

A scenic landscape at sunrise or sunset. The sun is low on the horizon, casting a warm glow over a range of mountains. In the foreground, a person is paragliding, suspended in the air with a large, curved blue canopy. Below them, a thick layer of white clouds fills the valley, creating a sea of clouds. The sky is filled with soft, golden light and wispy clouds. The overall mood is peaceful and adventurous.

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Managing and  
preserving your  
wealth:  
Key issues and  
current trends

23 March 2021 | Michael Rutili

[withers](#)<sup>LLP</sup>

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# A stitch in time saves nine...

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- More and more entrepreneurs, founders and owners are keen to plan ahead rather than wait for a crisis
- Have those difficult conversations today rather than tomorrow
- Greater opportunity for longer term planning rather than short term knee-jerk reactions
- Allow for opportunities to amend/reconsider planning

# Critical junctures

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- Generational shift
- Marriage / New members entering the family
- Divorce
- Family tensions/disputes
- Financial difficulties
- Death

# Objectives in family wealth planning

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- Succession planning and generational wealth transfer
- Family influence and control
- Flexibility
- Integrated governance (family charters/constitutions?)
- Sustainability and continuity
- Effective tax planning
- Asset protection
- Privacy / reputation management

# Challenges for wealthy families

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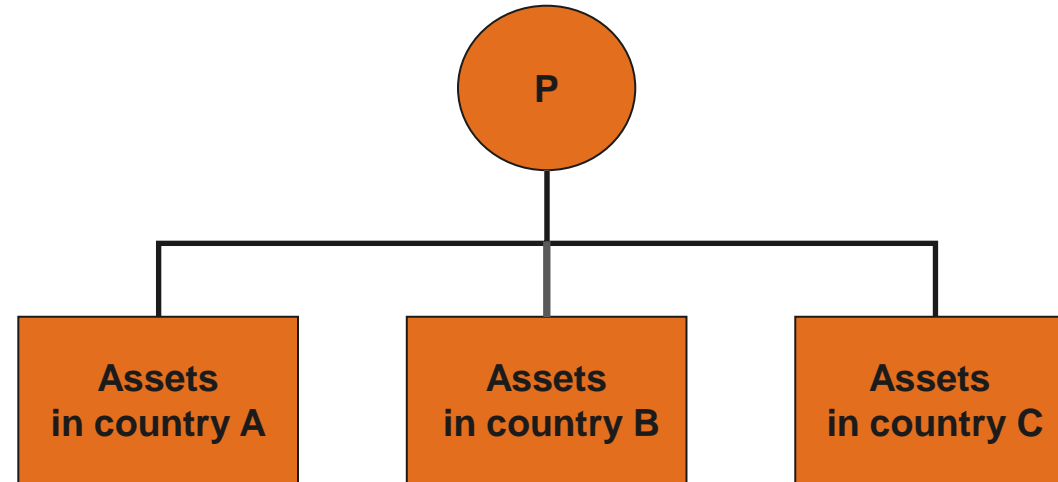
- Choosing the right holding structure for family wealth
- Sheltering wealth v control
- Managing generational change
- Cross-border succession/forced heirship
- Welcoming new members
- Managing the impact of divorce / family fallouts
- Uncertainty arising from shifting legal and tax landscape

# Ways to hold wealth

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- Direct ownership
- Holding companies
- Fiduciary structures
  - Foundations
  - Trusts
- Family offices

# Direct ownership



P may have -

- No formal succession plan
- No overreaching control and succession mechanism in place
- No separation of ownership to protect assets from creditors
- No objective review/audit on a coordinated basis

# Direct ownership

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## Advantages

- Direct family ownership giving control
- No outside involvement
- No additional costs

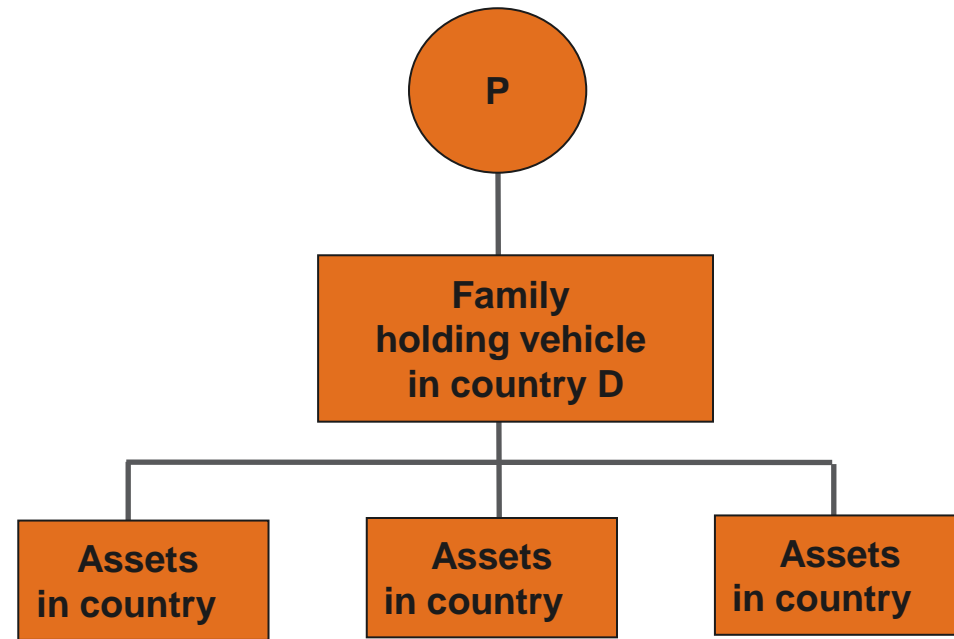
## Disadvantages

- Succession
- No control over how assets dealt with in the future
- More difficult to reach binding family consensus
- Will and probate
- May need a Will in more than one jurisdiction
- Local succession rules may apply
- Have to obtain probate of Will
- Limited asset protection
- Limited ability for tax planning



# Ownership through corporate vehicle – single owner First generation?

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P may have -

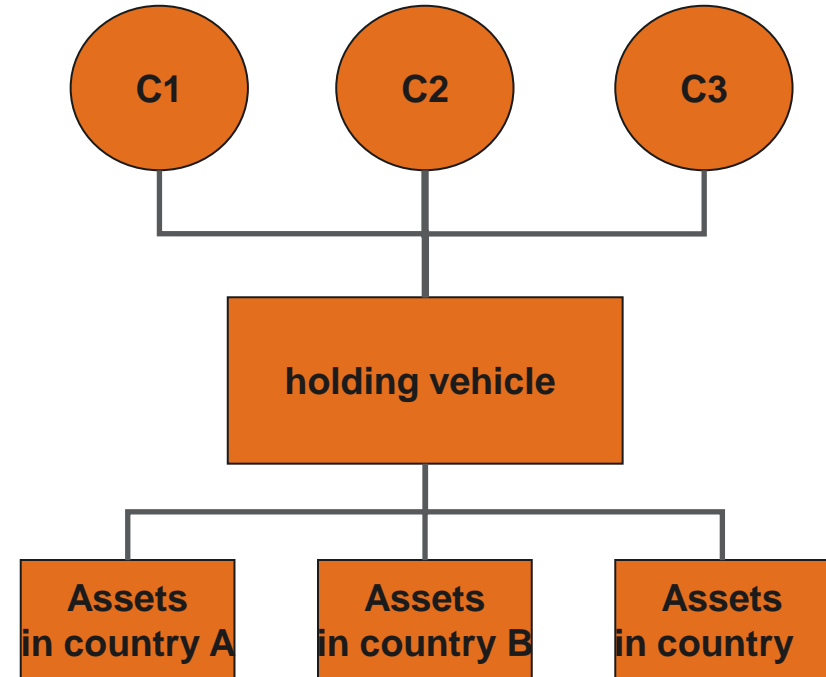
- No formal succession plan
- No overreaching control and succession mechanism in place
  - P may be sole or principal director of holding company and subsidiaries
- No separation of ownership to protect assets from creditors

# Ownership through corporate vehicle – multiple family ownership

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Can lead to...

- Fragmentation of ownership
- Loss of control at all levels of structure
- Problems caused by diverging family interests in relation to
  - Sale v retention of family business
  - Distribution v reinvestment of profits
  - Diversification v focus on core business



# Ownership through companies or partnerships

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## Advantages

- Direct family ownership giving control
- No outside involvement
- No additional costs
- Succession
- Shareholders' agreement and partnership deed may provide restrictions on who can hold shares or partnership interest
- Will and probate
- Will and probate needed only for shares and partnership interest not underlying assets

## Disadvantages

- Succession
- More difficult to build family consensus and may be conflict between different interests
- May result in fragmentation of ownership among heirs
- Will and probate
- Have to obtain probate of Will
- Limited asset protection
- Limited confidentiality and security

# Fiduciary structures

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## Foundation

- Foundation is an entity with separate legal personality in the same way as a company
- The Foundation is controlled by its board of directors who administer the assets for the benefit of the beneficiaries of the Foundation
- The Founder may be able to retain key powers over the Foundation
- The directors may be subject to the oversight of a supervisory board

## Trust

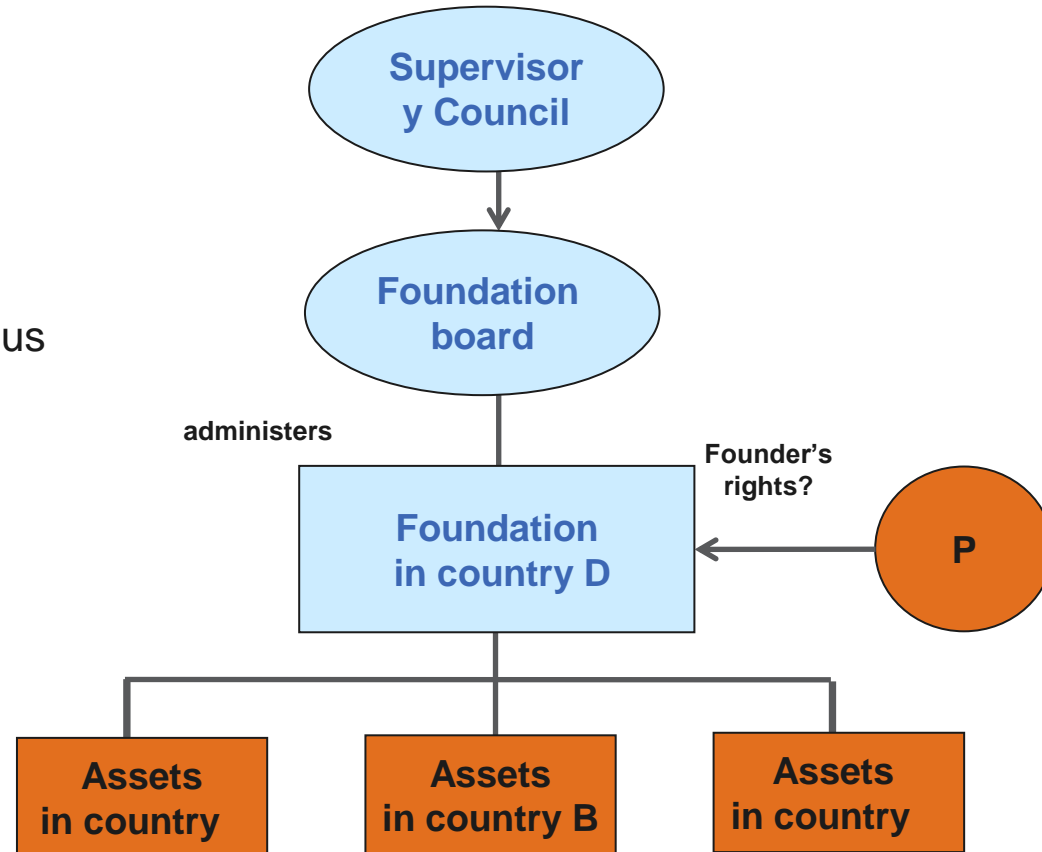
- A Trust has no separate legal personality – the assets of the Trust are owned by the trustees
- The trustees look after the Trust assets for the benefit of the beneficiaries
- The settlor and beneficiaries may hold key powers over the Trust
- The trustees may be subject to the oversight of a protector

# Foundation

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Consider:

- Family governance
  - Important to consider while there is consensus
  - Agreed structure involving family and advisers
- Separate structures
  - Business
  - Investment
  - Family branches



# Foundation

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## Advantages

- Separate legal personality
- Can be used as a long-term structure for the benefit of the family
- Founder may be able to retain certain powers
- Information about the Foundation is not usually on a public register
- Provides asset protection (but will depend on local jurisdiction)

## Disadvantages

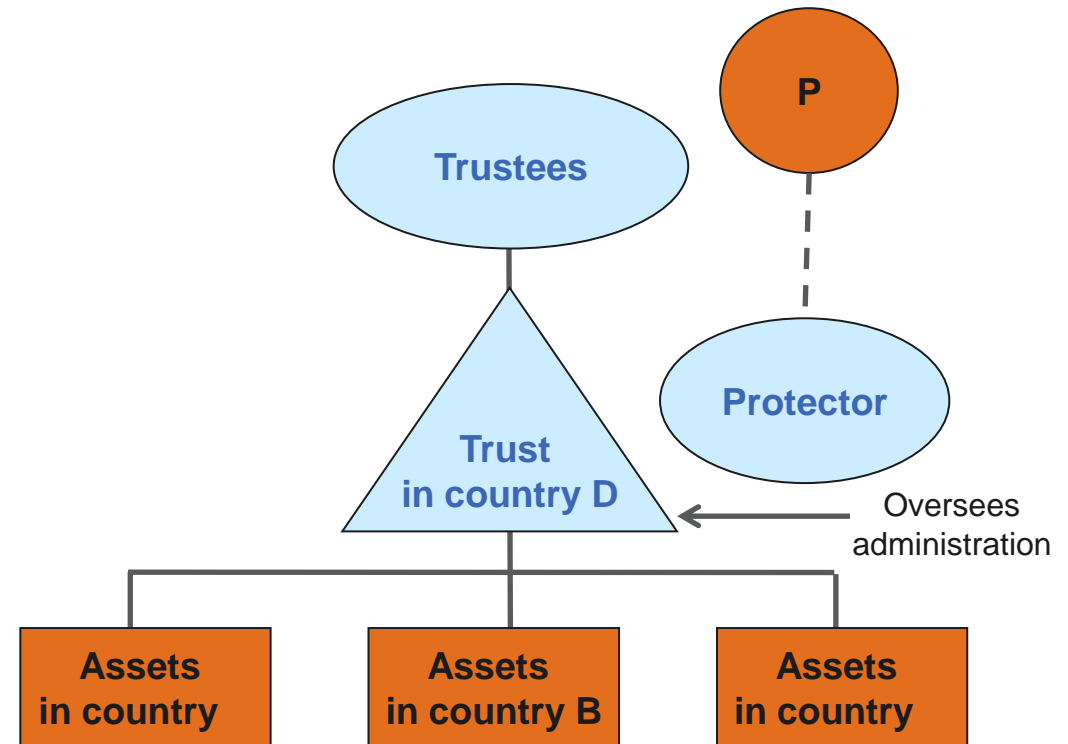
- Management often tied to jurisdiction of incorporation and third party involvement required
- May be difficult to transfer Foundation to another jurisdiction
- Uncertainty of tax treatment in common law jurisdictions
- It can be more difficult to build in key 'control' mechanisms for the family
- Complex structuring required

# Trust

## Consider:

- Family governance
  - Important to consider while there is consensus
  - Agreed structure involving family and advisers
- Separate structures
- Family oversight
  - Protectors
  - Appointors
  - Enforcers

P may retain indirect powers to appoint the protector or more direct powers over trust assets depending on local tax issues



# Trust

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## Advantages

- Wide choice of jurisdiction
- Effective long term vehicle for family wealth
- Ability (subject to personal tax issues) for family to retain key powers over the Trust
- Easy to transfer trust or trust assets from one jurisdiction to another
- Body of law and precedent developed over 100s of years
- Details of trusts confidential

## Disadvantages

- Less familiar in civil law jurisdictions
- To ensure integrity third party involvement recommended
- Complex structuring required



# Key messages and points for reflection

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- Plan in advance
- Flexibility – avoid temptation to ‘rule from the grave’
- Difficult conversations can prevent uncertainty and potential for dispute at critical junctures – conflict cannot always be avoided but can be managed
- Engage the next generation – encourage ‘owner’ mentality
- Is ‘keeping it in the family’ the right answer? ‘Outsiders’ can bring fresh ideas and encourage survival of the business/preservation of wealth
- Asset protection/privacy and tax- do not forget reputational issues

# Thank you

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Michael has developed a unique practice assisting individuals, families and their businesses. As well as advising on a wide range of UK and international issues involving tax, trust, estate planning and succession issues, he equally understands the corporate aspects and handles a wide range of more contentious matters, including tax litigation.

Having studied and worked in various European countries, Michael is fluent in French and Italian and speaks good Spanish.

He has been described by clients and intermediaries as ‘very personable and approachable’, ‘unflappable’ and ‘meticulous yet with a keen eye for the bigger picture’.

Michael has been named as a ‘Rising Star’ in Spear’s 500 as well as ‘One to Watch’ in Legal Week’s Private Client Global Elite and was a finalist for the STEP Young Practitioner of the Year award in 2017 and 2019. He has been listed as one of the ‘Top 35 Under 35’ private client practitioners by eprivateclient since 2016. Michael has recently been shortlisted as Lawyer of the Year for the Citywealth Future Leaders Awards 2020.