

## 2017 Delaware Trust Conference

“Wheel of Fortune” – Non-U.S. Considerations in Creating and Administering Delaware Trusts with Settlers and/or Beneficiaries from Civil Law and Other Foreign Jurisdictions – Mexico



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Please read the important information section at the end of the presentation.

# “Wheel of Fortune” – Non-U.S. Considerations in Creating and Administering Delaware Trusts with Settlers and/or Beneficiaries from Civil Law and Other Foreign Jurisdictions

## Mexico

### The case of Marcos

- Marcos was born in Boston, where his parents spent several years as graduate students. When Marcos was five, the family returned to Mexico. Marcos ultimately became a successful business owner and entrepreneur, and now is married and has three children. He is working with his U.S. and Mexican lawyers on his estate planning.
- Marcos’s assets consist of:
  - Mexican real estate
  - Shares of Mexican companies
  - Mexican investment accounts
  - U.S. bank accounts
  - Condo in Vail, CO
- His U.S. lawyer suggests that Marcos establish a DE revocable trust for succession planning, with continuing trusts for his wife and children upon his death.
- What are some of the issues that Marcos and his family will face, during Marcos’s life and after his death?

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### **Mexico**

#### **The case of Marcos, continued**

- When Marcos contributes his assets to the trust, has he made a taxable disposition under Mexican law?
- Can he contribute his Mexican real estate to the trust?
- If one of Marcos’s companies is in a regulated industry in Mexico, what information will be needed about the trust if the trust is the shareholder?
- Can the trustee take legal title to the Mexican assets?
- Will the trustee be able to open and maintain a Mexican investment account, where all the documents will be in Spanish?
- Will Marcos have any additional Mexican tax or reporting obligations with respect to the trust?
- When Marcos dies, will the disposition of assets under the trust be considered an exempt inheritance under Mexican law?
- How will the beneficiaries of the continuing trusts be taxed in Mexico, while income stays within the trust, and upon distribution?

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## Mexico

### The case of Jose

- Jose is a Mexican citizen and resident, and his wife and two children are U.S. citizens living in Mexico. Jose is worried about a future Mexican inheritance tax. His U.S. and Mexican lawyers have advised him to transfer some of his financial assets to an irrevocable DE trust.
- Jose likes the idea, but hates the idea of paying U.S. tax on the portfolio, because in Mexico he can invest in a fairly tax-efficient manner.
- Jose also wants to make sure his children go to college and graduate school, and work and live full, productive lives.
- His lawyers develop a plan where the trust is a foreign grantor trust for U.S. purposes, and Mexican income tax would only be payable when distributions are made.
- What are some of the issues that Jose and his family will face, during Jose’s life and after his death?

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### **Mexico**

#### **The case of Jose, continued**

- When Jose contributes his assets to the trust, has he made a taxable disposition under Mexican law?
- Since the trust is a foreign grantor trust, the account is opened on a Form W-8BEN; for Securities Law purposes, however, the trust is a U.S. person. What investment restrictions may the trust be subject to?
- How will the beneficiaries be taxed in Mexico, while income stays within the trust, and upon distribution?
- What information does the trustee have to give to the trust beneficiaries? Do the children have a right to information?

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### **Mexico**

#### **The case of Maria**

- Maria is a Venezuelan citizen and resident. Her husband died many years ago, and she has four adult children. She has a long-time companion who lives with her.
- Maria is considering establishing a revocable DE trust for the benefit of her children and her grandchildren, without any provision for her companion. She will make a separate provision for him in another instrument.
- What issues might Maria and her children face upon her death?

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### **Mexico**

#### **The case of Maria, continued**

- Venezuelan law recognizes common law marriages, and also has community property.
- If Maria’s companion is able to obtain a judgement from a court in Venezuela that he is her common law spouse, then he may be entitled to the income earned on all her assets during the period of her common law marriage.
- Could her companion make a claim against the DE trust during Maria’s lifetime or after her death for his share of the community property, with his Venezuelan court judgement?
- Venezuela also has forced heirship laws.
- Could Maria’s companion make a claim against the DE trust after Maria’s death for his forced share under Venezuelan law?

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