Practical Aspects of Estate Planning in Malaysia

When you have wealth, what would be your concerns?
## Concerns you may have

### Financial well being of loved ones...

### Concerns you may have

**Incapacity**
- Loss of Control – physical, mentally and wealth
### Concerns you may have

**Liquidity – of no use when frozen**

- Incapacity
- Comatose
- Missing
- Death

<table>
<thead>
<tr>
<th>Concerns you may have</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When will the funds be available for them?</strong></td>
</tr>
</tbody>
</table>

Maintenance, education and medical needs for...

- Spouse & Minor
- Handicapped
- Parents
Concerns you may have

Will the wealth create problems for your loved ones?

Concerns you may have

The Spendthrift – does not know value of money

Spendthrift Children/Heir/Widow(er)
### Concerns you may have

#### Heirs – No motivation

Receiving too much without restrictions

- **Why work?**

### Concerns you may have

#### Maintaining Harmony

between:
- Children (sibling rivalry)
- Wife & Mother
Concerns you may have

Children’s Spouse
Is it love or for money?

Concerns you may have

Spouse Remarry
Your wealth may be enjoyed by others due to inheritance or divorce
### Concerns you may have

**Predators – Keeping the wolves away**

Easy prey for fraud

![Nina Wang and Tony Chan](image)

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**Who takes over the steering wheel for your business?**

![Steering wheel](image)
Concerns you may have

Loss of Control
e.g. Spouse inherits & interferes in business

Concerns you may have

Co-owners – what happens when one goes?

Big loss in liquidity and value
Concerns you may have

Family Business
• Is my children interested?
• If yes, can it last through 3 generations?

Concerns you may have

Other concerns...
Concerns you may have

Asset Protection
Creditors of yours and beneficiaries

Concerns you may have

Nominees
Can you get it back?
Why Do You Need It?
The Overall Purpose

To achieve your estate planning wishes:
• without challenge
• with reasonable cost
• and minimal tax impact
When an Estate Plan is created, it provides for...

Protection
Distribution
Preservation

To fulfill the objectives, the right Estate Planning Tools are to be used...

Will  Trust  Power of attorney
Assignment  Nomination  Hibah
Buy-Sell agreement  Foundation  Offshore company
Offshore Trust
When a person dies, assets will be frozen!!!
### To unlock the assets

**With Will**
- Probate

**Without Will**
- Letters of Administration
  - Takes many years to get it because of inherent problems with Letters of Administration

### If you don’t have a Will, your assets will go to:
**Intestate Succession Ordinance 1960 (Sabah)**

<table>
<thead>
<tr>
<th>Survived by</th>
<th>Spouse</th>
<th>Children</th>
<th>Parent(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children, Spouse</td>
<td>1/3</td>
<td>2/3</td>
<td>-</td>
</tr>
<tr>
<td>Children</td>
<td>-</td>
<td>1/1</td>
<td>-</td>
</tr>
<tr>
<td>Parent(s)</td>
<td>-</td>
<td>-</td>
<td>1/1</td>
</tr>
<tr>
<td>Spouse, Parent(s)</td>
<td>1/2 *</td>
<td>-</td>
<td>1/2</td>
</tr>
<tr>
<td>None of the above</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brothers and Sisters</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Brothers and Sisters</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grandparents</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Grandparents</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uncles &amp; Aunts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Uncles &amp; Aunts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Next of kin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No next of kin</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government of Borneo</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Personal chattels
If you don’t have a Will, your assets will go to:

Distribution Act 1958 (amended in 1997)

<table>
<thead>
<tr>
<th>Survived by</th>
<th>Spouse</th>
<th>Children</th>
<th>Parent(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children, Spouse, Parent(s)</td>
<td>1/4</td>
<td>2/4</td>
<td>1/4</td>
</tr>
<tr>
<td>Children, Spouse</td>
<td>1/3</td>
<td>2/3</td>
<td>-</td>
</tr>
<tr>
<td>Children, Parent(s)</td>
<td>-</td>
<td>2/3</td>
<td>1/4</td>
</tr>
<tr>
<td>Spouse</td>
<td>1/1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Spouse, Parent(s)</td>
<td>1/2</td>
<td>-</td>
<td>1/2</td>
</tr>
<tr>
<td>Parent(s)</td>
<td>-</td>
<td>-</td>
<td>1/1</td>
</tr>
</tbody>
</table>

A WILL...

is a written declaration of distribution of assets and other matters which he wishes to take effect on or after his death, until which time it can be revoked/changed
Practical Aspects of Estate Planning
In Malaysia

With a Will, you can...

1) Appoint a suitable EXECUTOR
   – choose an individual and/or trust company.
   Knowledge and expertise? Accountability? Continuity? Impartial?

Appointing the right executor will ensure that your instructions are carried out and distribution done quickly!

2) Appoint a GUARDIAN for minor children – appoint the right person to provide care and guidance to your children.
   We recommend monthly allowance to be paid to the Guardian
With a Will, you can...

3) You decide who will be your BENEFICIARIES – whether they are family members or not

4) DISTRIBUTE assets the way you want it – you can give them with/without conditions

With a Will, you can...

5) Paying DEBTS - you can state which assets to be used first
If you have / plan to own foreign property...

<table>
<thead>
<tr>
<th>Is there Inheritance Tax or Estate Duty where the property is located?</th>
<th>NO</th>
<th>YES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Can include in Malaysian Will and wait for Malaysian Probate to be obtained first; OR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Write a separate Will for the property for quicker distribution</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Purchase the property using a company (whether offshore or local company there) – this will avoid Inheritance Tax / Estate Duty. The company will be subjected to lower tax rate.

Must make sure ...

1. The Will is written
2. Signed by the Testator in presence of 2 witnesses
3. Properly attested by 2 witnesses
4. Witnesses must not be beneficiary or married to the beneficiary
5. Sound mind at the time of signing
If the legal requirements of a Will is not fulfilled, then the Will is...

**NULL & VOID**

**WILL IS REVOCABLE**

Revoked when ...

- Marriage (but no divorce)
- Destruction
- A new Will
- Duly executed document declaring an intention to revoke
- Convert to be a Muslim
OTHER MATTERS TO CONSIDER...

Other matters to consider...

1) **FUNERAL instructions** – advisable?

2) **ORGAN DONATION** – register with National Transplant Resources Centre or National Kidney Foundation

3) **JOINT BANK ACCOUNT** - advisable to give to the surviving joint account holder. Prevent dispute and legalize the usage of the funds.

4) **PROPERTIES** - best to have each property inherited only by 1 beneficiary OR each property shared with 2 beneficiaries
Other matters to consider...

5) **SOLE PROPRIETORSHIP/PARTNERSHIP:** give to adult beneficiary only, rather than minors as the executor may not be able to continue with the business

6) **COMPANY:** is this a family business? If yes, do you want the business to be managed by family members over the years? If you do not want to pass it to your children, consider a buy-sell arrangement?

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**TAXATION ON ESTATES**

- **BE Form yet to submit to IRB**
  - Death – 3/2/2014
  - Probate – 3/6/2014

- **BE Form submission for YA 2013 – 1/11/2014**

- **TP Form submission for YA 2014 – 29/04/2015**

- Tax rates – individual person’s rate BUT only personal relief of RM9,000 is available

- Tax rates – individual person’s rate with the relevant reliefs and rebates available

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## STAMP DUTY ON TRANSFERS - ESTATES

<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
What is a Trust?

- Trust is an estate planning tool used to protect one’s assets for certain named Beneficiaries.
- It is a private and legal arrangement between the Settlor (who creates the Trust) and Trustee as to the management and distribution of the Trust for the named Beneficiaries.

Why Trust?

- Asset protection against creditors / spendthrift heirs
- Avoid Probate - quick distribution
- Settlor can be beneficiary
### Why Trust?

- Trust complements a Will
- A Will must be written to cover **ALL** other assets and beneficiaries

### Must make sure...

1. Clear words in the documents stating that a Trust is to be created such as “I instructs my Trustee to hold on trust...”
2. Identify clearly what asset(s) to be held on trust such as “RM1,000,000” or “my unit trust account number 12345 with Bagus Unit Trust Berhad”
3. Identify clearly the beneficiary of the Trust such as “my son, Chan How Mang” or “my children”
Must make sure ...

(4) Objective and instructions of the trust must NOT be against public policy or to defraud creditors

(5) The trust ends within a maximum of 80 years or life of a person living when setting up the trust

If the legal requirements of a Trust is not fulfilled, then the Trust is...

NULL & VOID
TAXATION ON TRUST

- Trust Setup: 3/2/2014
- Insurance Claim of RM1,500,000: 28/2/2014
- FD deposit for 6 months – from 1/3 to 31/8
- RM1,000,000 is invested in FD with a 3.5% return
- TA Form submission for YA 2014 – 29/06/2015
- Tax rates – 25% of income

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 if the transfer is made within 5 years even regardless of whether there is a sale of the property or not.
Effect of the Sch. 10, Financial Services Act 2013 on Insurance Nomination!

NOMINATION – Sch 10, FSA

1) Paragraph 5(1) & (2) – non-Muslim policy owner makes TRUST NOMINATION when nominee(s) is:
   • Spouse
   • Child
   • Parent, if there is no spouse and child at nomination date

On death of policy owner, policy monies will not be part of estate or debts of deceased. Nominee(s) receive the monies as Beneficiary!
NOMINATION – Sch 10, FSA

2) **Paragraph 5(3)** – policy owner can appoint trustee for trust nomination but policy owner CANNOT be trustee.

If NO trustee is appointed, then trustee will be:

- Competent nominee; if none, then;
- Parent of incompetent nominee; if none, then
- ARB or trust company nominated by policy owner

Insurer MUST pay the death claim to the trustee!

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Some have recommended to clients:

- Do NOT nominate, so there will NO Trustee problems!
- Is this good advice or bad advice?
  - When policy money forms part of estate, Probate/LA is required – there will be delay in the family receiving the money
  - Think about your client’s family, NOT about getting your commission! Are you a good agent or a bad one?
NOMINATION – Sch 10, FSA

3) **Paragraph 5(4)** – if there is more than 1 competent nominee, then all competent nominees are JOINT trustees

4) **Paragraph 5(5)** – MUST get WRITTEN consent of trustee(s) when policy owner wants to:
   - Revoke nomination or add a nominee other than spouse, child or parent (if there is no spouse and child)
   - Varying policy
   - Surrendering policy
   - Assigning policy
   - Pledging policy as security
NOMINATION – Sch 10, FSA

4) **Paragraph 6(1)** – nomination to any other person(s) than those under trust nomination will receive the insurance monies as an executor BUT under **Paragraph 6(3)** – if policy is assigned, then assignee receives the insurance monies as beneficiary. This means:

- Even a Muslim policy owner who assigns the policy to an assignee he chooses, the assignee receives the money as beneficiary – RECOMMENDED that the policy be part of a Trust!

Nomination under Sch 10, FSA have other issues!
They are...
### SCH 10 FSA TRUST NOMINATION

<table>
<thead>
<tr>
<th>Areas of concern</th>
<th>Sch 10 FSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nominating anyone as beneficiary</td>
<td>Limited to only spouse and/or child; OR parents</td>
</tr>
<tr>
<td>Substitute beneficiaries</td>
<td>Not allowed – either sole or joint nominees</td>
</tr>
</tbody>
</table>

### SCH 10 FSA TRUST NOMINATION

<table>
<thead>
<tr>
<th>Areas of concern</th>
<th>Sch 10 FSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditions to distribute</td>
<td>Not allowed</td>
</tr>
<tr>
<td>Periodical distribution to beneficiaries</td>
<td>Not possible – lump sum only</td>
</tr>
</tbody>
</table>
TRUST is commonly used in such situations...

1) Where there are Minors/Dependents

**Recommended for:**
- Settlor who is a single parent (with minor children)
- Settlor with minor children
- Settlor with old aged parent(s)
Assets frozen

DEATH

NO WILL
Letters of Administration

WILL
Grant of Probate

Asset collection

(3 – 12 months)

6 months

2 months

3 – 18 months

Advertise in the Gazette to notify the creditors

Payment to IRB and creditors

Distribution to Beneficiaries

No Will: between 3 years to 7 years

With Will: between 2 years to 3 years

Estimate 1-3 years

ASK YOURSELF...

• Do your Children/Dependents rely on you for their daily expenses, medical and education expenses?

• How long can your Children/Dependents wait to receive their inheritance?

• Who is going to pay for their daily expenses, medical and needs before receiving their inheritance?
 practical aspects of estate planning in malaysia

2) Providing for Special Needs Children
How can the well being of the special needs child be taken cared of when the parents are no longer around?

What areas are to be considered?
Step 1:
Firstly, calculate how much does the child need.

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education</td>
<td>RM7,000</td>
</tr>
<tr>
<td>Special equipment</td>
<td>RM6,000</td>
</tr>
<tr>
<td>Living expenses</td>
<td>RM18,000</td>
</tr>
<tr>
<td>Medical expenses</td>
<td>RM10,000</td>
</tr>
<tr>
<td>Guardian’s allowance @ RM1,000 p.m</td>
<td>RM12,000</td>
</tr>
<tr>
<td><strong>ESTIMATED ANNUAL EXPENSES</strong></td>
<td><strong>RM53,000</strong></td>
</tr>
</tbody>
</table>

Step 2:
Then, estimate how much would to set-aside

<table>
<thead>
<tr>
<th>Life Expectancy</th>
<th>Annual amount</th>
<th>Total (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 years</td>
<td>53,000</td>
<td>1,060,000</td>
</tr>
<tr>
<td>30 years</td>
<td>53,000</td>
<td>1,590,000</td>
</tr>
<tr>
<td>40 years</td>
<td>53,000</td>
<td>2,120,000</td>
</tr>
<tr>
<td>50 years</td>
<td>53,000</td>
<td>2,650,000</td>
</tr>
<tr>
<td>60 years</td>
<td>53,000</td>
<td>3,180,000</td>
</tr>
</tbody>
</table>
Step 3:

Appoint in the Will the right person to be the guardian for the child who will provide:
• Care
• Guidance
• Support
3) Providing for 2 Families ...

**IMPORTANT:**

If there are 2 families that needs to be provided for...

- Not recommended for the Will to have both families inherit from the same estate - this leads to conflict between the families when the Testator dies.
- A will and possibly 2 trusts is to be created.
- Keep them separate to prevent conflict.
Practical Aspects of Estate Planning
In Malaysia

**Children from the 2nd Family**

- **Settlor-Trustee**
- **TRUST**
- **When Settlor dies/TPD/Coma**
- **Children**
  - For their education, medical and maintenance

**TRUST**
- Property
- Insurance policy
- Monies in bank account

- **RWT will act as Trustee to use the assets for**

- **For how long?**
- **How much $$ needed?**

**Last Will & Testament**

- **Current wife & Children**

RWT is the:
- Sole Executor of the Will
- Trustee of Trust

**TRUST**

- **2nd family & children**
Hou Tor Chin (who is married with 2 children) asked his sister Hou Mui Mui (who is also married with 3 children) to buy a double storey house in Klang.

The house is bought under Mui Mui’s name and Tor Chin pays for the down payment and the loan repayments.

Tor Chin wants to know what happens to the property when Mui Mui dies and how can he get back the property?
Effect of Mui Mui’s death:

• When she dies, the property will become part of her estate.

• If she has a Will, then it is distributed according to the Will.

• If she does not have a Will, then it is distributed according to the Distribution Act 1958 (amended in 1997)

Key Issues:

• How can Tor Chin get back his property when Mui Mui or him dies?

• Before Tor Chin settles the full loan, can he prevent Mui Mui from selling the property?
Mui Mui as Settlor-Trustee

Life Insurance (assigned to RWT)

Tor Chin as Beneficiary

If Tor Chin died or becomes disabled, then his wife and children will be the next beneficiaries

Mui Mui: allows RWT to use $$ to settle the loan and transfer property to Tor Chin
Tor Chin: allows RWT to use $$ to settle the loan and transfer property to Tor Chin’s wife and children. Also prevent Mui Mui’s name being blacklisted for non-payment

It is best that Tor Chin lodge a caveat on the property to prevent Mui Mui from selling or getting another loan!

5) Sharing to buy Properties
Scenarios:
Tai Har Sai, Yow Chin and Ho Pah Pai bought several properties for investment:

a) RM1.5 million shoplot is registered in Tai Har Sai’s name only and he is the borrower of the bank loan;

b) RM3 million bungalow is registered in all their names and all of them are borrowers of the bank loan.

Shoplot registered in Ta Har Sai’s name only and he is the borrower of the bank loan

Tai Har Sai as Settlor-Trustee

Trust

Life Insurance (assigned to RWT)

Tai Har Sai, Yow Chin & Ho Pah Pai as Beneficiaries

Har Sai/Yow Chin/Pah Pai: sum assured is for 60 months instalment. Example, Har Sai dies, RWT to use $$ to continue to pay for his portion of the monthly instalment. Otherwise, Yow Chin and Pah Pai have to pay for Har Sai’s portion

When one of them dies/TPD/coma, RWT offer to sell property to the others at market value. If the offer is not accepted, then RWT and the others to find suitable buyer within 60 months. Net sale $$ distribute equally (including deceased’s beneficiary).

Note: Sang Yee & Pah Pai to lodge caveat on the property to prevent Sek Sai from selling or getting another loan without them knowing!
Bungalow is registered in all their names and they are borrowers of the bank loan

Tai Har Sai, Yow Chin, Ho Pah Pai as Settlers-Trustees → TRUST → Tai Har Sai, Yow Chin, Ho Pah Pai as Beneficiaries

Life Insurance (assigned to RWT)

When one of them dies/TPD/coma, RWT offer to sell property to the others at market value. If the offer is not accepted, then RWT and the others to find suitable buyer within 60 months. Net sale $$ distribute equally (including deceased's beneficiary).

Har Sai, Yow Chin, Pah Pai: sum assured is for 60 months instalment. Example, Yow Chin dies, RWT to use $$ to continue to pay for his portion of the monthly instalment. Otherwise, Har Sai and Pah Pai have to pay for his portion

TRUST

Note: there is no need to lodge caveat as all of them are registered owners.

6) Protecting assets in Divorce

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7) Succession or Exit from the Business?

Succession Plan or Sell?

<table>
<thead>
<tr>
<th>Questions</th>
<th>BVPT</th>
<th>Family Business Succession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relationship between the shareholders</td>
<td>• Friends • Siblings</td>
<td>• Husband &amp; Wife • Children • Siblings</td>
</tr>
<tr>
<td>Intention of the shareholders</td>
<td>Sell it to remaining shareholders</td>
<td>• To pass it on to many generations • Retain the business in the family</td>
</tr>
<tr>
<td>Business structure</td>
<td>• Partnership / LLP • Private limited company</td>
<td>• Listed company • Private limited company</td>
</tr>
</tbody>
</table>
Yow Sang Yee was a successful businessman. He had joined his childhood friend, Tai Sek Sai, to start a factory manufacturing carpets. Tai had a 60% share of the business while he had the remaining 40%. Ever since they started, the business had grown by leaps and bounds. Annual profit was now in the region of RM2 million. Their accountant had indicated that the business should have a value in the range of RM10 to RM15 million.

Then tragedy struck. He was diagnosed with third stage cancer of the liver and his health deteriorated. He wrote a will to give his assets to his wife and children. He took comfort in the thought that the value of his share of the business alone was enough to take care of his family comfortably and see his kids through their tertiary education. He also felt comfortable that his partner would not short change him as they had been childhood friends and had gone through thick and thin together for so many years.

After Yow’s departure, his wife wanted to dispose of his shares but Tai turned her down because he was already controlling and running the company.

Unfortunately for her, no outside party was willing to buy her shares and she had no choice but to plead with Tai to reconsider the purchase of the shares. He offered her a price of only RM1 million, rather than RM4 to RM6 million, which she had no choice but to accept it.”
Yow and Tai are friends who own a business...

• Will Yow’s family know how to manage the business?
• Will Tai agree the family be involved in the business and work together?
• Will Yow’s family contribute to the success of the business?

Yow and Tai are friends who own a business...

• Was Yow’s family offered a fair price to sell the shares?
• Will Tai have the cash ready to pay for the shares in one payment?
Since the answer to most or all of the questions would be **NO** or **NOT SURE**, what would be the possible solution?

**Possible solution**

Suitable for:
- Sdn Bhd
- Partnership
- Limited Liability Partnership

**B**usiness

**V**alue

**P**rotection

**T**rust
What is BVPT?

It is legal arrangement between Yow and Tai where they agree that whoever dies or suffer permanent disability or comatose first, he will sell his portion to the other partner who agreed to buy at the agreed price.
When BVPT is created, what would it cover?

**BVPT covers:**

1) Business continues and sale of business interest confirmed
2) Value of the business interest
3) Trigger Events - when to sell the shares
4) Funding to purchase the shares/interest
5) Power of Attorney – quick transfer of shares/interest
6) Trust Deed - distribution of sale proceeds
**Trigger Events**

When should the shares be sold?

- **Death**
- **Disability**
- **Critical illness**
- **Retirement**

**Documents for BVPT**

- **BUY-SELL / CROSS OPTION AGREEMENT**
  - Sets the pricing and sale & purchase terms

- **LIFE INSURANCE or UNIT TRUST or CASH**
  - To fund the purchase

- **POWER OF ATTORNEY**
  - Allows RWT to transfer the seller’s shares

- **TRUST DEED**
  - Tells RWT how to distribute the proceeds

What is a Power of Attorney and how does it work?
Power of Attorney

What is it?

• It is a formal legal document by the Donor giving authority to one person (Donee/Attorney) to act on behalf of the Donor.
• POA can only be used in West Malaysia (under the Power of Attorney Act 1949)
Power of Attorney (POA)

What is it?
• For East Malaysia:
  • Only can do BVPT for Sdn Bhd
  • Sdn Bhd MUST change registered address to West Malaysia for POA to be used

What is it for?
• Shareholders (Donor) give power to RWT (Donee) to sign the necessary documents to transfer shares of the Seller to the Buyers
• With the POA, there is NO need for RWT to get the Seller’s estate (or wait for Probate/LA) to transfer the shares to the Buyers
• So transfer of shares and sale of shares can be completed within 1-2 months
Power of Attorney (POA)

• All the shareholders will jointly give RWT a POA

Types of POA

Section 5

• General POA
  • Can be revoked when either Donor or Donee dies, unsound mind, revoke POA in writing or Donor is bankrupt

Section 6

• Irrevocable POA for valuable consideration
  • Cannot revoke POA unless Donor AND Donee agrees in writing

Section 7

• Irrevocable POA for fixed period
  • Cannot revoke POA unless Donor AND Donee agrees in writing

This type of POA is used for BVPT
HOW DOES BVPT WORK?

1) Value the Business
2) Determine Funding
3) Enters into a Buy-Sell Agreement
4) All execute a Power of Attorney
5) All execute their Trust Deeds

If insurance, premiums are paid by way of:
- Dividends and/or Directors’ fees
- Partnership expenses
- Insurance
- Cash
- Unit Trust

When Yow dies:

RWT is notified

RWT withdraws from the funding

Successful

Full payment

Proceeds are part of Yow’s Trust Fund

(RWT will transfers Yow’s share to Tai)

Shortfall

RWT collects shortfall from Tai

Yow’s Wife & Children
If Yow and Tai had done a BVPT...

**BVPT ADVANTAGES**

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### Advantages

1. Guarantees the sale of shares – Yow must sell and Tai must buy
2. Price to sell pre-agreed – Tai or Yow’s wife cannot negotiate anymore
3. Convert shares to be $$ for Yow’s wife and children who needs it
4. Shares can be quickly transfer to Tai – Yow’s family or estate is not involved
Advantages

5. Tai can continue business like normal as he fully owns it now
6. Avoid Yow’s family being involved in the business
7. Yow can control who, how and when $$ is to be released his family – to preserve $$ for proper usage

Family Business Succession
Unplanned Inheritance

Without Business Succession Planning

- Financial difficulty for family
- Difficult to sell business interest especially for private companies
- Serious disruption to the business
Family Business Trust

**Purpose**

- Ensure your business can be preserved over multiple generations
- Prevent shareholding from being fragmented i.e. your descendants become minority shareholders after few rounds of distribution from you to your children then to your grandchildren
- You may prevent your successors for selling their shares to outsiders.
- You can decide how and who to receive the dividends from the business even after your demise.

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**Family Business Trust Structure**

- **Settlor (You)**
- **Trustee**
- **Trust Deeds**
- **Board of Directors**
- **Family Business Trust**
- **Distribution of Income or Allowances**
- **Beneficiaries**
- **Dividends**
- **Owns**
- **Manages**
- **Appoints**
- **Protective Committee**
- **Administers**
Family Business Succession

We will be happy to conduct another session to the subject matter.

8) Protection from Creditors

Making Your Wishes Come True
“Claw back” provision when a person becomes bankrupt
s.52 Bankruptcy Act 1967:
• Any transfer of assets is VOID if the transferor becomes bankrupt within 2 years of the transfer and VOIDABLE if the transferor becomes bankrupt within 5 years of the date of settlement

Adjudicated bankrupt – 29/11/2014

2 years – 30/11/2012

5 years – 30/11/2009

VOIDABLE

VOID
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/protector/executor changed
Thank You