainly been the message from family offices that the Middle East market is incredibly busy. Our experience on the ground is that the DIFC and Riyadh are seen as a nexus for investment into key growth markets, specifically Africa and Asia - providing a route from North to South (the UK/Europe to Africa), and from West to East (the US to Asia).

As well as the geographical positioning that plays out well for this sort of structuring opportunity, it is the tax neutral environment they provide that also lends itself perfectly to straightforward collective investment structures – an area where we are seeing particular activity at the moment amongst family offices.

Private equity and venture capital type deals are areas of particular activity, with family offices globally still sitting on significant amounts of dry powder, waiting to be allocated to the right target and put to work. The message is clear, though - it has to be the right target. Which is why having a tried and tested rote to market that can enable them to react quickly when the right opportunity comes along is so important – and the hubs in the Middle East are rising to that challenge.

As well as providing good structuring, attractive tax environments and good mechanisms for upstream investment vehicles needing neutral ground, hubs in the region are significantly enhancing their governance and regulatory frameworks and investing heavily in their hard and soft infrastructures - bolstering their

regional stock exchanges, for example, to support listed fund business.

This is where there is significant opportunity for offshore vehicles in supporting the evolution of these hubs. We frequently see, for example, Jersey structures being used to complement activity in the Middle East, whilst the experience in centres like Jersey have in governance and cross border regulation is hugely prized by families and complements the work being done by advisors in the Middle East too.

As hubs in the Middle East continue to evolve and transition at pace from domestic to international centers, IFCs like Jersey can play a positive and complementary role. The fact that Jersey has been visiting the Middle East region for many years, has had a presence in the UAE since 2011 and is ramping up its visibility in Saudi Arabia, puts it in a strong position to support this trend.

The future

Both the DIFC and Riyadh have hugely ambitious but highly achievable growth plans for the years ahead.

2021 saw the approval, for instance, of the DIFC's Strategy 2030, a new strategy that reflects the DIFC's role in supporting sustained economic growth. It embraces new legislation relating to the expanded duties and responsibilities of the DIFC and promotes the values of efficiency, transparency and integrity, whilst also placing a real emphasis on innovation.

In Saudi Arabia meanwhile, the Vision 2030 strategy sets out an equally ambitious growth plan, with an aim to rebalance its economy, diversify into new sectors, from financial services to high-end manufacturing, tourism, entertainment and culture.

It's clear that the Middle East, in particular the UAE and Saudi Arabia, provides significant

opportunities to support family office structuring and private market cross-border investment, and the pace of change over the coming years will undoubtedly accelerate. ■

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