

Practical Aspects of Estate Planning in Malaysia



Making Your Wishes Come True

Practical issues regarding wealth distribution

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Issues

Liquidity – of no use when frozen due to:

- Incapacity
- Comatose
- Disappearance
- Death

Resulting in loss of control & value of wealth



Issues

When wealth is frozen, will funds be available for the loved ones and for your client?

Spouse & Minor



Handicapped



Parents



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Issues

When wealth is passed to a spendthrift heir, can he be controlled?



Issues

**Are the heirs receiving too much
without restrictions?**

Why
work?

Heirs – No motivation



Image: FredDigitalPhotos.net

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Issues

Will the heirs be easy prey for fraud and gold diggers?



Nina Wang



Tony Chan

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Issues

Are the asset protected?

Against legal suits and
creditors



Image: FredDigitalPhotos.net

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Issues

Who takes over the steering wheel for the business?



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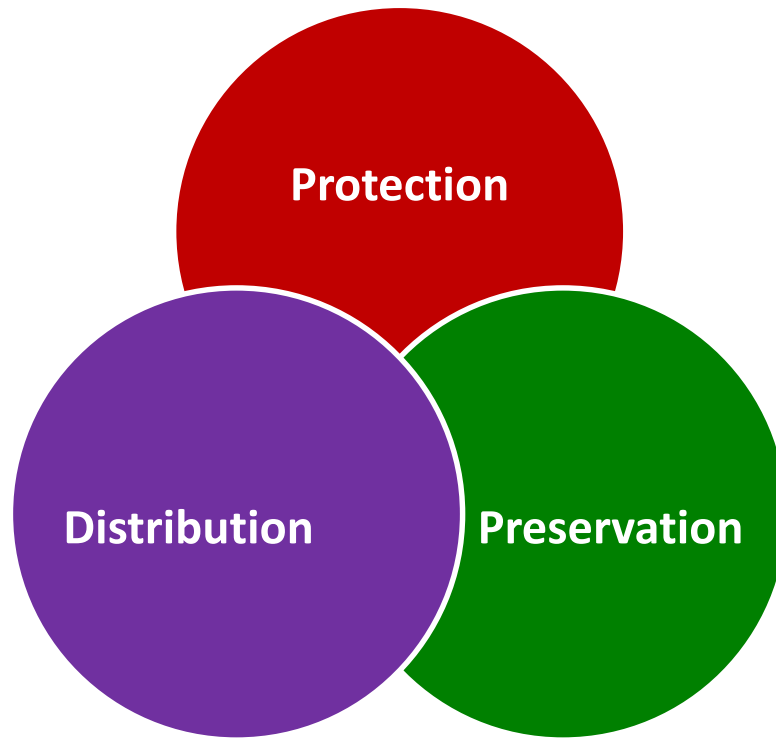
With a proper Estate Plan...

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... it provides for...



- without challenge
- with reasonable cost
- minimal tax impact

Common Estate Planning Instruments

Will

Trust

Power of
attorney

Assignment

Nomination

Hibah

Buy-Sell
agreement

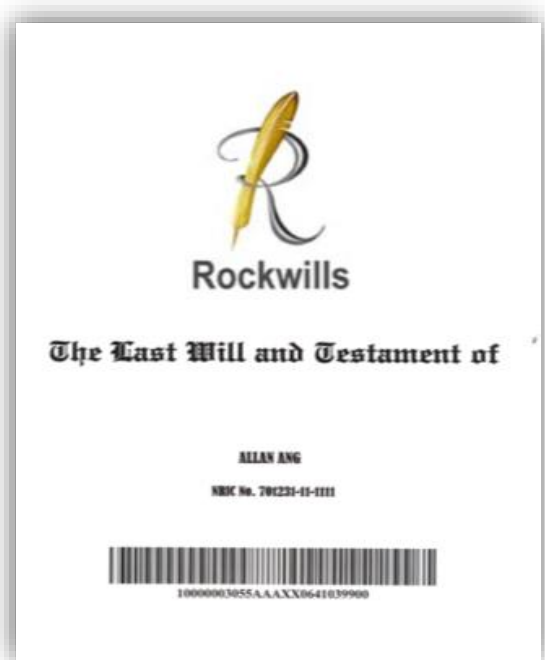
Harta
Sepencarian

Offshore
company

Offshore Trust

Family
Foundation

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WILL

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1) Appoint a suitable EXECUTOR – choose an individual and/or trust company.

Knowledge and expertise?
Accountability? Continuity?
Impartial? Tax knowledge?

Appointing the right executor will ensure that instructions are carried out!



**2) Allowance to the
GUARDIAN of minor
children** – very often
overlooked

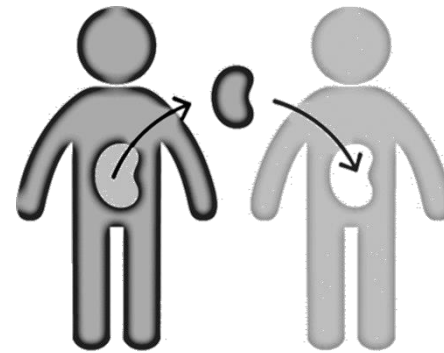
Recommend a testamentary
trust specifying the assets
being reserved to provide
regular payment to the
Guardian



3) FUNERAL instructions



4) ORGAN donation



5) JOINT BANK ACCOUNT –
should it be given to another
person than the joint
account holders?



6) PROPERTIES – should it be
given to more than 1 person?



- 7) **SOLE PROPRIETORSHIP** – what can be given away?
- 8) **PARTNERSHIP** – can it be given?
- 9) **COMPANY** – for majority/substantial shareholding, what is the fastest way to pass the shares?

EPF Nomination

- Avoid naming minor children as nominees, especially if they are in need of funds
- They will not be able to claim the EPF proceeds until he/she is 18 years old
- If your spouse can be trusted with the funds, appoint the spouse as EPF nominee. This will avoid the funds being retained by EPF



Insurance Nomination – non-Muslim

- For trust nomination made to spouse and children, the trustee shall be the party claiming the sum assured from the insurer.
- The trustee is the party authorized under the Financial Services Act 2013 to claim the insurance proceeds
- The beneficiary will not be able to claim the proceeds unless he/she is the trustee

Insurance Nomination – non-Muslim

- Where no trustee is appointed, the trustee will be:
 - 1) Competent beneficiary, failing which
 - 2) Parent of minor beneficiary, failing which
 - 3) Amanah Raya Berhad

Policy owners who are divorced or single parents should be aware of this!

Insurance Nomination – non-Muslim

To collect the sum assured from the trustee, an 18 year old child can receive the sum assured.

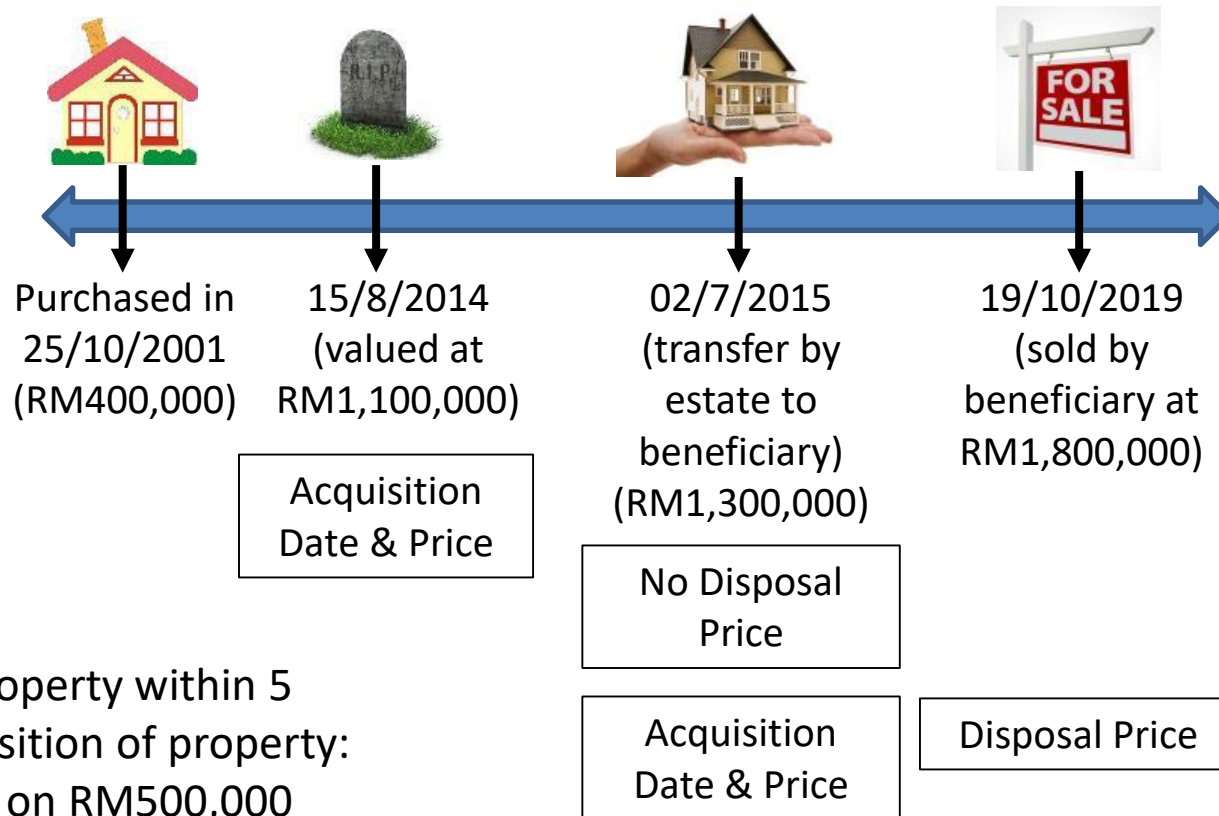
Will the child be able to preserve and manage the funds prudently for his future?

Creating an inter vivos trust may be the solution!

Invalidating a Will

1. Unsound mind when the testator signed the Will – medical evidence from the attending doctor is important
 2. Fraud on the testator
 3. Undue influence or duress on the testator to sign the Will
 4. The Will was not signed by the testator in presence of 2 witnesses or the witnesses did not sign in the presence of the testator
- (2), (3) and (4) can be negated with video evidence of proper will explanation and signing and attestation of the Will.

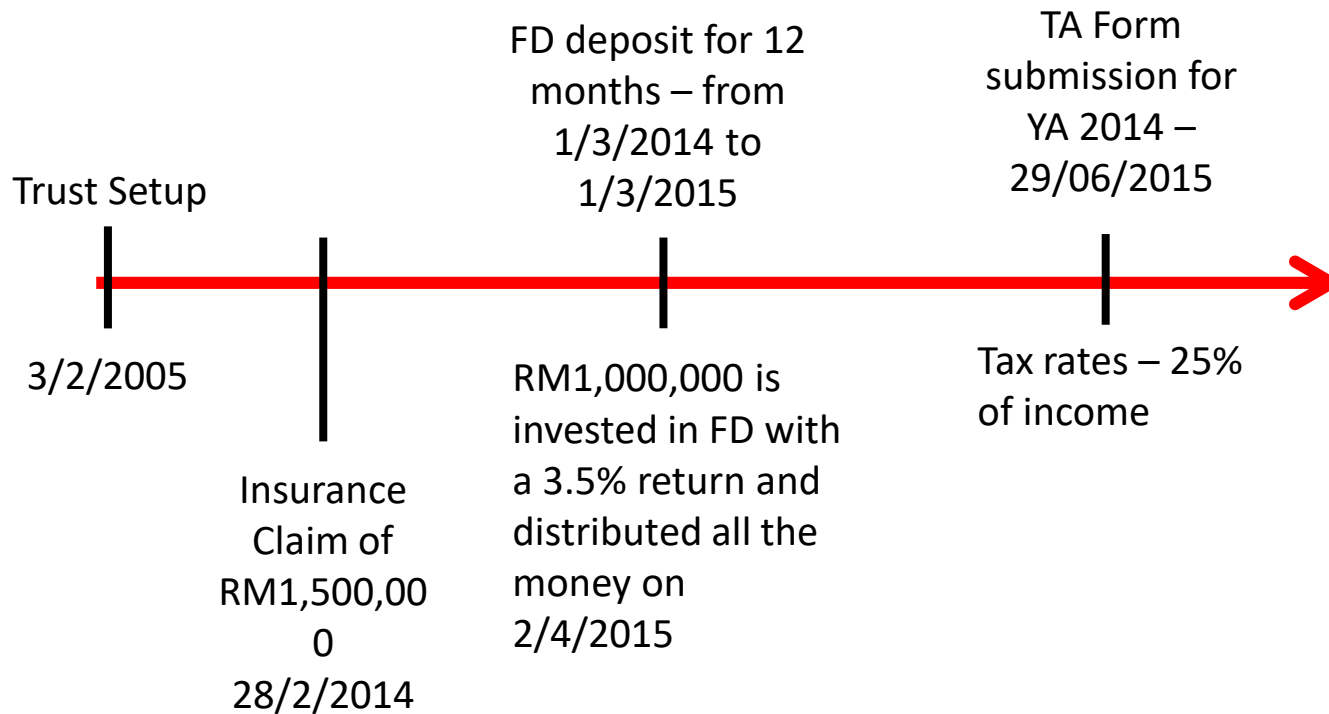
REAL PROPERTY GAINS TAX - ESTATES (Muslim & non-Muslim)



Disposal of property within 5 years of acquisition of property: RPGT payable on RM500,000 gain

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TAXATION ON TRUST



Tax rate for Trust for YA 2016 is **24%**

STAMP DUTY ON TRANSFERS - ESTATES (Muslim & non-Muslim)

| Asset | Stamp Duty rates |
|-----------------------|------------------------|
| Sdn Bhd shares | RM10 per transfer form |
| Listed company shares | 0.1% or max. RM200 |
| Property* | RM10 per title/lot |

* RPGT does not apply in cases of inheritance

STAMP DUTY ON TRANSFERS - TRUST

| Asset | Stamp Duty rates |
|-----------------------|---|
| Sdn Bhd shares | 0.3% of share value – NTA, PE ratio whichever higher |
| Listed company shares | 0.1% or max. RM200 |
| Property* | <ul style="list-style-type: none">• First RM100,000 – 1%• Next RM100,000 – RM500,000 – 2%• Above RM500,000 – 3% |

* RPGT applies if the transfer is made within 5 years even regardless of whether there is a sale of the property or not

Situations where having a Trust would be a good solution....

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Minor children

(especially for single parent)

Special needs child

Asset protection

Recovery of assets from nominee

Share sale upon death/TPD

Succession of family business

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Minor children

(especially for single parent)

Special needs child

Matters to be discussed in length with the Settlor:

1. Trust period
2. Funds required to fulfil the objectives of the trust
3. Asset to be settled into the trust which is related to (2)

Financial needs of the beneficiaries

| Areas | 5 years old | 7 years old | Wife |
|-------------------------------------|---|--|--|
| Education | <ul style="list-style-type: none"> Primary: RM15,000 x 6 years = RM90,000 Secondary: RM25,000 x 5 years = RM125,000 College: RM50,000 x 2 years = RM100,000 University: RM80,000 x 4 years = RM320,000 Total: <u>RM635,000</u> | <ul style="list-style-type: none"> Primary: RM15,000 x 5 years = RM75,000 Secondary: RM25,000 x 5 years = RM125,000 College: RM50,000 x 2 years = RM100,000 University: RM80,000 x 4 years = RM320,000 Total: <u>RM620,000</u> | - none |
| | Total: <u>RM1,255,000</u> | | |
| Medical | Shared by 2 children and wife: <u>RM600,000</u> | | |
| Daily expenses (food & clothing) | <ul style="list-style-type: none"> Primary: RM1,500 x 72 months = RM108,000 Secondary: RM2,000 x 60 months = RM120,000 College: RM2,500 x 24 months = RM60,000 University: RM3,000 x 48 months = RM144,000 Total: <u>RM432,000</u> | <ul style="list-style-type: none"> Primary: RM1,500 x 60 months = RM90,000 Secondary: RM2,000 x 60 months = RM120,000 College: RM2,500 x 24 months = RM60,000 University: RM3,000 x 48 months = RM144,000 Total: <u>RM414,000</u> | <ul style="list-style-type: none"> RM3,000 per month until she is 80 years old Total: <u>RM432,000</u> |
| | Total: <u>RM1,278,000</u> | | |



**RM3.1
million**

RM3.1 million

Suitable assets to be the trust asset?

Cash

Unit trust

**Life
insurance**

**Listed
shares**

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**It is important that the estate plan
designed fulfils your needs and give
you a peace of mind**

However....

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Every estate plan needs to be reviewed now and then, when...

- Birth of a new child/grandchild
- Death of a beneficiary
- Divorce
- Remarriage
- Marriage of a child
- Spendthrift beneficiary
- Bankruptcy of beneficiary
- Changes in the law
- Acquired new assets
- Change in financial status
- Relationship with the beneficiaries/protect or/ executor changed

Thank You

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