

NYSBA International 2019 Global Conference

Tokyo, Japan - November 8, 2019

Panel 18: Asian/North American Estate Planning for the Coming Decade

Hypothetical for Panel Discussion

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Agenda

1

Hypo – Bernet Santos Family

2

Planning Questions













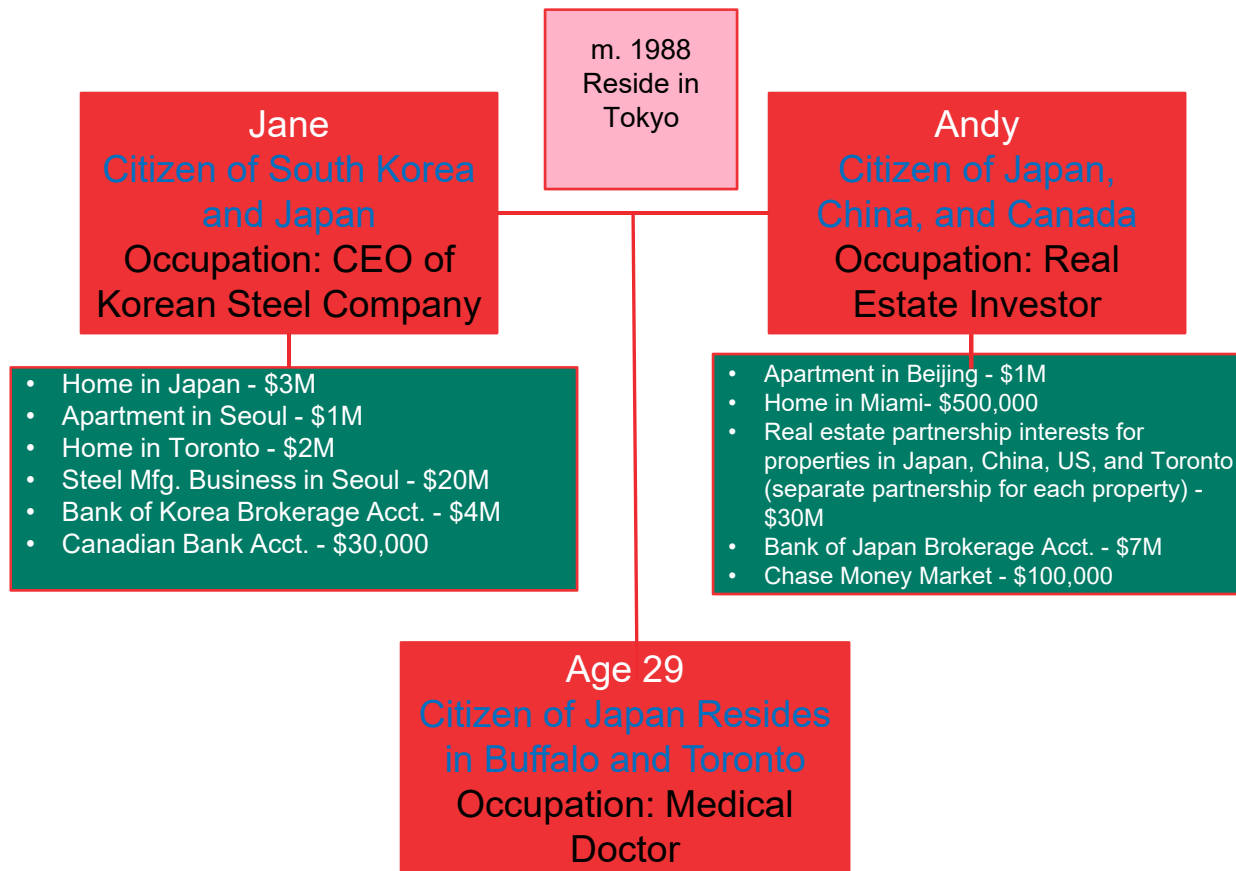
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Andy's and Jane's Family...

The Family and Their Assets...

- Jane and Andy were married in 1988 in Tokyo and have resided in Tokyo for their entire married life.
- Jane was born in 1967 in South Korea to a wealthy steel manufacturing family and is a citizen of Japan and South Korea (her father is Japanese and her mother is Korean). She is now the CEO of the steel company and splits her working time between Tokyo and Seoul.
- Andy was born in 1965 in Beijing and is a citizen of Japan, China, and Canada (his father was a Japanese diplomat and his mother was from Toronto and was a Canadian citizen, so Andy grew up in China and spent his vacations in Toronto and Tokyo). Andy is an investor in real estate world-wide.
- The couple's only child, Martin, was born in 1990 and is a physician at hospitals in Buffalo, NY and Toronto, Ontario. He is a citizen of Japan.
- Recently Jane and Andy purchased two vacation homes in the Americas, one in Miami, Florida, and another in Toronto so that they could spend time with Martin and his fiancé.
- Jane and Andy travel to the US under the visa waiver program with Japan and never spend more than 90 days at a time in the US and make sure they are never in the US for more than 120 days in a particular calendar year.
- Jane and Andy never spend more than six months a year in Canada and are therefore do not need a visa, since Japanese citizens who visit Canada for no more than six months are exempt from visa requirements.

JANE AND ANDY



2

Planning Questions...

Planning Ahead...

- What type of “advance planning” should the Andy and Jane have in each jurisdiction, in terms of powers of attorney, health care proxies, revocable trusts, etc.?
- What state’s or country’s law will apply to the disposition of the Andy’s and Jane’s property during their lives and upon their deaths?
- What are the rules in each jurisdiction to address conflict of law issues on the disposition of property at death?
- What difference does it make whether one dies with or without a Will in each jurisdiction?
- How can forced heirship or community property law be avoided in each jurisdiction?
- Can assets in your country be transferred to an entity organized in your jurisdiction or another jurisdiction in order to avoid local forced heirship or inheritance in the estate a decedent residing in another jurisdiction?

Planning Ahead...

- Who controls the assets of the “estate” in each jurisdiction?
- Can property be left by gift or bequest to a trust in each jurisdiction or outside the jurisdiction?
- Martin is planning on marrying a US citizen and wants to enter into a pre-nuptial agreement to protect his world-wide inheritances. How are pre-nuptial agreements viewed in each country and what jurisdiction’s law should govern the agreement?
- What, if any, transfer, death, inheritance, or estate taxes will be due on lifetime dispositions and dispositions upon death in each jurisdiction?
- To the extent any taxes will be due upon the death of either spouse, what estate planning techniques can be implemented in order to minimize such taxes?
- What is the recommended form of business entity that should be used by for the steel business and real estate investments?