

The background features abstract, overlapping green geometric shapes, primarily triangles and polygons, in various shades of green, creating a modern and dynamic look.

Chapter 7

Life Insurance & Estate Planning

Introduction

- ▶ Useful tool in the risk management of an individual with regards to managing “personal risks” such as death, permanent disability and major illnesses.
- ▶ It is also a very important tool for estate planning purposes

The Advantages of Life Insurance in Estate Planning

- ▶ an immediate “**cash estate**” for the policyowner the moment he has effected an insurance policy on his life.
- ▶ this “cash estate” can be acquired with a relatively small initial contribution or premiums, compared with other types of assets of significant value, such as the purchase of immoveable assets.

The Advantages of Life Insurance in Estate Planning

- ▶ insurance proceeds are paid promptly to the named nominee, without the need of Grant of Probate or Letter of Administration
- ▶ the insurance proceeds may also enjoy the benefit of a “**creditor-protection**” assets by virtue of a statutory provision in the Financial Services Act 2013, Schedule 10, Para 5
- ▶ insurance proceeds are also useful for **business organizations**, whether sole-proprietors, partners or shareholders in a company, as an effective tool for business financial planning.

Payment to Nominees

- ▶ “immediate cash” from insurance proceeds paid by insurance companies is made possible because of the specific provisions of the Financial Services Act 2013, **Para 4, Schedule 10** which states as follows:

Payment to Nominees

- ▶ *“Subject to subsection (2), where a policy owner dies having made a nomination, the licensed insurer shall pay the policy moneys of the deceased policy owner according to the direction of the nomination upon receipt of a claim by the nominee and the claim is accompanied by proof of death of the policy owner”.*

Payment to Nominees

- ▶ This provision effectively means that if the insurer is agreeable to pay the death claim of the insured policyowner, it must pay to the named nominee(s).
- ▶ The nominees need not show proof of relationship with the insured. It is also not the insurer's responsibility whether the nominee is receiving the moneys beneficially, or in his capacity as an executor or even as a trustee.

Payment to Nominees

- ▶ Another provision in the Act also creates a system which encourages the insurer to pay out death claims quickly and this is found in **Para 12(1), Schedule 10** of the Act which states:
- ▶ *“(1) Where a claim or a part of a claim made under a life policy, or under a personal accident policy upon the death of the policy owner is not paid by the licensed insurer within 60 days of receipt of intimation of the claim, the licensed insurer shall pay a minimum compound **interest** of at the average fixed deposit rate applicable for the period of twelve months for licensed banks as published by the bank plus 1% or such other rate as may be specified by the Bank, on the amount of policy moneys upon expiry of the sixty days until the date of payment”.*

Trust Policies

- ▶ On of the most important aspects of life insurance as an estate planning tool is that a statutory trust can be created out of the moneys payable upon death of a policy owner.
- ▶ This benefit is provided in **Para 5 (1) and (2), Schedule 10** of the Act:

Trust Policies

- ▶ Para 5 (1) reads as follows:
A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if
 - (a) the nominee is his spouse or child;
or
 - (b) where there is no spouse or child living at the time of nomination, the nominee is his parent,

Trust Policies

- ▶ Subsection (2) further states that
“Notwithstanding any written law to the contrary, a payment under subsection (1) shall not form part of the estate of the deceased policy owner or be subject to his debts”.

Trust Policies

► The key features of this trust:

i) These trusts may only be created by non-muslim policy owners

ii) The benefit of the trust is only created if the nominees are spouse, children and parents.

However, if a parent is named, there must have been no spouse or children living at the time of nomination.

iii) The policy moneys payable under such trusts do not form part of the estate of the deceased or be subject to his debts.

Trust Policies

- ▶ a very unique benefit given to policyowners by statutory law
- ▶ the only asset of deceased policyowner which is not subject to the creditors of his estate
- ▶ all the other assets, including those which he had a beneficial interest in at the time of his death will be subject to creditors under the rules of the Bankruptcy Act 1967 (Amended 2017).

Nominees as Executors

- ▶ Other than those individuals mentioned in Para 6, Schedule 10 of FSA 2013, all other nominees who receive death claim proceeds do so in the capacity of an executor. This applies to nominees of Muslim policy owners too.
- ▶ Para 6, sub para 1: *“A nominee, other than a nominee under subparagraph 5(1), shall receive the policy moneys payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the licensed insurer shall be discharged from liability in respect of the policy moneys paid.”*

Assignments

- ▶ An assignment of a life policy is a deed or document which is effective to transfer the ownership of the policy from the one person to another.
- ▶ The person who does the transfer in the assignment is called the **assignor**.
- ▶ The person who receives the benefit of the assignment is the **assignee**.
- ▶ An assignment may be made to a person or corporations. It is a very common practice for policyowners to assign the benefits of the policy to banks or other financial institutions as a security for a loan granted to them. Upon completion of the loan, the bank will reassign the policy to the policyowner.

Assignments : Absolute or Conditional?

- ▶ An assignment made for the purpose of transferring all of one's ownership rights to another is called an *Absolute Assignment*.
- ▶ An assignment which is made for the purpose of transferring some ownership rights to another but on condition that these rights are reverted to the original owner upon certain conditions is called a *Conditional Assignment*.

Bankruptcy

- ▶ The term '**bankruptcy**' describes the procedure whereby the State takes over a person's (known as the debtor's) assets for the purpose of selling them in order to pay off the creditors of the debtor.
- ▶ The term '**insolvency**' refers to the situation whereby a person's liabilities exceed his assets, thus making him unable to pay off his debts.
- ▶ The two terms are different, as an insolvent person only becomes a bankrupt after the court has declared him to be so eg by making a court order to that effect.

Bankruptcy

- ▶ Therefore, a bankrupt is insolvent but an insolvent person is not necessarily a bankrupt.
- ▶ The debtor can only be called a bankrupt after the court has made the order (known in legal terms as the adjudication order).

Why Make a Debtor a Bankrupt?

- ▶ to secure a fair distribution of the debtor's assets among his creditors;
- ▶ to relieve the debtor from his debts and to enable him to make a fresh start as soon as he is discharged by the court

Effects of Adjudication Order

- ▶ Once an adjudication order is made, the bankrupt's assets **vests in the Director General of Insolvency (or DGI) (previously the Official Assignee)** who will decide on how to distribute the assets among the creditors.
- ▶ The DGI will take charge of the assets; he steps into the bankrupt's shoes and has full control over the bankrupt's assets.
- ▶ The DGI will also decide on whether certain earlier transactions entered into by the bankrupt are still valid or not

Effects of Adjudication Order

- ▶ **Section 52(1) :**
- ▶ *1) Any settlement of property doneif the settlor becomes bankrupt within **two years** after the date of the settlement will be absolutely void against the DGI.....*
- ▶ *2)and shall if, the settlor becomes bankrupt..... within five years..... of the settlement, be void against the DGI unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement, able to pay all his debts without the aid of that property.....*

Effects of Adjudication Order

- ▶ The meaning of the term 'settlement' is stated in section 52(3) as follows:
..... 'settlement' includes any conveyance or transfer of property, bill, bond, note, security for money or covenant for the payment of money and any gift of money.
- ▶ As can be seen, the term 'settlement' is widely drafted and thus can include an insurance policy which has **been absolutely assigned** and also a **trust policy**.

Effects of Adjudication Order

- ▶ For insurance policies which are **statutory trusts** however, the law is specifically provided for in **Para 5, sub para 6, Schedule 10 of FSA 2013** which states:
- ▶ *“Nothing in this section shall prejudice a creditor of a policy owner from applying to the court for a declaration that this section, wholly or partly, is inapplicable to any particular policy on the ground that the premiums under that policy were paid to defraud the creditor.”*

Effects of Adjudication Order

- ▶ This provision gives creditors the right to apply to the court for a declaration that the **interests of nominees are inapplicable because of fraud.**
- ▶ It is presumed that a creditor must prove that the premiums under the policy were paid to defraud the creditor.
- ▶ It is expected that this provision would be applied in a similar manner to the trust created by **Section 23(2) of the Civil Law Act 1956.**