

The delicate subject of death, wills and wealth transition

Kevin Lee, partner at Zhong Lun Law Firm in Hong Kong, heads the firm's private wealth practice. His talk at the Hubbis Independent Wealth Management Forum in November focused on the delicate subject of the ramifications of the death of a client.

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LEE CITED THE HYPOTHETICAL example of Mr. X, a high net worth individual with two families. Married twice and survived by a child from the first marriage, and a wife and two children from the second marriage, he is also the owner of property in both Hong Kong and in Mainland China.

Make a will...Whatever the scenario facing the lawyer or the wealth adviser, Lee's first and foremost advice is that clients make a will. "It may not be that exciting a part of my practice, but it is important, and it is part of our private wealth offering that we give advice on wills. Moreover, we tell the clients some of the horror stories we have encountered when people die without a will."



[KEVIN LEE](#)
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But even with a will, the contents are not always executed to the word, depending on the jurisdiction. Lee explained that in Hong Kong, for example, there is a statute - the Inheritance (Provision for Family and Dependents) Ordinance - which allows people the opportunity to apply to the court for a reapportionment of the estate, if they feel they have been hard done by.”

Nothing is foolproof

“So, for example, the ex-wife of a married man who has passed away might submit that she was being ‘maintained’ by Mr. X, and therefore I am applying for maintenance as he has excluded me from the will while his current wife is benefitting in full. Accordingly, would the court please reallocate part of the estate.”

Lee explained that she would not be entitled to this application if she has re-married, but if she was dependent throughout post-divorce, then she would in theory have a case to apply for part of the estate, even if not named in the will. “The same,” explained Lee, goes for “girlfriends, boyfriends and illegitimate children. It can clearly become highly complex.”

Lee also noted that in Mainland China, similarly in some ways, there is a need to reserve a portion in the will for dependents. “Hence, if the will does not equally divide the estate among children, but one of the children that was excluded can prove that he was totally dependent on his father, the court will actually give him something on an apportionment.”

Cross-border complexities

Issues surrounding cross-border assets are other considerations and add confusion. “I have been practising law in this area for many years, but there is no straightforward answer, especially when dealing with China.” However, a global will drawn up in Hong Kong will be far better than no will at all, with notarisatation services sometimes required if a client’s executor then needs to take that will into another jurisdiction, for example China to deal with assets there.

Another key question for lawyers and advisers is how are they paid once a client passes away. “When your client, who is paying your bill, dies, the estate is effectively frozen in Hong Kong law. If someone such as the surviving

spouse deals with it, without a court order, it is deemed inter-meddling, in other words you are dealing with the deceased’s estate before the court has approved who has the power to deal with it.”

A retainer from the executor is one option. But if for example the executor does not have much available cash, that can be a stumbling point. In Hong Kong there is a possibility of a partial probate of a portion of the assets for the specific purpose of paying fees. However, Lee explained that it is only granted for a specific purpose of alleviating the expenses of the estate and he also noted that probate takes about six months in Hong Kong at a minimum.

Planning for the inevitable

A well-planned and executed will that is transparent and up-to-date is essential for the surviving family members to be able to manage the demise of their loved one and his/her estate without undue complexity and stress. Wills may not necessarily make things easy, was the message Lee delivered, but taking the right steps well in advance will make a difficult phase and process less onerous. ■

Overview

- What happens when a client dies?
- How do you deal with it?
- How do you get paid?

