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Estate Planning & Death Management (Part A)

遺產管理法律概述 (甲部)

The Introduction 前言

The estate of a deceased person legally consists of all the properties owned by him at the time of his death. Such properties may include both real estate and personal properties including bank accounts, securities, jewellery, cars and even claims, rights or other kind of beneficial interests.

Estate planning (遺產管理), as a legal concept, comprises of a series of legal steps taken during an individual's lifetime in order to preserve and manage his estate after his death. Effective estate planning can help ensure that the desired distributions of an individual's assets after his death will be made according to his directions and objectives so that, for example, the needs of his loved ones (that might include non-family members) can be taken care of.

In many countries where the estate duty (遺產稅) is levied at one's estate at death (e.g. the United States and the United Kingdom), good estate planning can effectively and efficiently reduce the amount of estate duty payable. Estate duty in Hong Kong was abolished on 11th February 2006 when the Revenue (Abolition of Estate Duty) Ordinance 2005 came into effect. However, for the estates of persons who died on or before 14th July 2005, estate duty is still chargeable at the progressive rates as provided under the Estate Duty Ordinance (Cap.111). The rates of estate duty can range from nil where the value of the estate is less than HK\$7,500,000; up to a maximum rate of 15% if the value of the estate exceeds HK\$10,500,000.

Major Steps in Estate Planning 遺產管理的主要工作

The major steps in estate planning are briefly as follows :-

- (1) Identifying and considering the nature of a person's assets which will form part of his estate after his death;
- (2) Identifying the person's needs and desires for the ideal dispositions of his estate assets which include identifying the beneficiaries and the nature of their needs. For example, for someone with elderly parents, this would usually include the need to secure a home shelter for his parents after he dies. This objective can, for example, be achieved with drawing up a Will (遺囑) to

provide the parents with a life interest in a domestic flat, so that the executor cannot sell or assign the flat to the other beneficiaries during the lifetime of the parents.

- (3) Identifying and adopting the proper and suitable ways (i.e. estate planning tools) for carrying out one's wishes according to his estate planning. There are a number of legal tools that can be utilized to manage and distribute assets. The basic tools of estate planning will be discussed further below.

Nature of an estate plan depends on the size and characteristics of the estate, the number of beneficiaries and the purposes of distributions. For example, a life insurance policy can benefit a man's wife immediately after his death as a beneficiary under the policy when the wife has been named as a beneficiary under the insurance policy during the lifetime of the husband. Instead of waiting for the long processing for a Court Probate (法院遺產承辦令), the wife can immediately obtain "instant cash" from the insurance company after her husband's death in order to settle the household and testamentary expenses (遺產處理費用). So, estate planning advice would include the consideration of an insurance policy.

- (4) Consulting and instructing professional advisors, including lawyers, financial consultants, accountants and life insurance advisors, to devise clear details of the person's estate plan and utilizing the suitable estate planning tools and schemes for carrying out the plan.

Lawyer's Roles in Estate Planning 律師在遺產管理的角色

- (1) Advising on the legal considerations relevant to estate planning .
- (2) Drafting the estate planning documentation such as Wills and Trust Deeds.
- (3) Acting as the executor/trustee of the estate.
- (4) Handling dispute resolutions such as negotiation, conciliation, mediation and court action relating to the estate.
- (5) Co-ordinating with other estate planning professionals such as accountants and investment advisors in order to implement the estate planning schemes.

Basic Estate Planning Tools 遺產管理的常用工具及其法律特性

The most common tools are a Trust (信託), a Will (遺囑), Joint Tenanted Properties (長命契資產) and a Life Insurance Policy (人壽保險) etc. We shall examine their legal characteristics in our next Legal Newsletter.

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