Practical Aspects of Estate Planning in Malaysia
Practical issues regarding wealth distribution
Issues

Liquidity – of no use when frozen due to:

• Incapacity
• Comatose
• Disappearance
• Death

Resulting in loss of control & value of wealth
When wealth is frozen, will funds be available for the loved ones and for your client?

- Spouse & Minor
- Handicapped
- Parents
When wealth is passed to a spendthrift heir, can he be controlled?
Issues

Are the heirs receiving too much without restrictions?

Why work?

Heirs – No motivation
Issues

Will the heirs be easy prey for fraud and gold diggers?

Nina Wang  Tony Chan
Issues

Are the asset protected?
Against legal suits and creditors
Issues

Who takes over the steering wheel for the business?
With a proper Estate Plan...
... it provides for...

- Protection
- Distribution
- Preservation

• without challenge
• with reasonable cost
• minimal tax impact

Making Your Wishes Come True
Common Estate Planning Instruments

- Will
- Trust
- Power of attorney
- Assignment
- Nomination
- Hibah
- Buy-Sell agreement
- Harta Sepencarian
- Offshore company
- Offshore Trust
- Family Foundation

Making Your Wishes Come True
1) Appoint a suitable EXECUTOR – choose an individual and/or trust company.


Appointing the right executor will ensure that instructions are carried out!
2) **Allowance to the GUARDIAN of minor children** – very often overlooked

Recommend a testamentary trust specifying the assets being reserved to provide regular payment to the Guardian
3) FUNERAL instructions

4) ORGAN donation
5) **JOINT BANK ACCOUNT** – should it be given to another person than the joint account holders?

6) **PROPERTIES** – should it be given to more than 1 person?
7) **SOLE PROPRIETORSHIP** – what can be given away?

8) **PARTNERSHIP** – can it be given?

9) **COMPANY** – for majority/substantial shareholding, what is the fastest way to pass the shares?
EPF Nomination

• Avoid naming minor children as nominees, especially if they are in need of funds

• They will not be able to claim the EPF proceeds until he/she is 18 years old

• If your spouse can be trusted with the funds, appoint the spouse as EPF nominee. This will avoid the funds being retained by EPF
Insurance Nomination – non-Muslim

• For trust nomination made to spouse and children, the trustee shall be the party claiming the sum assured from the insurer.

• The trustee is the party authorized under the Financial Services Act 2013 to claim the insurance proceeds.

• The beneficiary will not be able to claim the proceeds unless he/she is the trustee.
Insurance Nomination – non-Muslim

- Where no trustee is appointed, the trustee will be:
  1) Competent beneficiary, failing which
  2) Parent of minor beneficiary, failing which
  3) Amanah Raya Berhad

Policy owners who are divorced or single parents should be aware of this!
Insurance Nomination – non-Muslim

To collect the sum assured from the trustee, an 18 year old child can receive the sum assured.

Will the child be able to preserve and manage the funds prudently for his future?

Creating an inter vivos trust may be the solution!
Invalidating a Will

1. Unsound mind when the testator signed the Will – medical evidence from the attending doctor is important

2. Fraud on the testator

3. Undue influence or duress on the testator to sign the Will

4. The Will was not signed by the testator in presence of 2 witnesses or the witnesses did not sign in the presence of the testator

(2), (3) and (4) can be negated with video evidence of proper will explanation and signing and attestation of the Will.
Disposal of property within 5 years of acquisition of property:
RPGT payable on RM500,000 gain
TAXATION ON TRUST

Trust Setup
3/2/2005

Insurance Claim of RM1,500,000
28/2/2014

FD deposit for 12 months – from 1/3/2014 to 1/3/2015

RM1,000,000 is invested in FD with a 3.5% return and distributed all the money on 2/4/2015

TA Form submission for YA 2014 – 29/06/2015

Tax rates – 25% of income

Tax rate for Trust for YA 2016 is 24%
## STAMP DUTY ON TRANSFERS - ESTATES (Muslim & non-Muslim)

<table>
<thead>
<tr>
<th>Asset</th>
<th>Stamp Duty rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sdn Bhd shares</td>
<td>RM10 per transfer form</td>
</tr>
<tr>
<td>Listed company shares</td>
<td>0.1% or max. RM200</td>
</tr>
<tr>
<td>Property*</td>
<td>RM10 per title/lot</td>
</tr>
</tbody>
</table>

* RPGT does not apply in cases of inheritance
## STAMP DUTY ON TRANSFERS - TRUST

<table>
<thead>
<tr>
<th>Asset</th>
<th>Stamp Duty rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sdn Bhd shares</td>
<td>0.3% of share value – NTA, PE ratio whichever higher</td>
</tr>
<tr>
<td>Listed company shares</td>
<td>0.1% or max. RM200</td>
</tr>
<tr>
<td>Property*</td>
<td>• First RM100,000 – 1%</td>
</tr>
<tr>
<td></td>
<td>• Next RM100,000 – RM500,000 – 2%</td>
</tr>
<tr>
<td></td>
<td>• Above RM500,000 – 3%</td>
</tr>
</tbody>
</table>

* RPGT applies of the transfer is made within 5 years even regardless of whether there is a sale of the property or not
Situations where having a Trust would be a good solution....
Minor children (especially for single parent)

Special needs child

Asset protection

Recovery of assets from nominee

Share sale upon death/TPD

Succession of family business

Making Your Wishes Come True
Minor children (especially for single parent)

Special needs child

Matters to be discussed in length with the Settlor:
1. Trust period
2. Funds required to fulfil the objectives of the trust
3. Asset to be settled into the trust which is related to (2)
## Financial needs of the beneficiaries

<table>
<thead>
<tr>
<th>Areas</th>
<th>5 years old</th>
<th>7 years old</th>
<th>Wife</th>
<th>Total: RM1,255,000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education</strong></td>
<td>• Primary: RM15,000 x 6 years = RM90,000</td>
<td>• Primary: RM15,000 x 5 years = RM75,000</td>
<td>- none</td>
<td>RM3.1 million</td>
</tr>
<tr>
<td></td>
<td>• Secondary: RM25,000 x 5 years = RM125,000</td>
<td>• Secondary: RM25,000 x 5 years = RM125,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• College: RM50,000 x 2 years = RM100,000</td>
<td>• College: RM50,000 x 2 years = RM100,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• University: RM80,000 x 4 years = RM320,000</td>
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</tr>
<tr>
<td></td>
<td><strong>Total: RM635,000</strong></td>
<td><strong>Total: RM620,000</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Medical</strong></td>
<td><strong>Shared by 2 children and wife: RM600,000</strong></td>
<td><strong>Total: RM1,255,000</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Daily expenses</strong></td>
<td>• Primary: RM1,500 x 72 months = RM108,000</td>
<td>• Primary: RM1,500 x 60 months = RM90,000</td>
<td></td>
<td>RM432,000</td>
</tr>
<tr>
<td></td>
<td>• Secondary: RM2,000 x 60 months = RM120,000</td>
<td>• Secondary: RM2,000 x 60 months = RM120,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• College: RM2,500 x 24 months = RM60,000</td>
<td>• College: RM2,500 x 24 months = RM60,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• University: RM3,000 x 48 months = RM144,000</td>
<td>• University: RM3,000 x 48 months = RM144,000</td>
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<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total: RM432,000</strong></td>
<td><strong>Total: RM414,000</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>RM432,000</strong></td>
<td><strong>RM414,000</strong></td>
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</table>

**Total:** **RM1,278,000**
RM3.1 million

Suitable assets to be the trust asset?

Cash
Unit trust
Life insurance
Listed shares
It is important that the estate plan designed fulfils your needs and give you a peace of mind

However....
Every estate plan needs to be reviewed now and then, when...

- Birth of a new child/grandchild
- Death of a beneficiary
- Divorce
- Remarriage
- Marriage of a child
- Spendthrift beneficiary
- Bankruptcy of beneficiary
- Changes in the law
- Acquired new assets
- Change in financial status
- Relationship with the beneficiaries/protect or/ executor changed
Thank You