Chapter 1
The Concepts and Fundamental of Estate Planning

INTRODUCTION

Estate Planning : the process of making appropriate arrangements for the protection, preservation and provision of a person's assets for the benefit of beneficiaries

Objectives

- ✓ Minimizing cost of estate administration
- ✓ Provisions for the maintenance of dependents
- ✓ Avoiding disputes among beneficiaries
- ✓ Management of assets of deceased

Human Factor in Estate Planning

- No one likes to think about death, what more about making arrangements
- Procrastination
- Understand the difficulties of the dependents when dealing with assets and debts of a deceased

The Estate Planning Process – 6 Steps Process

- Establish the client's objectives/ goals
- Information/data gathering
- Analyze and evaluate the client's current financial situation
- Formulate practical strategies by selecting proper estate planning tools
- Develop an estate plan
- Implement and, where necessary, update the plan

Step 1: Objectives and goals

- Depends on one's value system
- When all arrangements are in place, unnecessary expenses and legal costs are kept to a minimum

Step 1: Objectives and goals
Examples of common goals:

- Provide funds for funeral and testamentary expenses, and settlement of outstanding debts or loans.
- Provide income to maintain a required standard of living to dependents and beneficiaries.
- Establish adequate funds for children's education needs.
- Create trusts, where necessary, authorizing the management of assets for the benefit of beneficiaries and dependents.

Step 1: Objectives and goals Examples of common goals:

- Making arrangements to deal with one’s interest such as those in partnerships and limited companies.
- Provisions for charity or any other specific or peculiar wishes of the individual.

Step 2: Information or data gathering

- All relevant information: assets, income, liabilities, outstanding debts, business interest and also dependents and beneficiaries.
- The extent of ownership interest and any limitations or constrains that may exist in dealing with any of the assets must be identified, eg: a land with a charge, restrictions on disposal of land.

Step 3: Analyze and Evaluate

- Identify the strength and weaknesses of the individual's position in relation to his goals and aspirations.
- A client with substantial assets may think that he has achieved his estate planning goals but overlooks that he may be highly geared or have significant liabilities that will reduce his net worth at time of death.

Step 3: Analyze and Evaluate

- Ownership rights may range from outright ownership to merely having a legal interest as trustee.
- The limits of an individual’s beneficial rights and interest in assets need to be identified.

Step 4: Formulate Practical Strategies

- Formulate various strategies for different assets.
- Make provisions to settle liabilities and debts and preserve assets according to needs.
- Eg: nominations in life insurance or Family Takaful and EPF.

Step 5: Develop an Estate Plan

- A recommended time schedule for the execution of the proposed plan.
- The client’s authorization to proceed with the recommendations made.
- A letter of discharge for the financial planner, to be signed by the client, if he has a differing view or rejects parts of the brief presented to him.

Step 6: Implementation and Update

- Priorities must be identified, eg purchase of a MRTA for a loan.
- Professionals of various fields such as lawyers, tax consultants, corporate trustees and insurance advisers have to be engaged to execute specific areas of the plan.

Step 6: Implementation and Update

- Update the client on any specific concern or issue that may arise, or any changes of the law during the implementation process.
- With the consent of client, update family members or dependents of the various stages of the implementation where appropriate.

Ownership Rights

1. Outright ownership
2. Life interest ownership
3. Term interest ownership
4. Future interest ownership
5. Business ownership e.g. sole proprietorship, partnership
6. Joint Tenancy ownership with survivorship right
7. Tenancy In Common

Estate administration

2 steps:

- To place the estate in the hands of one or more individuals, or an organization who is authorized to “take charge” of the assets.
- The ‘distribution” of the assets according to the relevant laws applicable.

Estate Administration

Two basic principles in estate administration process:

1. All liabilities and creditors must be paid before assets are distributed or transferred.
2. Different sets of laws/principles for asset distribution to muslims and non-muslims.

   Eg: Distribution Act 1958 (Amended 1997) does not apply to muslims (governed by Hukum Faraid).

Types of Transfer

1. Transfer in testacy or intestacy
2. Transfer by statutory law provisions
3. Transfer by contract

1. Transfer by testacy or intestacy

- **Testacy** (or testate) refers to a situation where a person passes away leaving behind a valid Will
- When a person passes away without a Will, he is said to have passed away **intestate** or the situation is said to be an intestacy
- The **personal representative** , a term refers to either an executor or administrator, is the person who takes charge of the estate

2. Transfer by Statutory Law Provisions

- Under EPF Act, the moneys of a person in his EPF will be paid to a named nominee upon his death.
- Death claim proceeds of life and personal accident insurance policies are also directly paid to named nominee(s) under Financial Services Act 2013.

3. Transfer by Contract

Certain assets may be subject to contractual terms which place them completely or partially outside the general probate and administration process. The following legal instruments named are also being used as estate planning tools.

a) Trusts

A trust is an arrangement whereby the owner (settlor) of a particular asset transfer the legal rights to another person (trustee) to hold or manage it for the benefit of others (beneficiaries).

3. Transfer by Contract

Owner/Settlor (legal and beneficial interest)

Trustee (Legal interest)

Beneficiary (Beneficial interest)

3. Transfer by Contract

b) Power of Attorney

A power of attorney (POA) is an instrument that allows the owner of an asset to appoint another (the attorney or donee) to deal with it as his “agent”. Such delegated authority can be continued even after the death of the owner.

3. Transfer by Contract

c) Assignments of Insurance Policies

d) Joint Accounts – Bank and Unit Trust

e) Buy-Sell Agreements among Business Owners