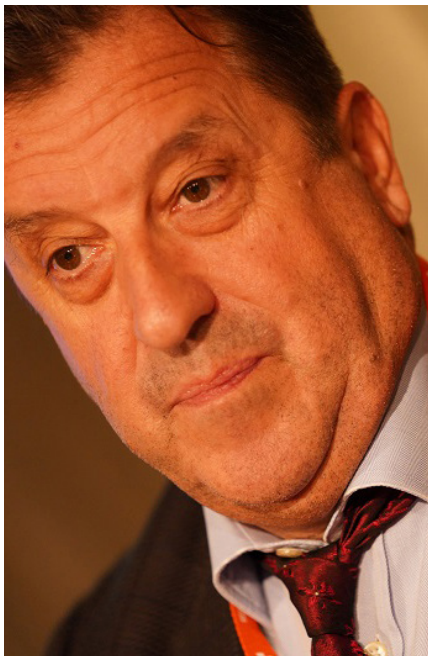
Planning your estate to protect your loved ones



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HOW HAS BUSINESS BEEN AFFECTED BY THE CORONAVIRUS?

Well, the coronavirus has affected us, like all businesses, but perhaps less than most because we are so widespread around the world with offices in lots of locations. So none of them have been perfect, but none of them ended up in a disaster area.

But a lot of our business these days is setting up companies who are coming into town to set up a new operation, so there's none of that going on. They're all sat at home and waiting to see what happens, so we can't expect any of that business.

But on the other hand, the good news is, and I always say every problem has an opportunity within it, a lot of people are ringing me and going, "I've been meaning to ring you after that conversation we had three, four, five years ago because I need to get my personal affairs sorted out and I don't have a huge amount to do at the moment, so I've taken the opportunity to do a little personal admin and I've given you a call."

"So can we start thinking about, principally, (their) estate planning, wills, trusts, positioning themselves if they're going to move, emigrate to another country, return home. And all the things that are happening in Hong Kong, certainly at the moment, are giving pause for thought to my typical client who's my typical age of 50 plus, who's in that position where he needs to start thinking about what happens next and how do I look after my family, so I'm getting quite a lot of calls and that's keeping us busy.

WHAT MUST CLIENTS FOCUS ON TODAY WHEN PREPARING FOR THEIR DEATH?

Clients have to, principally, start with a will. Have you got a will? If not, that can be an absolute disaster area for your loved ones; if you die in testate, there are all sorts of issues. First of all, you lose any opportunity to tax plan, and so your estate is whatever it is. Whereas with a little forethought, you could have sorted things out, so that inheritance tax, which is still an issue for many people in the world, and in Hong Kong in particular, get sorted as far as it can. Particularly our clients, lot of them are UK expats, so they will still be domiciled in the UK. Many of them don't realise that they're still subject to 40% inheritance tax on their worldwide estates. To a certain extent, that is a voluntary tax and you can plan out of it with a little care, but if you do nothing, you lose all those opportunities. So that's certainly one issue which comes to the fore at times like this, not only because they've got a bit of time on their hands, but they're also faced with death all around them. So it does bring it home, I think.

WHAT ARE THE CONSEQUENCES OF NOT DEALING WITH THIS IN AN ORGANISED WAY?

Nobody knows where anything is, and it's a real major task to find it. In our view, a simple estate takes two years to wind up, and a lot of that is actually finding the assets and getting control of them. For most international businessmen, they'll have far from a simple estate, so it'll probably take up to six years to sort it out. There are opportunities to shorten that considerably. If you use trusts, you can gather everything together in one neat little basket, so it's all there and essentially it's all done; so there's nothing to do if something happens to you at a time when your beloved are grieving and least able to deal with all this stuff. So we recommend that you sort your affairs out in an orderly fashion.

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WHAT ARE THE OBVIOUS MISTAKES CLIENTS MAKE?

Not having a will at all is one, as everything would then automatically go to your nearest of kin, which is your wife. That may be as you wanted, your spouse, that may be as you wanted, but you lose the opportunity to leave assets in a controlled manner to your children with the tax saving there, so that's one obvious pointer for UK people where failure to have a will is going to be an immediate cost on an estate worth a reasonable amount, say even if it's just worth the average price of a house these days.

IN ADDITION TO TRUSTS, ARE THERE OTHER OPTIONS?

Yes, there are (other options available). And a lot of people are fundamentally uncomfortable with the idea of a trust, because by definition you have to trust somebody who is going to hold the assets for your chosen beneficiaries. If you think about it, that shouldn't be such a big problem because your only other way of giving away your assets is to use a will, in which case assets get given to your executors who then have to distribute them according to the terms of the will. So one way or another you've got to trust somebody, either your executives or your trustees. But an alternative structure which is finding a lot of favour and is much more easily understandable, particularly by those who are not familiar with the common law principles of trust, is to use what is generally known as a 'family investment company'.

And under that scenario, assets are donated or sold to a company. It can be a company incorporated anywhere in the world, but tends to be the case that offshore companies work best because they're simpler and easy to administer. As many people will know, a company issues shares, and typically a share has three characteristics; votes, the ability to receive dividends, so the right to income, and the right to capital. So those are the three characteristics. However, shares could be created so that they have one, two, or all three of those. So you can create some interesting results by, for example, the head of the household transfers his assets to the company but retains all the votes, so he contains absolute control over the way that company is managed and what it does with those funds he's given. He may decide that he needs the income during his lifetime, so he may decide to keep the income producing shares, the shares which can carry dividends. But what he really wants to pass on is the capital shares, which (is) where most of the value is, and he can do that by giving them away gradually during his lifetime. If there are no tax issues, he can give those away in a will. But in this instance, rather than the will demising a whole variety of different assets, a basket full of assets, in different countries under different legal systems, they're all owned by one company, so there's just one asset to pass on. So that would massively simplify things. It may not be tax efficient because the value of the capital shares is equal to the value of the underlying assets, so he may wish to give them away progressively during his lifetime and achieve tax advantage as well. But that is the general principle. ■

Howard Bilton speaking at our Independent Wealth Management Forum in Hong Kong

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