Starting with a will

International estate planning is relevant for expatriates who settle in Singapore and Singaporeans with assets overseas

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GLOBALISATION has changed the way we live. A less discussed topic is that globalisation has also changed the way we die. Cross-border investments and worldwide acquisition of assets have increased dramatically with technological advances and the ease of travel. It is also an increasingly common phenomenon for family members to reside in different jurisdictions. Such lifestyles may give rise to complex issues when the asset holder dies.

International estate planning becomes very important in this context. Bad planning, or worse, no planning at all, may lead to unintended consequences. This is relevant not just for expatriates who settle here in Singapore, but also for Singaporeans with assets overseas.

Estate planning can involve a range of tools, one of which is a will. Apart from specifying who should inherit one's assets, a will serves to appoint executors: In Singapore (and a number of common law jurisdictions), there is the concept of administration of estate, whereby a personal representative calls in the assets and pays up the debts of the deceased prior to distributing the remaining assets to the beneficiaries. Where there is a will, this duty falls on the executor(s) appointed in the will, who proves his title by way of probate in Court. In the absence of a will or the appointment of executor, or where the executor is unable to act and no substitute was appointed in the will, this role falls on the person who applies successfully for letters of administration in Court.

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Where a person dies without leaving a will or with no executors appointed, the starting point is to determine who is entitled to administer the estate (that is, to apply for letters of administration). Under Singapore law, certain classes of people are recognised, in order of priority, to have that right. However, this can become complicated when the deceased is a foreign-domicile, raising questions of which governing law should apply.

It is possible to commence an application to reseal in Singapore a grant of letters of administration that is obtained from a Commonwealth jurisdiction or the territory of Hong Kong; thus, in that sense, foreign letters of administration may be recognised by the Singapore Court. But recognition by resealing does not apply to grants (or the equivalent) obtained in other jurisdictions, such as the US.

In the case where a person dies without leaving a will, until the letters of administration are extracted, a family member may not be recognised to have the authority to access the deceased person's assets and administer the estate, much less make distributions to the beneficiaries.

In summary, while not an insurmountable task, the process of obtaining letters of administration can be complicated. A couple of case studies will illustrate some of the complexities.

(1) Mr Lim, a Singaporean, was the sole proprietor of a thriving business and head of a loving family. Mr and Mrs Lim have two children, Ryan and Rachel. After Ryan graduated from Stanford University, he became a doctor, got married and obtained US citizenship. Due to a hectic work schedule and a new baby on the way, Ryan seldom comes back to Singapore. Rachel is 19 years old and has just been admitted to the National University of Singapore. Mr Lim has many overseas investments including a summer home in Derbyshire, England and an office unit in Hong Kong. He never made a will because everything in his life was going well and dying was never on his mind.

Mr Lim passed away suddenly due to a heart attack and his family was devastated. What may not be so predictable is the volume of issues Mrs Lim had to deal with in addition to funeral arrangements. Since Mr Lim died intestate (without a will), Mrs Lim, as Mr Lim's spouse, has prior right under Singapore law to apply for Letters of Administration with the Court so she can administer Mr Lim's estate. The first obstacle is that despite being an intelligent young woman, Rachel is considered a minor in the eyes of the law because she has yet to attain the age of 21 and hence, two administrators must be appointed. Who should this second administrator be? Ryan lives far away and does not have a flexible schedule. More remote family members may not be willing to act because being an administrator is a big responsibility. Banks and financial institutions may refuse to disclose details of Mr Lim's accounts if they do not recognise Mrs Lim's authority to administer the estate.

Diverse estate

Given the complexity and concerns of a sole proprietorship business and tax issues of overseas assets, it is simply overwhelming for Mrs Lim and other family members to administer such a diverse estate. Moreover, the courts in Singapore and Hong Kong may request a "surety guarantee" before Mrs Lim can administer Mr Lim's Singapore and Hong Kong assets respectively. Ryan's US citizenship adds a further layer of complication.

(2) Mr Smith was originally from Manchester, England but settled in Singapore when he was appointed the head of the Asia-Pacific region by his employer. Since then, he has acquired various Singapore investments and assets. Mr Smith went through a painful divorce from Debra, his wife. Because Mr Smith was an avid supporter of animal rights, he fell out with his only living family member, his sister Fiona, who is very into extravagant fur coats. Mr Smith was always too busy to think about his estate planning, but he knew he did not want to leave anything to Debra and Fiona. In addition to assets in Singapore and England, Mr Smith also had a vacation home in France.

One big issue with Mr Smith dying intestate is that the intestacy rules do not give effect to his wishes. Mr Smith's estate will go to Fiona and even Debra may not be fully excluded. The most fundamental issues are which law should govern succession (who stands to inherit) and the administration of his estate (how to get it). Should it be the law of Singapore (possible domicile of choice/habitual residence), England (domicile of origin), or even France, a jurisdiction which has the concept of forced heirship? Additional issues could arise from the new EU (European Union) Succession Regulation that came into effect on Aug 17, 2015 but that is a topic that requires an article of its own.

The common lesson gleaned from the two examples is that a will is a vital starting point for international estate planning, or indeed any estate planning. A well-drafted will can ensure one's assets go to the right people as simply and as cheaply as possible in terms of tax, administrative expenses and expenditure of emotional energy of one's family. Had Mr Lim executed a will, he could appoint his lawyers or professional trustees, who possess relevant expertise, to administer his estate and a surety guarantee would not be necessary for his Singapore and Hong Kong assets. Trust arrangements may be explored in light of Ryan's US tax status. Had Mr Smith executed a will, he could at least leave his estate to a recognised animal charity.

Is it better to have one will to cover worldwide assets or is it better to have multiple wills covering each jurisdiction? A single will covering worldwide assets is clearer and more straightforward, but it may not be formally valid in every jurisdiction. Resealing or proving the will in every jurisdiction may also cause long delays in dealing with foreign notaries. Having multiple wills may be helpful to address these issues, but requires coordination and centralised review.

Balancing these pros and cons, as well as drafting a will that best fits the asset holder's family circumstances and complex wealth arrangements, requires professional advice. If these issues are not addressed, then a bereaved family may face distress, uncertainty and financial insecurity in addition to the loss of a loved one. W

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