

## Estate Proceedings and Executors In Israel

Alon Kaplan, Adv., Lyat Eyal, Adv.

### 1. Introduction

Estate and Inheritance matters and procedures in Israel are governed by the Succession Law 1965 (the "Succession Law") and the Succession Regulations 1998 (the "Succession Regulations"). The Succession Law allows a legally competent individual to bequeath such person's estate as he/she wishes by drafting a last will and testament (a "Will"). In the event that no Will is signed prior to an individual's demise in accordance with the legal formalities of the Succession Law, said person's estate shall be distributed intestate, in accordance with the provisions of the Succession Law.

### 2. Foreign Residents

#### a. A separate Will for assets in Israel

It is generally advisable, for an individual owning assets in more than one jurisdiction, to have separate Wills, executed in accordance with the laws of each relevant jurisdiction, to govern the distribution of the assets in each jurisdiction. The same is relevant for foreign residents owning assets in Israel. A separate Will valid under Israeli law should be signed in accordance with the Succession Law to govern the distribution of the Israeli assets.

#### b. Probate or Inheritance Proceedings

Israel does not recognize foreign court orders and a petition for an inheritance or probate order, as the case may be, must be filed with the competent authority in Israel in order to distribute estate assets located in Israel in all cases regardless of the place of residence, domicile, nationality of the deceased or the *situs* of other assets of the estate.

The rights of heirs by law or beneficiaries under a Will are declared by way of an inheritance order for the former or by a probate order for the latter. Neither an inheritance order nor a probate order provide details of the assets of the estate. An inheritance order declares the identity of the legal heirs and their respective share of the estate, whereas a probate order declares the Will of the deceased to be valid under Israeli law.

The proper law which will be resorted to is the law of the place of domicile of the deceased at the time of his death. There are, however, three exceptions to this general rule:

- (a) with respect to assets located outside Israel: the assets pass after death exclusively in accordance with the *lex situs*. Therefore, if the *lex situs* expressly excludes the application of any foreign law, then the *lex situs* will apply regardless of domicile;
- (b) with regard to one's capacity to make a will: the law of domicile of the testator at the time of the signing of the will applies and not the law of domicile at the time of death;
- (c) with respect to validity as to form: a will is valid if it is valid in accordance with the law of any one of the following:

- (i) Israeli law;
- (ii) the law of the country in which the will was signed;
- (iii) the law of the country of domicile or of residence of the testator, whether at the time the will was signed or at the time of death;
- (iv) the law of the country of citizenship of the testator, whether at the time the will was signed or at the time of death;
- (v) if the will relates to real property, the *lex situs*.

Notwithstanding the above, foreign law will not be resorted to:

- if the foreign law refers to yet another foreign law. Such other foreign law will not be resorted to and the internal law of the first foreign country will apply. If, however, the law of the first foreign country refers the matter to Israeli law, then Israeli law will apply;
- to the extent that such law discriminates as to race, religion or nationality or otherwise contradicts Israeli public policy;
- if such law confers intestate inheritance rights on a person who is not a relative of the deceased by blood, marriage or adoption, unless and to the extent that such foreign law recognizes such inheritance rights which are conferred by Israeli law.

## **2. Procedure for Will Probate or Inheritance Proceedings**

A petition for the appropriate order (inheritance or probate) is filed with the Registrar of Inheritance in accordance with the Succession Regulations. Said petition, sworn to by way of an affidavit, includes the petitioner's details, the deceased's details and details about the deceased's spouse and children.

The petition is filed together with the original death certificate of the deceased, the original will (if one exists), documentation evidencing the ownership by the deceased of assets located in Israel, identifying documentation of the heirs by law or beneficiaries and evidence of notices provided to each heir or beneficiary. If the deceased was a non resident of Israel, documents in a foreign language may require translation and documents issued by foreign government agencies may require translation and a certification as to their authenticity. In addition, if the deceased was a non-resident of Israel, an opinion by a local attorney in the deceased's jurisdiction of residence advising on the succession laws in said jurisdiction.

The Registrar furnishes a copy of the petition to the Administrator General at the Ministry of Justice who is at liberty to intervene in the proceedings when a matter of public interest is involved.

## **3. Appointment of an Executor**

### **a. The appointment process**

The appointment of an executor of an estate is not required under Israeli law although it may be advisable for a foreign resident for the efficient distribution of an Israeli estate (This may be especially important where there are no Israeli resident beneficiaries or heirs).

The petition to the Registrar of Inheritance Affairs or to the Family Court is sworn to by way of an affidavit, similar to the petition for a probate or an inheritance order. The consent of the executor as well as the consent of the heirs or beneficiaries must be filed together with the petition. The Israeli Registrar or Family Court will not usually approve the appointment of a foreign resident as an executor of an Israeli estate nor will co-executors be approved where one is not an Israeli resident.

The Guardian General at the Ministry of Justice is the body to which appointed executors report in accordance with the provisions of the Succession Regulations. It is responsible for ensuring that the relevant rights are granted to the heirs or beneficiaries, to the State of Israel and to minors or missing persons, if any. Executors are required to file annual financial reports to the Guardian General as well as to take every possible action to ensure the most advantageous result to the estate. As a result, for every transaction, the executor must publish an auction in order to receive the best possible offer for said transaction. Further, each and every action taken by executors, such as a transaction for the sale or rental of real property, must receive the approval of the Family Court.

## **b. Considerations relating to the management of an estate**

Israel does not impose gift or estate taxes on its residents. Nonetheless, in addition to tax considerations in the deceased's country of residence, other aspects are to be considered by an executor prior to the distribution of an estate. The Succession Law provides a surviving spouse, children and other dependants a certain degree of protection by granting them a right to receive maintenance payments from the estate of a deceased. The right to maintenance is, however, quite limited.

The following persons are heirs under the Succession Law:

- (a) the lawfully married spouse of the deceased at the time of death.
- (b) the children of the deceased and their issue (including illegitimate and adopted children and their issue), the parents of the deceased and their issue, the grandparents of the deceased and their issue;
- (c) the State of Israel – in the absence of any other heirs.

## **a. Surviving Spouse**

Under the Succession Law, where an estate is distributed intestate, a surviving spouse is entitled to receive the tangible personal property, including a motor vehicle, which customarily belong to the common household.

In addition to the household tangible personal property, the surviving spouse is entitled to a share of the estate – which share depends upon the relationship to the deceased of the other heirs by law who are entitled to inherit together with the spouse:

- (a) if the deceased is survived by children or their issue or if the deceased is survived by parents – the share of the surviving spouse is one-half;

(b) if the deceased is survived by siblings or their issue or if the deceased is survived by grandparents – the share of the surviving spouse is two-thirds. If, however, the surviving spouse and the deceased were married to one another for at least three years prior to the death and if they lived together in a residence which, in whole or in part, is an asset of the estate, the surviving spouse is entitled to all of the rights of the deceased in such residence and two-thirds of the remainder of the estate.

## **b. Maintenance from the Estate**

It is not mandatory for a testator to provide for his relatives and dependants. Nonetheless, the Succession Law confers a discretionary power upon the court to adjudicate maintenance from the estate in favor of certain dependent relatives who are in need of maintenance and who have been excluded by a testator in his will or whose share in the estate is insufficient to provide for their reasonable needs.

The right of a dependent relative to claim maintenance from the estate cannot be negated by any provision of a will, and indeed even a dependent relative who has been disqualified from inheriting from the deceased may claim maintenance.

The following relatives of a deceased are entitled to claim maintenance from the estate provided that they are in need of maintenance:

- (a) the spouse of the deceased, including a common law spouse, provided that neither party was married to another person at the time of the death. A spouse is not entitled to maintenance in the event that the right of such spouse to maintenance was negated prior to the death of the deceased.
- (b) the children of the deceased, including illegitimate and adopted children and a child born after the death of the deceased, up to the age of 18 or, under special circumstances, up to the age of 23, and in the case of a disabled or a mentally incompetent child, as long as such child is disabled or incompetent;
- (c) the parents of the deceased if their livelihood depended on the deceased prior to his death, for the remainder of their lives;
- (d) grandchildren of the deceased who were orphaned prior to the death of the deceased, or whose livelihood depends on the deceased if the parents of such grandchildren are unable to support them.

Israel does not have forced heirship laws. Nonetheless, a recent Supreme Court case held an important decision with respect to forced heirship matters that, in accordance with section 137 of the Succession Law, the deceased's estate was to be distributed in accordance with the laws of the deceased's place of residence at her death. If such jurisdiction follows forced heirship laws, these may not be ignored and the Israeli estate of the deceased is to be distributed in accordance with the forced heirship laws.

## **Estate Planning – Trusts and Underlying Companies**

Most of the issues mentioned herein relating to administrative and legal matters upon the death of a non-resident owning assets in Israel at the time of death may be resolved by appropriate estate planning methods in accordance with advice of local professionals.

An option may be to establish a trust and an underlying company thereof. Under the newly effective Taxation of Trusts Law, a trust settled by a foreign resident is defined as a foreign settlor trust. A foreign settlor trust is viewed as the foreign resident personally, regardless of whether the trust is classified as revocable or irrevocable. The assets held by the trustee are viewed as though they were held by the foreign resident personally. As a result, the income of the trust is regarded as the income of the foreign resident. Trust profits that are not derived from sources in Israel are not taxable in Israel. Further, there are no reporting obligations in Israel.

As the trustee of a foreign settlor trust is not subject to tax or reporting requirements, the trustee may utilize an underlying company, whether in Israel or abroad, to hold the trust's assets. Neither the trustee nor the underlying company is subject to tax or reporting obligations on the income derived outside Israel.

Before the Taxation of Trusts law was legislated, every Israeli trustee holding such a company would, through the 'management and control' test, cause it to be regarded as an Israeli company resident in Israel, therefore subjecting it to corporate tax and reporting requirements in Israel. The new law provides that this underlying company is now regarded as a 'flow through entity' and the 'management and control' test is no longer relevant. The Israeli tax authority will 'ignore' the company and treat the assets and the income derived therefrom as though they were held directly by the trustee.

### **Conclusion**

It is important for non-residents who purchase assets in Israel to structure the holding of such assets in a manner which will ensure the simplest transfer of such assets to their heirs. As a result, it is advisable for a non-resident to obtain professional advice as to the manner of structuring the holding of said assets both with respect to the laws of Israel and with respect to the laws of the jurisdiction in which he resides.