ALON KAPLAN

ADVOCATE & NOTARY

A SPECIAL COLLECTION OF ARTICLES ON TRUSTS & ESTATE

2018 - 2019

The information provided in this collection of articles does not, and is not intended to, constitute legal advice; The views expressed at, or through, this collection of articles are those of the individual authors writing in their individual capacities only.

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INTRODUCTION

The articles compiled in this booklet were presented to the participants of the STEP Israel conference 2019.

This year marks 21 years since the founding of the STEP Israel branch and 71 years since the State of Israel's independence.

Few countries in the world have the experience of absorbing waves of millions of immigrants coming from many jurisdictions and establishing a home, profession and business different from the culture and law of their origin.

The articles included in this collection portray the law and practice used by professionals in accommodating the needs and requirements of the complex society in Israel which grew from a community of less than one million people in 1948 to close to more than nine million in 2019.

The articles represent a small portion of the vast legal writing on this subject.

The team of writers of the articles in this booklet deserve special praise for their contribution.

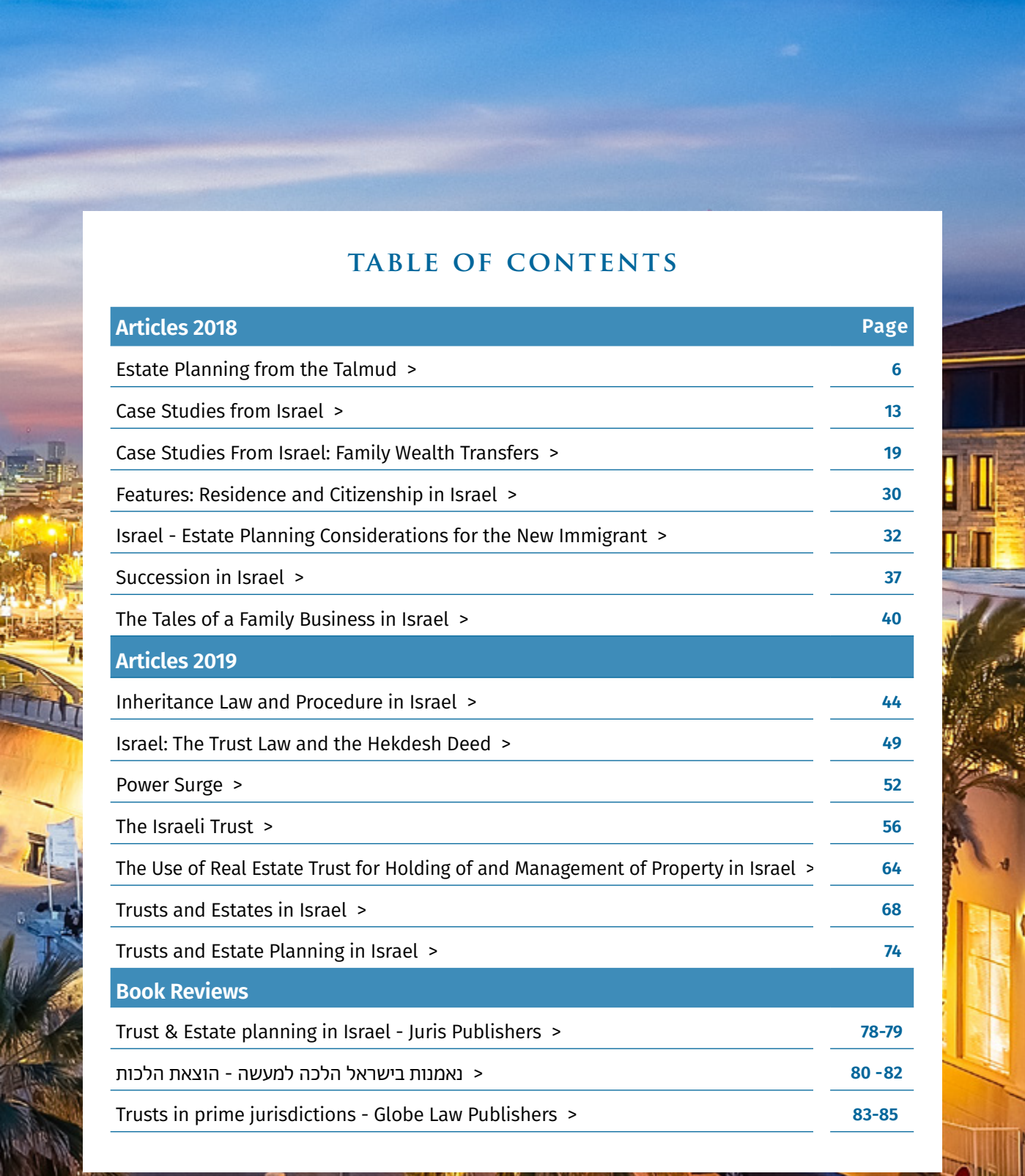
Alon Kaplan

July 2019

Contributors & Editors

Dr. Alon Kaplan, Meytal Liberman, Lyat Eyal

Panoramic view of
Tel Aviv Jaffa



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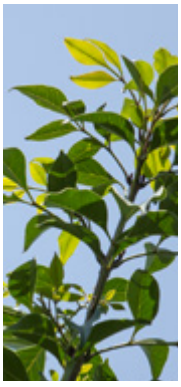
ESTATE PLANNING FROM THE TALMUD

A STORY "CHONI HA'MEAGEL"*

Last month I participated in a professional conference in Lisbon. We took a tour out of the city and visited a production site using cork taken from the cork trees. We were shown that the cork is part of the trunk of the tree. It takes 25 years after plantation until the first harvest of the cork tree can be used as raw material for the industry. The next time the the tree can be harvested will be 9 years from the last harvest. This amazing information reminded me the story of " Choni Ha'meagel" from the Talmud time:



One-day Choni saw in the field an old man planting a carob tree. Choni asked the man when this newly planted tree would bear fruit. He was told that this type of carob tree bears fruit only seventy years after it is first planted. Choni wondered "Do you intend to eat from this tree?"

"Just as my ancestors saw to it that when I came into the world I found fruit trees that I could eat from, so I am making sure my descendants will have fruit trees available when they come into the world" answered the old man. Each generation makes sure the following generations' needs are provided. The story tells that Choni fell into a deep sleep. Seventy years later he woke up. He saw that the tree that had been planted on the day he fell asleep, was now bearing fruit.

Choni asked the man who stood by the tree: "Did you plant this tree?"

the man answered: "No, it was my grandfather who planted this tree seventy years ago ".

Choni went to his home and asked about his son. He was told the son had passed away but his grandson is alive.

Choni went to the synagogue. Nobody recognized him and people ridiculed him for presenting himself as Choni Ha' Meagel the famous scholar. Choni said in frustration: "If I am not recognized and appreciated for who I am, I'd rather die." G-d took his soul.

WHAT IS THE LESSON WE SHOULD LEARN?

"Just as my ancestors saw to it that when I came into the world I found fruit trees that I could eat from, so I am making sure my descendants will have fruit trees available when they come into the world."

ESTATE PLANNING WAS ALREADY CONSIDERED IN THE TIME OF THE TALMUD.

*Wikipedia: **Honi ha-Me'agel** (חוני המעגל Khoni, **Choni, or Ḥoni, HaMa'agel**; lit. Honi the Circle-drawer) was a Jewish scholar of the 1st-century BC, prior to the age of the tannaim, the scholars from whose teachings the Mishnah was derived. Honi ha-Me'agel, was famous for his ability to successfully pray for rain.

אָמַר רַ' יוֹחָנָן:
כָּל יָמָיו שֶׁל אוֹתוֹ צַדִּיק הָיָה מִצְטַעֵר עַל הַמִּקְרָא הַזֶּה:
"שִׁיר הַמַּעֲלוֹת בְּשׁוּב ה' אֶת שִׁיבַת צִיּוֹן הָיִינוּ כְּחֹלְמִים" (תהילים קכו, א) -
אָמַר: "וְכִי יֵשׁ מְנַמְנֵם שִׁבְעִים שָׁנָה בַּחֲלוֹם?"
- פַּעַם אַחַת הָיָה מְהַלֵּךְ בַּדֶּרֶךְ, רָאָה אָדָם אֶחָד שֶׁהוּא נוֹטֵעַ חָרוּב.
אָמַר לוֹ: זֶה לְכַמָּה שָׁנִים טוֹעֵן פֵּרוֹת?
אָמַר לוֹ: לְשִׁבְעִים שָׁנָה.
אָמַר לוֹ: כְּלוּם בָּרִי לְךָ שֶׁתִּחְיֶה שִׁבְעִים שָׁנָה, וְתֹאכַל מִמֶּנּוּ?
אָמַר לוֹ: אֲנִי מָצָאתִי אֶת הָעוֹלָם בַּחֲרוּבִים; כְּשֵׁם שֶׁנָּטְעוּ אֲבוֹתַי לִי כָּךְ אֶטַּע
אֲנִי לְבָנַי.
יָשַׁב חוֹנִי לֶאֱכֹל, נָפְלָה עָלָיו שֵׁנָה וְנִתְנַמְנֵם.
עָלָה צוּק וְהִקִּיף עָלָיו וְנִתְכַּסָּה מִן הָעַיִן וְיָשֵׁן שִׁבְעִים שָׁנָה.

כְּשֶׁנִּנְעַר רָאָהוּ לְאָדָם אֶחָד שֶׁהוּא מְלַקֵּט מֵאוֹתוֹ חָרוּב.
אָמַר לוֹ: אַתָּה הוּא שֶׁנִּטַּעְתּוֹ?
אָמַר לוֹ: אֲבִי אַבָּא.
אָמַר: וַדַּאי מְנַמְנֵם הָיִיתִי שִׁבְעִים שָׁנָה.
רָאָה אֲתוֹנוֹ שֶׁיָּלְדָה לוֹ עֲיָרִים עֲיָרִים.
הָלַךְ לְבֵיתוֹ, אָמַר לָהֶם: בְּנוֹ שֶׁל חוֹנִי הַמְּעַגֵּל הֵיכָן?
אָמְרוּ לוֹ: בְּנוֹ אֵינוֹ בָּעוֹלָם, אֲבָל יֵשׁ בֶּן בְּנוֹ.
אָמַר לָהֶם: "אֲנִי חוֹנִי הַמְּעַגֵּל" – וְלֹא הֶאֱמִינוּ לוֹ.
הָלַךְ לְבֵית הַמִּדְרָשׁ,
שָׁמַע הַחֲכָמִים אוֹמְרִים: בְּרוּרָה לָנוּ שְׁמוּעָה זוֹ עַכְשָׁו כִּבְיָמָיו שֶׁל חוֹנִי הַמְּעַגֵּל,
שֶׁכְּשֶׁהָיָה נִכְנָס לְבֵית הַמִּדְרָשׁ, כָּל קֻשְׁיָה שֶׁהָיְתָה לָהֶם לַחֲכָמִים הָיָה מְיַשְּׁבָהּ.
אָמַר לָהֶם: "אֲנִי חוֹנִי", וְלֹא הֶאֱמִינוּ לוֹ, וְלֹא נָהֲגוּ בּוֹ כָּבוֹד כָּרָאוּי לוֹ.
חָלְשָׁה דַּעְתּוֹ וּבִקֵּשׁ רַחֲמִים - וָמֵת.

אָמַר רָבָא! זֶה שֶׁאוֹמְרִין הַבְּרִיּוֹת: "אוֹ חַבְרוּתָא אוֹ מִיתוּתָא".

תלמוד בבלי, מסכת תענית, דף כג', עמוד א'

ALON KAPLAN

ADVOCATE & NOTARY

ABOUT US

Established in 1975, the firm offers a full range of services in the fields of Commercial Law, International Trusts and Estates, cross border estate planning, Real Estate Trusts, International Taxation. The firm has extensive activity in Europe, in the areas of Trusts and Estates, Private Banking, International Transactions and Taxation, Companies and Commercial Agencies and Distributors.

Writing in various respectable international legal publications such as Trusts& Trustees, Tottel Publishing's International Succession Laws, and Planning and Administration of Offshore and Onshore Trusts and Kluwer Law Online publications – the firm is responsible for writing, and periodically updating, the chapter in each one dealing with Israel.

PRACTICE AREAS

Trusts

The Practice advises on foreign and Israeli trusts for Israeli and overseas clients. Trusts are structured to meet the client's particular needs, including succession planning, asset protection and forced heirship issues. The Practice maintains close relationships with reputable banks in Israel and abroad, as well as with numerous law firms and licensed trust companies.

Estates

The Practice advises on all matters of estate planning, trusts, probate and inheritance proceedings. This includes legal services, such as drafting of trust deeds and wills, as well as providing services relating to probate and inheritance orders, administration of estates and cross-border inheritance matters.

International Taxation

The Practice provides tax advice to individuals and companies with international business activities, including tax planning advice involving personal tax law and international tax issues. In order to provide this comprehensive service. The practice works closely with lawyers, tax experts and accountants in several jurisdictions with the required expertise in this filed.

Family Office

The Practice provides legal advice to family offices in matters of structuring and organizing family businesses, creation of trusts, and drafting of wills.

Distributors & Agents

The Practice provides legal advice to distributors, agents and suppliers from Israel and overseas on the law and practice of distribution agreements. The Practice advises foreign companies regarding the appointment of agents and distributors in Israel and Israeli companies regarding the appointment of agents and distributors overseas.

Real Property and Financial consultations

The Practice advises on purchasing, holding and managing real estate in Israel with a special focus on investments by overseas companies and individuals, including aspects of taxation and the creation of real estate trusts. Special expertise in serving “Olim” – immigrants to Israel in all financial and assets arrangements.

Company Law

The Practice advises on all aspects of company law in Israel, including legal advice for foreign investors and entrepreneurs wishing to start or operate a business in Israel.

AUTHORS

ALON KAPLAN
ADVOCATE & NOTARY

DR. ALON KAPLAN

Advocate & Notary, PHD, TEP
Founder & Managing Partner

Dr. Alon Kaplan, LLM (Jerusalem), PhD (Zurich), TEP, was admitted to the Israel Bar in 1970, was appointed a notary in 1989, and practices law in Tel Aviv. He was admitted to the New York Bar in 1990 and became a Member of the Frankfurt Bar in 2010.

Among the founders of STEP Israel in 1998, he is currently the President of STEP Israel, and has advised the Israel Tax Authority on Trust legislation.

Alon is co-chairman of *The Committee for Private International Law of the Israel Bar Association.*

Alon has taught in the LLM program at Tel Aviv University's Faculty of Law and is a Lecturer and Academic Coordinator of the STEP Diploma Course in Israel.

He is an Academician of the International Academy of Estate and Trust Law and a member of ACTEC The American Trust and Estate College.

He is the Israel Country Correspondent for the Oxford Journal "Trusts and Trustees".

Alon is General Editor of Trusts in Prime Jurisdictions (4th edition, April 2016, Globe Law and Business). He is author of Trusts in Israel: Development and Current Practice (2015 Helbing Lichtenhahn Verlag), Trusts and Estate Practice in Israel (2016 Juris Publishing) and a book in Hebrew on Trusts in Israel – Theory and Practice (Dec. 2017, Halachot Publishing).

Alon is a member of the New York State Bar Association, the American Bar Association, and the International Bar Association.

Alon is a member of the Board of Trustees of IMPACT, a charitable trust that awards scholarships to IDF soldiers who have completed their term of duty, and is also a member and a director of the of the Israel -Switzerland and Liechtenstein Chamber of Commerce.

He has been an active member of the Society of Friends of the Weizmann Institute of Science since 1999 and in November 2016 was appointed a member of the International Board of the Weizmann institute.

King David Boulevard 1
Tel Aviv 6495301 Israel

Direct
Tel: +972-3-508-4966
Fax: +972-3-508-4969

Office
Tel: +972-3-695-4463

alon@alonkaplan-law.com
www.alonkaplan-law.com

LYAT EYAL

Advocate LLB, TEP
Partner | Aronson, Ronkin-Noor, Eyal Law Firm & Notary

Lyat manages the firm's private client practice and advises clients on cross border estate planning, trusts, taxation of trusts, pre-immigration planning and private international laws relating to estate planning. Lyat also provides services in connection with probate and inheritance proceedings in Israel and estate administration services.

Lyat was admitted to the New York State Bar in 1998 and practiced law at the New York law firm of Faust Oppenheim, LLP until 2003. Lyat was admitted to the Israel Bar in 2005 and was an attorney at Alon Kaplan Law Firm until 2015.

Lyat is a member of the New York State Bar Association, Trusts and Estates Section and International Section, as well as a member of the International Tax Specialist Group (ITSG). Lyat is an Academician of the International Academy of Estate and Trust Law (TIAETL) and a Fellow of the American College of Trust and Estate Counsel (ACTEC). Lyat publishes in leading professional journals and lectures widely in her areas of expertise.

MEYTAL LIBERMAN

Advocate LLM, TEP
Herzog Fox & Neeman

Meytal Liberman was admitted to the Israel Bar in 2013, and today she advises clients from Israel and overseas on trusts and estate planning as an Associate Advocate at Herzog Fog & Neeman's Private Client Practice, after she had acquired an expertise in her filed of practice as an Associate Advocate at the practice of Dr. Alon Kaplan, Advocate & Notary.

Meytal Earned her LLB degree at Bar Ilan University in 2012, and her LLM degree in Commercial Law at Tel Aviv University in 2015. She has been a member of the Society of Trusts and Estates Practitioners (STEP) since 2015, after she had completed two years of studies and earned a Diploma in International Trust Management.

Meytal is the General Editor and contributor of the book "Trust in Israel: Theory and Practice" by Dr. Alon Kaplan, which was published in Hebrew in 2017.

ARTICLES 2018

Masada
Judean desert

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CASE STUDIES FROM ISRAEL

Dr. Alon Kaplan | Meytal Liberman

CROSS-GENERATION TRANSITIONS OF THE OWNERSHIP, CONTROL AND MANAGEMENT OF THE FAMILY BUSINESS

The state of Israel is a small country, about the same size as New Jersey in North America. It's located on the eastern shore of the Mediterranean Sea and has excellent access by air and sea to Europe, Africa, Asia and North America.[1] It's becoming an important jurisdiction for wealthy families.

The Credit Suisse *Global Wealth Report* of November 2017 found that there were 120,464 ultra-high-net-worth (UHNW) individuals in Israel in 2017.[2] "UHNW Israeli Individuals," p. x., shows how they're divided."

Wealth Range (USD)	Number of Adults	Percentage
1-5 m	104,609	86.838%
5-10 m	9,301	7.721%
10-50 m	5,685	4.719%
50-100 m	506	0.420%
100-500 m	315	0.261%
500 - 1 bn	28	0.023%
over 1 bn	20	0.017%

As is evident, Israel provides a fertile ground for both Israelis and foreign residents who wish to invest in the Israeli market and engage in business to increase their wealth.

FAMILY BUSINESS SOLD

Keter Plastics develops, manufactures and distributes a broad range of plastic consumer products throughout the world. It's regarded as an innovative global leader in the production of plastic products for the home and garden using the do-it-yourself method.[3]

The group has over 25,000 sales points around the world, 18 manufacturing plants and two distribution centers spread over nine countries. It enjoys strong ties with retailers in all the markets in which it operates. The company has 4,000 workers, including nearly 2,000 in Israel, and its products are sold in 100 countries.[4]

Keter Plastics was founded in 1948 in Jaffa as a factory for making toys and household utensils, with Joseph Sagol among its founders. Sami and Yitzhak Sagol, his sons, have managed the company since

1. Central Intelligence Agency, Israel, www.cia.gov/library/publications/the-world-factbook/geos/is.html.
2. Credit Suisse, Global Wealth Databook 2017, http://publications.credit-suisse.com/index.cfm/publikationen-shop/research-institute/global-wealth-databook-2017-en/ (November 2017).
3. "BC Partners signs deal to buy Keter Plastic," Globes (July 28, 2016,) www.globes.co.il/en/article-bc-partners-signs-deal-to-buy-keter-plastic-1001142672; Assaf Kamar and Nadav Tsantsipar, "The Huge Exit of Keter: The Brothers who Made a Fortune out of Plastic," YNET (July 21, 2016), www.ynet.co.il/articles/0,7340,L-4831260,00.html (Hebrew).
4. Ibid.

the early 1980s. In 2016, the Segol family sold their 80 percent stake in the company to the investment fund BC Partners. The acquisition is believed to be at a company value of $1.3 billion.[5]

It's also reported that, according to the Segol close family circle, the decision to sell Keter Plastics was made because the third and fourth generations of the family – four daughters and grandchildren – pursued careers in other fields and don't intend to continue the family business.[6]

INTERNATIONAL CORPORATION CONTINUES

In 1936, Dr. Richard and Hilde Strauss immigrated to Israel from Germany with their son, Michael and settled in Nahariya. Around the cabin in which they lived, they grew vegetables, set up a small cowshed and cared for two cows. Shortly afterwards, they began to sell dairy products from their farm, which slowly gained popularity. Eighty years later, Strauss Group is an international corporation that manages and develops its business to offer a wide range of food and beverage brands to entire populations, which are marketed through various commercial channels. The group has 14,000 employees worldwide and is active in more than 20 countries. The group's turnover was estimated at IS 7.9 billion ($2.3 billon) in 2016, of which its international operations account for 49 percent. Strauss has collaborations with Danone, PepsiCo, Haier and Virgin.[7]

In 1975, shortly after Richard's death, his children Michael and Raya took over the management of the family business. In 2001, the baton was passed to the next generation with the appointment of Ofra Strauss, Michael's daughter, as chairperson of the group. Ofra's appointment followed a series of management positions she had held in the company. Ofra still runs the family business today.[8]

In a lecture by Ofra given at a scientific conference of the Israeli Cattle Breeders' Association in July 2013, she stressed the significance of long-term planning to a family business, and said:

> In Strauss, until 1995 the family was alone in the business. We made a principle decision not to sell the control over the business, to keep it a family business. ... we built an organizational identity to distinguish ourselves from our partners.
>
> ... Thus, when we came to the passing of the baton in the early 2000s, we implemented it based on organizational foundations laid down years beforehand. When the third generation joined the management of the company, the administrative infrastructure of the first and second generations was there and upon it the change of generations was executed.[9]

COURT LITIGATION

Ofer Investments Group was founded by Sammy and Yuli Ofer in 1957, who began their activities in the shipping industry under the name "Mediterranean Lines." By the 1960s, the brothers owned dozens of ships and decided to expand their operations into the income-generating real estate sector. The company has grown and expanded over the years, acquiring and constructing many properties and becoming one of the leading players in its field. Today, the group is active in income-generating real estate, residential real estate, hotels and banks.[10]

Yuli passed away in 2011,[11] and after his death,

5. Ibid.
6. Ibid.
7. History & Legacy, www.strauss-group.com/about-us/history_and_legacy/; Our Portfolio, www.strauss-group.com/company/strauss-coffee/.
8. Ibid.
9. Ofra Strauss, "Cross-Generational Transaction in the Family Business – Experience of the Strauss Family," 365 Economy of the Cattle and Milk 16 (2013), www.icba.org.il/articles/0365/365.2013.13.pdf (Hebrew).
10. Ofer Investments, www.oferinvest.com/ofer-investments/group/?langId=2.
11. Nadav Shemer, "Businessman Yuli Ofer Passes Away at the Age of 87," The Jerusalem Post (Sept. 12, 2011), www.jpost.com/Business/Business-News/Businessman-Yuli-Ofer-passes-away-at-the-age-of-87.
12. Efrat Neuman, "Liora Ofer Wins Inheritance Dispute With Brother Doron Ofer," Haaretz (Dec. 17, 2013), www.haaretz.

a dispute arose between his son Doron, who was disinherited from his father's estate, and his daughter Liora. The long battle between the siblings was eventually concluded in a ruling of the Family Court in Tel Aviv in December 2013, whereby Liora received the entire stake of her father in Ofer Investments, leaving her with 51 percent of the company.[12]

AVOIDING DISPUTES

Elco Holdings Ltd's founder and controlling shareholder, Gershon (Georg) Salkind, passed away in September 2017 at age 87. Elco is one of the largest Israeli industrial groups. Elco has several production centres in Israel, Italy, France and China, where it produces household appliances, air conditioning units and electro-mechanical equipment. Gershon founded the group in 1949 and owned 65 percent of its shares. In 2007, Michael and Daniel Salkind, Gershon's two sons, were appointed joint CEOs, and according to sources familiar with the company since their appointment, Gershon resigned from all the boards of directors on which he was previously active and remained as a partner in strategic decisions only.[13]

After Gershon's death and in accordance with his last will and testament, his shares in Elco were divided equally between his two sons, each half estimated at IS 700 million. In addition, the Salkind brothers had signed a shareholders' agreement designed to establish mechanisms for joint management of the company.[14]

In addition to his two sons, Gershon had a daughter, Dr. Daphna Sessler. According to reports, Daphna didn't inherit any shares in Elco, but rather inherited other private assets of her father's. As far as is known, there are no inheritance disputes within the Salkind family.[15]

Given the importance of the family constitution and the challenges it's intended to face, it would be advisable to complement the family constitution with separate documents that are legally binding and can be enforced.

It can therefore be assumed that Gershon took the trouble and made the necessary arrangements to efficiently transfer the family business to the next generation while minimizing potential disputes among his children.

THE LEGAL ENVIROMENT

Here are the elements of the legal environment for UHNW individuals and family businesses.

The family constitution and contracts law. A family constitution is a formal document that sets out the rights, values, responsibilities and rules applying to stakeholders in the family business and provides plans and structures to deal with situations that arise in the course of the family business. Such a document may: assist the family in dealing with unexpected events; keep focus on the matters that are most important to the family; manage disputes; and create a common language and values to serve as the guidelines for the family business, even for future generations who weren't involved in the business when it was first established. A family

com/israel-news/business/.premium-liora-ofer-wins-battle-of-wills-with-brother-doron-1.5304738.

13. Globes correspondent, "Elco Controlling Shareholder Gershon Salkind Dies," Globes (Sept. 26, 2017), www.globes.co.il/en/article-elco-controlling-shareholder-gershon-salkind-dies-1001206339.
14. Globes correspondent, "Gershon Salkind's Elco Shares to be Divided Equally between Sons", Globes (Jan. 18, 2018), www.globes.co.il/en/article-gershon-salkinds-elco-shares-to-be-divided-equally-between-sons-1001220212; Aviv Levy, "Elco Shares Divided between Salkind's Sons; What About his Daughter?" Globes (Jan. 21, 2018), www.globes.co.il/news/article.aspx?did=1001220484 (Hebrew).
15. Levy, ibid.
16. Taryn Hartley, "Family Constitutions – What, When and Why," Lexology (Nov. 2, 2015), www.lexology.com/library/detail.aspx?g=e5d5c264-e453-4d03-b1a6-b93f958f9f17.

constitution tends not to be legally binding on the family members.[16]

Given the importance of the family constitution and the challenges it's intended to face, it would be advisable to complement the family constitution with separate documents that are legally binding and can be enforced.

In Israel, a family constitution may be constructed under the applicable law of contracts, which includes the Contracts Law (General Part),[17] the Contracts Law (Remedies)[18] and relevant case law. In such cases, the family constitution may be enforceable against only the parties who've agreed to it, but given that the family constitution is meant to regulate the family relations within the family business across generations, such a contract would most likely become ineffective over time as members of the family change. Moreover, to enforce such a contract, a claim must be filed with the court, which may result in unwanted litigation.

Due to these reasons, a founder of a family business should take into account other means or structures under other laws to enable the transfer of the family business to the next generation more effectively.

GIFTS

The founders of the family business may transfer ownership of the business to other members of the family at any time they choose to by way of a gift. The Gift Law19 governs this procedure. There's no gift tax in Israel between family members.

The advantage of this procedure is that it allows the transfer of the family business during the lifetime of the founder, who may then asses how efficiently the business is managed by the next generation and make changes accordingly. Furthermore, this course of action prevents the need to undergo inheritance proceedings, which may result in costly and unwanted litigation, such as in the case of the Ofer family.[20]

The principle of freedom of testation is one of the cornerstones of the inheritance law in Israel.

On the other hand, under certain circumstances, this option isn't available, such as in the case of the Segol family,[21] where none of the founder's children was in a position to assume control over the family business. Furthermore, such transfer may not be desirable by the founder of the family business, who would be reluctant to relinquish his control over the family business in his lifetime.

INHERITANCE

A family business may be transferred to the next generation by way of succession. The Succession Law[22] governs individuals who were residents of Israel or owned assets in Israel at the time of their death.[23] The succession procedure has its perils, and the heirs or other members of the family may challenge the bequests under the testament,[24] and litigation in court may arise, such as in the case of the Ofer family.[25]

Freedom of testation. The principle of freedom of testation is one of the cornerstones of the inheritance law in Israel. [26]

The prohibition to grant a gift to be effective on death. Another issue that must be taken into

17. Contracts (General Part) Law, 5733-1973, 27 LSI 117 (1972–1973) (Isr) (Contracts Law (General Part));
18. Contracts (Remedies for Breach of Contract) Law, 5731-1970, 25 LSI 11 (1970–1971) (Isr) (Contract Law (Remedies)).
19. Gift Law, 5728-1968, 22 LSI 113 (1968) (Isr).
20. See Section on Gershon Salking, p. c.
21. See ibid.
22. Succession Law, 5725-1965, 19 LSI 215 (1964–1965) (Isr).
23. Ibid., Section 136.
24. Ibid., Section 67.
25. Supra note 20.
26. Supra note 22 Section 27.

account for estate planning is the time when the transfer is to become effective. Section 8 of the Succession Law states in Subsection (a) that, "an agreement regarding a person's inheritance or a waiver of his inheritance, made during the lifetime of that person, is void." Subsection (b) states that, "[a] gift made by a person, such that it shall be granted to the recipient only following the death of the donor, shall have no validity, unless made in a will pursuant to the provisions of this law."

In the context of the cross-generational transfer of the family business, it follows that should a founder choose to transfer the family business by way of gift, his intention must be implemented by the transfer of the control over the business during his lifetime. It also follows that a family constitution (a contract) containing provisions relating to the time period after the founder's demise won't be enforceable.

Corporate structure. Another possible course of action a founder can take in order to transfer the family business to the next generation is in accordance with the applicable law of contracts,[27] the Succession Law and the Companies Law.[28]

In this context, the articles of association of the company can be regarded as a contract between the shareholders and the company, as well as a contract between the shareholders among themselves, in accordance with the well-known theory of nexus of contracts, which views the business as a collection of contracts among different parties.[29]

The articles of association of the company operating the family business can therefore be drafted to better meet the needs of the family business, and in effect, constitute the family constitution within a company framework. This allows the shareholders to protect their rights and to ensure the implementation of the family constitution through the Companies Law and the corporate documents of the company.

For example, the articles of association can provide several classes of shares, thereby allowing the founder to control management while assigning dividend shares, which don't grant voting rights to other family members. The management shares can afterwards be bequeathed to selected family members. Such separation of classes is also possible in the United Kingdom.[30]

We assume that Gershon Salkind used such a mechanism to ensure the cooperation of his two sons in the management of Elco.

It should also be noted that the choice of the form of the trust, as mentioned above, requires consideration of personal and family circumstances, as well as tax planning considerations.

Other relevant mechanisms can be added to the articles of association, such as alternative dispute resolution clauses, for example under the Arbitration law.[31]

Trust structure. A trust structure can be a good way to hold assets under central management and regulate its activities according to the wishes of the head of the family business, who would be the settlor of the trust.

The trust has been part of Israeli society for many years, even before the establishment of the state in 1948. The Israeli Trust Law[32] defines a trust as the duty imposed on a person to hold or to otherwise

27. Contracts Law (General Part), Contracts Law (Remedies) and case law.
28. Companies Law, 5759-1999, 1711 SH 189 (1999) (Isr).
29. Williamson, "Corporate Governance," 93 Yale LJ 1197 (1984); Uriel Procaccia, New Company Laws in Israel 14 (1989) (Hebrew).
30. Spencer Summerfield and Beliz McKenzie, "Shareholders' Rights in Private and Public Companies in the UK (England and Wales): Overview", Thomson Reuters Practical Law (June 1, 2015), https://uk.practicallaw.thomsonreuters.com/5-613-3685?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1.
31. Arbitration Law, 5728-1968, 22 LSI 210 (1967–1968).
32. Trust Law, 5739-1979, 33 LSI 41 (1966–1967) (Isr).
33. Ibid., at Section 2.

deal with assets under his control for the benefit of another or for some other purpose.

A trust may be created by a contract, a deed or a testament, as set out below:

- A trust created by contract requires an agreement between the settlor and the trustee with no specific procedure necessary for its validity;[33]
- A trust created by a deed must be in writing and signed in the presence of an Israeli notary. This trust is known as hekdesh (that is, inter vivos trust). It becomes operative during the lifetime of the settlor on the transfer of the assets of the settlor to the control of the trustee;
- A testamentary trust, also referred to under the Trust Law as hekdesh, refers to a trust that's created by way of probate proceedings under the Succession Law. Accordingly, a testamentary trust must comply with the formal requirements under the Succession Law for executing a will. These include signing the will in the presence of two witnesses or an Israeli notary.A testamentary trust becomes valid only on the issuance of a probate order with respect thereof.

Due to the limitations set by Section 8 of the Succession Law mentioned above, a trust contract between the settlor and the trustee, under which control of the trust's assets passes to the trustee only on the death of the settlor, is invalid. The control must be granted during the lifetime of the settlor, or alternatively, the trust must be a hekdesh with assets effectively transferred to the control of the trustee or a testamentary trust that becomes effective on the issuance of a probate order with respect thereof.

It therefore follows that in a trust created pursuant to a contract the death of the settlor – one of the parties to the contract - will require a succession procedure to transfer the rights of the deceased to his heirs.

It should also be noted that the choice of the form of the trust, as mentioned above, requires consideration of personal and family circumstances, as well as tax planning considerations.

THE FAMILY OFFICE

A family office[34] may appoint a person who will manage the financial assets of a family. It may also choose the appropriate administration offices and management of the economic strategy of the family.

In Israel, there are two types of family office – the single family office (SFO), which provides services to one family exclusively, and the multi-family office, which provides services to more than one family at a time.

In Israel's modern economy, we find new rich families whose wealth was created in the high-tech industry. When the entrepreneur makes his first exit, his lifestyle continues, but to enable him to go on with his business activities, he needs the family office to manage his wealth and take care of the family needs, including transfer to future generations.

ADDITIONAL LEGAL INSTRUMENTS

Israelis view the family constitution as an important document, as evident from Ofra Strauss' words. However, we believe that such a constitution isn't sufficient for the cross-generation transitions of the ownership, control and management of the family business. Reality shows us that situations such as marriage, divorce, death and incapacity require more than a contractual treaty among the family members, and the legal instruments of matrimonial agreements, succession and estate planning, corporate instruments and trusts may provide solutions that are more comprehensive.

34. Phillip J Weil, Troubles of Wealthy People 35, 39–43 (2017) (Hebrew).

CASE STUDIES FROM ISRAEL: FAMILY WEALTH TRANSFERS

Dr. Alon Kaplan | Meytal Liberman

INTRODUCTION

1.1 Israel as a growing economy

The state of Israel is a small country, about the same size as New Jersey in North America. It is located on the eastern shore of the Mediterranean Sea and has excellent access by air and sea to Europe, Africa, Asia and North America.1 It is becoming an important jurisdiction for wealthy families.

- The Credit Suisse Global Wealth Report of November 2016 has found that2:
- In 2016, 2% of Israelis (105,000 people) are defined as possessing more than $1 million worth of holdings in cash, property and investments – an increase of 19% (17,000 people), out of which: 18 people are considered to be billionaires, 25 people are estimated to have between $500 million and $1 billion and 277 people have between $100 million and $500 million;
- In addition, 32% of Israelis are defined as possessing between $100,000 and $1 million; 42.5% of Israelis are defined as possessing between $10,000 and $100,000; and 23.5% of Israelis are defined as possessing between $10,000 or less;
- The majority of wealth in Israel (70%) is financial instruments such as cash and securities, while the other 30% is comprised of real estate and other properties;
- Between 2000 and 2016, the average Israeli citizen's wealth has doubled from $92,589 to $176,263. The median wealth of an Israelis stood at only $54,384 – about a third of the average wealth.

Furthermore, according to the 2017 report of PwC,[3] Israeli high-tech 'exits' (a merger, an acquisition or an initial public offering) in 2017 totalled $7.44 billion – 110% more than the $3.5 billion in 'exits' in 2016.

As is evident, Israel provides a fertile ground for both Israelis and foreign residents who wish to invest in the Israeli market and engage in business in order to increase their wealth.

1.2 The framework of this article

This article will first present the reality of a few dominant wealthy families in Israel and of their family businesses, as well as the challenges they face in their efforts to preserve the family wealth, and to transfer it to the next generation. These families and their stories can be considered as good examples of the challenges a wealthy family faces in Israel.

Based upon these cases, this article will discuss the relevant legal framework under Israeli law and the tools it provides for such families to deal with those

1 Central Intelligence Agency, Israel, https://www.cia.gov/library/publications/the-world-factbook/geos/is.html.

2 Roy Bergman, "The Wealthiest in Israel: 105 Thousand Millionaires, 18 Billionaires", YNET (22 November 2016), https://www.yediot.co.il/articles/0,7340,L-4882814,00.html (Hebrew); Albert Hecht, "There are 105,000 Israeli Millionaires and 18 Billionaires", Jewish Business News (27 November 2016), http://jewishbusinessnews.com/2016/11/27/there-are-105000-israeli-millionaires-and-18-billionaires/.

3 ISRAEL21c Staff, "Israeli High-Tech Exits in 2017 Totaled $7.44 Billion", ISRAEL21c (31 December 2017), https://www.israel21c.org/israeli-high-tech-exits-in-2017-totaled-7-44-billion/.

challenges. The legal fields which will be discussed in this article include contracts, gifts, inheritance, trusts, legal capacity and guardianship, matrimonial property, and dispute resolution.

This method of drawing conclusions from selected cases is well accepted in this field of practice, as explained by Nicholas Smith[4]:

> *Much family business writing and teaching is based on case studies of real life family business situations. By applying an extended treatment to a selected number of legal cases, we aim to use these to illustrate various issues of family business dynamics as well as to explain legal principles. It follows that some of the cases have been chosen on the basis that they illustrate issues of family business dynamics and whilst they are relevant to legal issues are by no means leading or landmark cases on the subject concerned.*

This article will also address the family office from an Israeli perspective.

A FAMILY STORY

2.1 Stef and Eitan Wertheimer and the Iscar Company

Iscar was founded in 1952 by Stef Wertheimer in the western Galilee town of Nahariya. In 1984, Stef handed over the reins to his son, Eitan. In 1995, Eitan Wertheimer handed over the CEO seat to Jacob Harpaz (a non-family executive), and went on to serve as Chairman, and later President, of Iscar. In 2006, the Wertheimer family sold 80% of Iscar's shares to Berkshire Hathaway, and subsequently sold the remaining 20% to Berkshire Hathaway for US$2 billion.[5]

In an interview with the Israeli newspaper Calcalist, Eitan stated: "It was important for us to sell the business before family problems arise. We see what is happening in other family businesses, and there is no need to wait for problems." Eitan also added that "the best course of action would be not to transfer family businesses to the next generation, but rather that each generation will start his own new business".[6]

2.2. The 'happy end' of Sami Segol and Keter Company

Keter Plastics develops, manufactures and distributes a broad range of plastic consumer products throughout the world. It is regarded as an innovative global leader in the production of plastic products for the home and garden using the do-it-yourself method.[7]

The group has over 25,000 sales points around the world, 18 manufacturing plants, and two distribution centres spread over nine countries. It enjoys strong ties with retailers in all the markets in which it operates. The company has 4,000 workers, including nearly 2, 000 in Israel, and its products are sold in 100 countries.[8]

Keter Plastics was founded in 1948 in Jaffa as a factory for making toys and household utensils, with Joseph Sagol being among its founders. Sami and Yitzhak Sagol, his sons, have managed the company since the early 1980s. In 2016, the Segol family sold their 80% stake in the company to the investment fund BC Partners. The acquisition is believed to be at a company value of $1.3 billion.[9]

It is also reported that, according to the Segol close family circle, the decision to sell Keter Plastics was made because the third and fourth generations of the family – four daughters and grandchildren – pursued careers in other fields and do not intend to

4 Nicholas Smith, Advising the Family Owned Business (2017) (Introduction: https://store.lexisnexis.co.uk/__data/assets/pdf_file/0018/412425/Advising-the-Family-Introduction.pdf).

5 Guy Rolnik, "Warren Buffett Buys out Israeli Tool Firm Iscar for $2 Billion", Haaretz (2 May 2013), https://www.haaretz.com/israel-news/business/warren-buffett-buys-out-israeli-tool-firm-iscar-for-2-billion.premium-1.518655.

6 Galit Hami, "Eitan Wertheimer: 'Family Businesses – the best would be not to pass on'", Calcalist (1 May 2013,) https://www.calcalist.co.il/markets/articles/0,7340,L-3601454,00.html (Hebrew).

7 "BC Partners signs deal to buy Keter Plastic", Globes (28 July 2016,) http://www.globes.co.il/en/article-bc-partners-signs-deal-to-buy-keter-plastic-1001142672; Assaf Kamar and Nadav Tsantsipar, "The Huge Exit of Keter: The Brothers who Made a Fortune out of Plastic", YNET (21 July 2016), https://www.ynet.co.il/articles/0,7340,L-4831260,00.html (Hebrew).

8 Id.

9 Id.

Israel provides a fertile ground for both Israelis and foreign residents who wish to invest in the Israeli market and engage in business in order to increase their wealth

continue the family business.[10]

2.3 The successful story of the Strauss family Business

In 1936, Dr Richard and Hilde Strauss immigrated to Israel from Germany with their son, Michael, and settled in Nahariya. Around the cabin in which they lived, they grew vegetables, set up a small cowshed and cared for two cows. Shortly afterwards, they began to sell dairy products from their farm, which slowly gained popularity. Eighty years later, Strauss Group is an international corporation that manages and develops its business in order to offer a wide range of food and beverage brands to entire populations, which are marketed through various commercial channels. The group has 14,000 employees worldwide, and is active in more than 20 countries. The group's turnover was estimated at IS 7.9 billion ($2.3 billon) in 2016, of which its international operations account for 49%. Strauss has collaborations with Danone, PepsiCo, Haier and Virgin.[11]

In 1975, shortly after Dr Richard Strauss's demise, his children Michael and Raya took over the management of the family business. In 2001, the baton was passed to the next generation with the appointment of Ofra Strauss, Michael's daughter, as chairperson of the group. Ofra's appointment followed a series of management positions she had held in the company. Ofra Strauss still runs the family business today.[12]

In a lecture by Ofra Stauss given at a scientific conference of the Israeli Cattle Breeders' Association in July 2013, she stressed the significance of long-term planning to a family business, and said:

> *in Strauss, until 1995 the family was alone in the business. We made a principle decision not to sell the control over the business, to keep it a family business. ... we built an organizational identity to distinguish ourselves from our partners. ... Thus, when we came to the passing of the baton in the early 2000s, we implemented it based on organizational foundations laid down years beforehand. When the third generation joined the management of the company, the administrative infrastructure of the first and second generations was there and upon it the change of generations was executed.*[13]

2.4 The court litigation of the Ofer family

Ofer Investments Group was founded by Sammy and Yuli Ofer in 1957, who began their activities in the shipping industry under the name 'Mediterranean Lines'. By the 1960s, the brothers owned dozens of ships and decided to expand their operations into the income-generating real estate sector. The company has grown and expanded over the years, acquiring and constructing many properties, and becoming one of the leading players in its field. Today, the group is active in income-generating real estate, residential real estate, hotels and banks.[14]

Yuli Ofer passed away in 2011,[15] and after his demise a dispute arose between his son Doron, who was disinherited from his father's estate, and his daughter Liora. The long battle between the siblings was eventually concluded in a ruling of the Family Court in Tel Aviv in December 2013, whereby Liora receives the entire stake of her father in Ofer Investments, leaving her with 51% of the company.[16]

10 Id.

11 History & Legacy, https://www.strauss-group.com/about-us/history_and_legacy/; Our Portfolio, https://www.strauss-group.com/company/strauss-coffee/.

12 Id.

13 Ofra Strauss, "Cross-Generational Transaction in the Family Business – Experience of the Strauss" Family, 365 Economy of the Cattle and Milk 16 (2013), http://www.icba.org.il/articles/0365/365.2013.13.pdf (Hebrew).

14 Ofer Investments, http://www.oferinvest.com/ofer-investments/group/?langId=2.

15 Nadav Shemer, "Businessman Yuli Ofer Passes Away at the Age of 87", The Jerusalem Post (12 September 2011), http://www.jpost.com/Business/Business-News/Businessman-Yuli-Ofer-passes-away-at-the-age-of-87.

16 Efrat Neuman, "Liora Ofer Wins Inheritance Dispute With Brother Doron Ofer", Haaretz (27 December 2013), https://www.

As is evident from the family stories outlined above, the cross-generational transfer of the family business may result in a costly and cumbersome court litigation that can, in turn, diminish the family wealth and disrupt the family business

2.5 Moshe (Muzi) Wertheim

Moshe 'Muzi' Wertheim, a Mossad agent who became a billionaire by getting the rights to bottle Coca Cola in Israel, died at age 86 in 2016. Central Bottling Company, which he formed in 1967, was a 'cash cow' that today controls 40% of the Israeli drinks market and generates annual revenues of IS 6 billion ($1.6 billion) and operating profits in the hundreds of millions of shekels. Cola profits enabled Wertheim to build a business empire that included a 21.9% stake in Mizrahi-Tefahot, Israel's fourth-largest bank, control of the Channel 2 television franchisee 'Keshet', and a host of holding companies such as real-estate developer Alony Hetz, BMW importer Kamor and a financial services firm. He also invested in energy exploration.[17]

In 2013, three years prior to his death, Wertheim transferred 63% of his holdings in Coca Cola Israel to his son, David Wertheim, and the remaining 37% to his daughter, Drorit Wertheim. Furthermore, David became chairman of the company, while Drorit became a company director.[18]

Shortly after his death, it turned out that Wertheim had left an addendum to his last will and testament, where he provided protection to his daughter's rights as minority shareholder in Coca Cola Israel, mainly from possible dilution, as well as a protection of her rights to act as director in the company and to receive dividends. Drorit commented in response: "I am happy that father has made certain adjustments and left specific instructions, binding and clear, as to the changes that shall be implemented in the articles of association of the companies of the family allowing the protection of minority rights and other substantial rights he considered proper to implement during his lifetime."[19]

It can therefore be assumed, that after Wertheim had transferred the majority of the shares to his son, David, he had second thoughts, and worried that his son may use his majority shareholding in a negative manner, and thereby affect the status and rights of Drorit. This no doubt was what motivated him to prepare the necessary legal documents in advance, during his lifetime.

2.6 Gershon Salkind and Elco

Elco Holdings Ltd's founder and controlling shareholder, Gershon (Georg) Salkind, passed away in September 2017 at age 87. Elco is one of the largest Israeli industrial groups. Elco has several production centres in Israel, Italy, France and China, where it produces household appliances, air conditioning units and electro-mechanical equipment. Gershon Salkind founded the group in 1949 and owned 65% of its shares. In 2007, Michael and Daniel Salkind, Gershon's two sons, were appointed joint CEOs, and according to sources familiar with the company since their appointment, Gershon resigned from all the boards of directors on which he was previously active, and remained as a partner in strategic decisions only.[20]

After Gershon's demise and in accordance with his last will and testament, his shares in Elco were divided equally between his two sons, each half estimated at IS 700 million. In addition, the Salkind brothers had signed a shareholders' agreement designed to establish mechanisms for joint management of the company.[21]

haaretz.com/israel-news/business/.premium-liora-ofer-wins-battle-of-wills-with-brother-doron-1.5304738.

17 Eran Azran, "Moshe Wertheim, ex-Mossad Agent Who Built Fortune with Coca Cola, Dies at Age 86", Haaretz (31 August 2016), https://www.haaretz.com/israel-news/business/muzi-wertheim-who-built-a-fortune-with-coca-cola-dies-at-age-86-1.5432997.

18 Hana Levi Julian, "Moshe Wertheim, Owner of Coca Cola Israel, Dies at 86", Jewish Press (31 August 2016), http://www.jewishpress.com/news/breaking-news/moshe-wertheim-owner-of-coca-cola-israel-dies-at-86/2016/08/31/.

19 Calcalist Service, "Addendum to the Will of Muzi Wertheim Strengthens his Daughter Drorit", Calcalist (4 November 2016), https://www.calcalist.co.il/local/articles/0,7340,L-3701087,00.html (Hebrew).

20 Globes correspondent, "Elco Controlling Shareholder Gershon Salkind Dies", Globes (26 September 2017), http://www.globes.co.il/en/article-elco-controlling-shareholder-gershon-salkind-dies-1001206339.

21 Globes correspondent, "Gershon Salkind's Elco Shares to be Divided Equally between Sons", Globes (18 January 2018),

In addition to his two sons, Gershon Salkind had a daughter, Dr Daphna Sessler. According to reports, Dr Sessler did not inherit any shares in Elco, but rather other private assets of her father's. As far as is known, there are no inheritance disputes within the Salkind family.[22]

It can therefore be assumed that Gershon Salkind took the trouble and made the necessary arrangements to efficiently transfer the family business to the next generation while minimising potential disputes among his children.

THE CHALLENGES ENTAILED IN THE CROSS-GENERATIONAL TRANSFER OF THE FAMILY BUSINESS

As is evident from the family stories outlined above, the cross-generational transfer of the family business may result in a costly and cumbersome court litigation that can, in turn, diminish the family wealth and disrupt the family business. Court litigation may arise in various circumstances, such as:

- Dispute between heirs under inheritance proceedings, as in the case of the Ofer family;[23]
- Granting control to the next generation over the family business may result in insolvency proceedings if these family members lack the skills to manage the business well. This may also bring about long court litigation. Liquidation of the family business may result from personal bankruptcy, class action against a family member who owns the family business, and contested divorce proceedings;
- Court proceedings may also arise due to legal incapacity of the founder of the family business, prior to his demise. In such situations, the founder still holds control over the family business, but is not in a position to execute it. In such cases, a legal guardian may be appointed by the court[24] who would effectively assume control over the family business, yet he may not necessarily have the required expertise for the position;
- Changes in the composition of the family members may also trigger disputes. Changes such as these occur as a result of death, marriage, divorce and in every change of generation. The longer the family business exists, the more changes are likely happen.

THE LEGAL ENVIRONMENT FOR HIGH NET WORTH INDIVIDUALS AND FAMILY BUSINESSES

4.1 The 'family constitution' & contracts law

A family constitution is a formal document which sets out the rights, values, responsibilities and rules applying to stakeholders in the family business and provides plans and structures to deal with situations which arise in the course of the family business. Such a document may assist the family to deal with unexpected events; keep focused on the matters that are most important to the family; manage disputes; and create a common language and values to serve as the guidelines for the family business, even for future generations who were not involved in the business when it was first established. A family constitution tends not to be legally binding on the family members.[25]

Given the importance of the family constitution

http://www.globes.co.il/en/article-gershon-salkinds-elco-shares-to-be-divided-equally-between-sons-1001220212; Aviv Levy, "Elco Shares Divided between Salkind's Sons; What About his Daughter?", Globes (21 January 2018), https://www.globes.co.il/news/article.aspx?did=1001220484 (Hebrew).

22 Levy, id.

23 See Section 2.4 above.

24 Legal Capacity and Guardianship Law, 5722-1962, 16 LSI 106, §33 (1961–1962) (Isr) ('Legal Capacity and Guardianship Law').

25 Taryn Hartley, "Family Constitutions – What, When and Why", Lexology (2 November 2015), https://www.lexology.com/library/detail.aspx?g=e5d5c264-e453-4d03-b1a6-b93f958f9f17.

and the challenges it is intended to face,26 it would be advisable to complement the family constitution with separate documents, which are legally binding, and can therefore be enforced.

In Israel, a family constitution may be constructed under the applicable law of contracts, which includes the Contract Law (General Part),27 the Contracts law (Remedies),28 and relevant case-law. In such cases, the family constitution may be enforceable against only the parties who have agreed to it, but given that the family constitution is meant to regulate the family relations within the family business across generations, such a contract would most likely become ineffective over time as members of the family change. Moreover, in order to enforce such a contract, a claim must be filed with the court, which may result in unwanted litigation.

Due to these reasons, a founder of a family business should take into account other means or structures under other laws to enable the transfer of the family business to the next generation more effectively.

4.2 A gift

The founders of the family business may transfer ownership of the business to other members of the family at any time they choose to by way of a gift. The Gift Law[29] governs this procedure. There is no gift tax in Israel between family members.

The advantage of this procedure is that it allows the transfer of the family business during the lifetime of the founder, who may then asses how efficiently the business is managed by the next generation, and make changes accordingly. Furthermore, this course of action prevents the need to undergo inheritance proceedings, which may result in costly and unwanted litigation, such as in the case of the Ofer family.[30]

On the other hand, under certain circumstances this option is not available, such as in the case of the Segol family,31 where none of the founder's children was in a position to assume control over the family business. Furthermore, such transfer may not be desirable by the founder of the family business, who would be reluctant to relinquish his control over the family business i

4.3 Inheritance

A family business may be transferred to the next generation by way of succession. The Succession Law[32] governs individuals who were residents of Israel or owned assets in Israel at the time of their death.[33] The succession procedure has its perils, and the heirs or other members of the family may challenge the bequests under the testament[34] and litigation in court may arise, such as in the case of the Ofer family above.[35]

4.3.1 Freedom of Testation

The principle of Freedom of Testation is one of the cornerstones of the inheritance law in Israel. [36] The high significance of this principle was most evident in the case of Attorney-General v *Lishitzky*,[37] where the Supreme Court applied the Trust Law[38] in order to

26 See Section 3 above.
27 Contracts (General Part) Law, 5733-1973, 27 LSI 117 (1972–1973) (Isr) (Contracts Law (General Part));
28 Contracts (Remedies for Breach of Contract) Law, 5731-1970, 25 LSI 11 (1970–1971) (Isr) (Contract Law (Remedies)).
29 Gift Law, 5728-1968, 22 LSI 113 (1968) (Isr).
30 See Section 2.4 above.
31 See Section 2.4 above.
32 Succession Law, 5725-1965, 19 LSI 215 (1964–1965) (Isr) (the Succession Law).
33 Succession Law, § 136.
34 Succession Law, § 67.
35 See Section 2.4 above.
36 Succession Law, § 27.
37 CA 4660/94 Attorney-General v Lishitzky [1999] IsrSC 55 (1) 88 (the Lishitzky case).
38 Trust Law, 5739-1979, 33 LSI 41 (1966–1967) (Isr) (the Trust Law).

The founders of the family business may transfer ownership of the business to other members of the family at any time they choose to by way of a gift.

overcome certain issues related to the validity of the deceased's will under the Succession Law.

In the *Lishitzky* case, the deceased made a will in which she left her assets to "a good soldier, a good person, who wishes to study but does not have the means of doing so, in order to assist him with his studies, to purchase an apartment for him, and to advance him in life. The soldier will recite Kaddish[39] in my memory." Section 33 of the Succession Law states, among other things, that a will from which it cannot be determined to whom the testator left his property is insufficiently precise, and as such is void. Although Section 29 of the Succession Law allows the testator to specify a group from which the inheritors will be selected by an agent appointed by him, this group needs to be sufficiently clearly defined. In *Lishitzky*, the court agreed that the testator's instruction in this instance was too broad to fall within the ambit of Section 29, and thus would be void if treated simply as a will, as per Section 33. But rather than voiding the will, the court ruled that the testatrix had, in effect, established a *hekdesh* (ie, a trust) under the Trust Law.[40]

Another interesting case which demonstrated the extent the court is willing to go to in order to enforce the wishes of the testator is Fox v Weinstein.[41] In this case, the Supreme Court held that a provision in a will that conditions the entitlement of the heirs to their settlement in Israel does not contradict public policy, and therefore is valid.

In the cross-generational transfer of the family business context, the freedom of testation enables the founder of the family business to bequest in his testament who will be the successive leaders of the business and what would be the share and role in the business of t

4.3.2 The prohibition to grant a gift to be effective upon death

Another issue that must be taken into account for estate planning is the time upon which the transfer is to become effective. Section 8 of the Succession Law states in Subsection (a) that "an agreement regarding a person's inheritance or a waiver of his inheritance, made during the lifetime of that person, is void". Subsection (b) states that "[a] gift made by a person, such that it shall be granted to the recipient only following the death of the donor, shall have no validity, unless made in a will pursuant to the provisions of this law".

In the Lola Beer case,[42] Lola Beer, the deceased, bequeathed her assets located in Israel to her family members; however, prior to her demise, she made a written undertaking to grant a certain amount to Ben-Gurion University, but failed to execute it prior to her death. The university later initiated legal proceedings in order to enforce the undertaking against the heirs. The Supreme Court, relying on the Gift Law, found that the letter given by Beer, in which she expressed her intention to make a gift to the university, was valid under the Gift Law as an undertaking by her to grant that gift. As Beer failed to fulfil the undertaking due to her death, that undertaking passed to her estate and became binding upon her heirs. Although the Gift Law permits a future gift to be revoked by its donor, that right of revocation is a personal prerogative of the donor, and cannot pass to the donor's heirs or estate upon the donor's death. It was therefore held that Beer's estate was bound to complete the gift to the university, which in her lifetime she had failed to effect. It follows that where there is no doubt that an undertaking to bestow a gift was made during the donor's lifetime to become effective during the donor's lifetime, the court will consider the gift as if it had been

39 Kaddish is the traditional Jewish memorial prayer.

40 See Section 4.5 above.

41 CA 5717/95 Fox v Weinstein 54(5) PD 792 [2000] (Isr).

42 CA 3727/99 Ben-Gurion Univeristy of the Negev v Ben-Bassat (7 July 2002), Nevo Legal Database (by subscription) (Isr) (the Lola Beer case).

The succession procedure has its perils, and the heirs or other members of the family may challenge the bequests under the testament and litigation in court may arise, such as in the case of the Ofer family above.

given during the donor's lifetime, and will enforce it.

In the context of the cross-generational transfer of the family business, it follows that should a founder choose to transfer the family business by way of gift, his intention must be implemented by the transfer of the control over the business during his lifetime. It also follows that a family constitution (a contract) containing provisions relating to the time period after the founder's demise will not be enforceable.

4.4 A corporate structure

Another possible course of action a founder can take in order to transfer the family business to the next generation is in accordance with both the applicable law of contracts,[43] the Succession Law and the Companies Law.[44]

In this context, the articles of association of the company can be regarded as a contract between the shareholders and the company, as well as a contract between the shareholders among themselves, in accordance with the well-known theory of 'Nexus of Contracts', that views the business as a collection of contracts among different parties.[45]

The articles of association of the company operating the family business can therefore be drafted to better meet the needs of the family business, and in effect, constitute the family constitution within a company framework. This allows the shareholders to protect their rights and to ensure the implementation of the family constitution through the Companies Law and the corporate documents of the company.

For example, the articles of association can provide several classes of shares, thereby allowing the founder to hold the management while assigning dividend shares, which do not grant voting rights to other family members. The management shares can afterwards be bequeathed to selected family members. Such separation of classes is also possible in the United Kingdom.[46]

In the *Salking* case,[47] it can be assumed that Gershon Salkind used such a mechanism to ensure the cooperation of his two sons in the management of Elco.

Other relevant mechanisms can be added to the articles of association, such as alternative dispute resolution clauses, for example under the Arbitration law.[48]

4.5 A trust

A trust structure can be a good way to hold assets under central management and regulate its activities according to the wishes of the head of the family business, who would be the settlor of the trust.

In Israel the trust has been part of society for many years, even before the establishment of the state in 1948. The Israeli Trust Law[49] defines a trust as the duty imposed on a person to hold or to otherwise deal with assets under his or her control for the benefit of another or for some other purpose.

A trust may be created by a contract, by a deed or by a testament, as set out below:

43 Contracts Law (General Part), Contracts Law (Remedies), and case law.

44 Companies Law, 5759-1999, 1711 SH 189 (1999) (Isr) (Companies Law).

45 Williamson, "Corporate Governance", 93 Yale LJ 1197 (1984); Uriel Procaccia, New Company Laws in Israel 14 (1989) (Hebrew).

46 Spencer Summerfield and Beliz McKenzie, "Shareholders' Rights in Private and Public Companies in the UK (England and Wales): Overview", Thomson Reuters Practical Law (1 June 2015), https://uk.practicallaw.thomsonreuters.com/5-613-3685?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1.

47 See Section 2.6 above.

48 Arbitration Law, 5728-1968, 22 LSI 210 (1967–1968).

49 Trust Law, 5739-1979, 33 LSI 41 (1966–1967) (Isr) (the Trust Law)..

In Israel there are two types of family office – the single-family office, which provides services to one family exclusively, and the multi-family office, which provides services to more than one family at a time.

A trust created by contract requires an agreement between the settlor and the trustee with no specific procedure necessary for its validity[50];

- A Trust created by a deed must be in writing and signed in the presence of an Israeli notary. This Trust is known as *hekdesh (ie, inter vivos trust)*. It becomes operative during the lifetime of the settlor upon the transfer of the assets of the settlor to the control of the trustee;

- A testamentary trust, also referred to under the Trust Law as *hekdesh*, refers to a trust which is created by way of probate proceedings under the Succession Law. Accordingly, a testamentary trust must comply with the formal requirements under the Succession Law for executing a will. These include signing the will in the presence of two witnesses or an Israeli notary. A testamentary trust becomes valid only upon the issuance of a probate order with respect thereof.

Due to the limitations set by Section 8 of the Succession Law mentioned above, a trust contract between the settlor and the trustee, under which control of the trust's assets passes to the trustee only upon the death of the settlor, is invalid. The control must be granted during the lifetime of the settlor, or alternatively, the trust must be a hekdesh (ie, inter vivos trust) with assets effectively transferred to the control of the trustee, or a testamentary trust, which becomes effective upon the issuance of a probate order with respect thereof.

It therefore follows that in a trust created pursuant to a contract the death of one of the parties to the contract will require a succession procedure to transfer the rights of the deceased to his or her heirs.

It should also be noted that the choice of the form of the trust, as mentioned above, requires consideration of personal and family circumstances, as well as tax planning considerations.

4.6 Enduring power of attorney

Amendment 18 of the Legal Capacity and Guardianship Law[51] introduced a new instrument into Israeli legislation – the enduring power of attorney. This power of attorney allows a competent person (the 'appointer') to appoint another person (the 'delegate') to attend to his or her personal, and/or medical, and/or property affairs when the appointer is no longer in a position to properly understand the matter and attend to these affairs by himself or herself, while certain matters require an express authorisation or approval of the court.

Amendment 18 details the relevant procedure. Generally, only an attorney who was specifically trained by the Administrator-General is allowed to provide this service, and such powers of attorney must be deposited with Administrator-General.

Such a power of attorney may offer a good instrument for a founder of a family business who fears future legal incapacity, and who is also reluctant to transfer the ownership in the family business during his lifetime. As this power of attorney can be applied to personal and medical affairs, it can also be used as a complementary instrument together with other arrangements.

THE FAMILY OFFICE[52]

5.1 What is a family office?

Out of the various definitions of a family office, the following definition can be considered as one of the simplest:

A family office is an organization that assumes the day-to-day administration and management of a family's affairs. To that end, to

50 Id at § 2.

51 Legal Capacity and Guardianship Law (Amendment 18), 5776-2016, 2550 SH 798 (2016) (Isr) (Amendment 18).

52 Phillip J Weil, Troubles of Wealthy People 35, 39–43 (2017) (Hebrew).

A trust structure can be a good way to hold assets under central management and regulate its activities according to the wishes of the head of the family business, who would be the settlor of the trust.

honestly call itself a family office, an organization needs to provide more than just the standard wealth management functions. Most people in the industry would agree that a family office should be able to provide for tax compliance work, access to private banking and private trust services, document management and recordkeeping services, expense management, bill paying, bookkeeping services, family member financial education, family support services, and family governance.[53]

In this context, a family office can assist as a consultant in the preparation of the cross-generational transfer of the family business by serving as a 'one-stop-shop' for the client, and provide different advisory services to implement the transfer through its various experts.

5.2 How does a family office operate?

A family office may appoint a person who will manage the financial assets of a family. It may also choose the appropriate administration offices and management of the economic strategy of the family.

The family office provides the following functions:

- tax reporting including bookkeeping, auditing by CPA and filing tax reports to the tax authorities;
- day-to-day life-style – payments to employees, insurance, cars, housing, education and household expenditures.
- estate planning for transfer of wealth – creating trusts, education and training of the next generation in preparation for integrating them into the family business.

5.3 The family office in Israel

In Israel there are two types of family office – the single-family office, which provides services to one family exclusively, and the multi-family office, which provides services to more than one family at a time.

The Israeli family businesses are usually composed of the first, second and third generations. It is believed that 70% of the wealth is still held by the first generation. Only 20% is managed by the first and second generation and 10% is managed by the third generation. The general trend is the development of the single-family office, which is usually established by the second generation.

In Israel's modern economy, we find new rich families whose wealth was created in the high-tech industry. When the entrepreneur makes his first 'exit', his life-style would continue but in order to enable him to go on with his business activities, he would need the family office to manage his wealth and take care of the family needs including transfer to future generations.

CONCLUSION

A common practice by families looking to regulate the family internal relationships in the context of a family business is by using a family constitution. A family constitution is a formal document which sets out the rights, values, responsibilities and rules applying to stakeholders in the family business and provides plans and structures to deal with situations which arise in the course of the family business.[54]

From an Israeli perspective, we view the family

53 Todd Ganos, "What Is A Family Office?", Forbes (13 August 2013), https://www.forbes.com/sites/toddganos/2013/08/13/what-is-a-family-office/#399a06eba13f.

54 Taryn Hartley, "Family Constitutions – What, When and Why", Lexology (2 November 2015), https://www.lexology.com/library/detail.aspx?g=e5d5c264-e453-4d03-b1a6-b93f958f9f17.

Remains of the ancient
port of Caesarea

FEATURES:
RESIDENCE AND CITIZENSHIP IN ISRAEL

Dr. Alon Kaplan | Lyat Eyal

Israel, which is commemorating its 70th anniversary of independence, is a young and geographically small nation. It has a population of approximately 8.5 million people — 75% of which are Jewish, 21% Arabic and 4% other populations. The majority of the Israeli nation are immigrants, which commenced in Biblical times.

After the destruction of the Second Temple around 586 AD, immigrants were those exiled by the Roman Empire, with around 1,490 people exiled from Spain and Portugal. Between the years of 1893 and 1948, approximately 500,000 people immigrated to the land that later formed the State of Israel, and specifically between 1933 and 1939, these people came from Germany.

Since the founding of the State of Israel in 1948, there have been a number of immigration 'waves' to the nation, mainly from European countries, the US, Canada the Middle East and South Africa. In 1948, the Jewish population was approximately 630,000 people and today reaches around 6 million. It is a globally oriented society, economically focused on areas such as high-tech industry, biotechnology and foreign trade.

THE LAW OF RETURN

In 1948 the State of Israel was established as a State for the Jewish people. The Law of Return of 1950 granted every Jew wishing to immigrate to Israel the right to do so and to receive an immigration certificate to obtain Israeli citizenship (depending on certain qualifying factors). Israeli citizenship may be obtained without relinquishing foreign citizenship, unless such a requirement exists in the foreign country. The immigration certificate grants an individual the legal status of a new immigrant (Oleh Chadash) and permits residence in Israel with no visa requirements, while formal citizenship, including obtaining an Israeli passport, takes between 6 and 18 months.

There are also residence options for those who do not wish to formally immigrate to Israel, including for individuals who are not Jewish. These include different employment visas, which require administrative procedures, as well as temporary residence status with no requirement for formal immigration necessary.

ISRAELI RESIDENCE

Under Israeli law, an individual is presumed to be an Israeli resident if they are present in Israel for at least 183 days in a tax year, or at least 30 days in a tax year and a total of at least 425 days during a relevant tax year and the immediately preceding two tax years.

The day count is a rebuttable presumption for both the individual and the Tax Authority in accordance with the center of life test, irrespective of the days present in Israel. A person may be considered an Israeli resident if the person's center of life is in Israel (irrespective of the day count). The test is a subjective one that takes into consideration factors such as the place of residence of the person's immediate family members, his or her economic and social ties and including, without limitation, factors such as: location of the person's permanent home; location of the person's actual home and that of his immediate family members; location of the person's business or place of employment; location of the person's economic interests; and location of the person's activity in organizations, associations and institutions.

NEW IMMIGRANTS AND RETURNING ISRAELI RESIDENTS

For Israel's 60th anniversary of independence in 2008, legislation was passed amending the Income Tax

Ordinance to returning Israeli residents and granting greater tax benefits to new immigrants. The Tax Ordinance now defines three classes of immigrants:

a. w immigrants, i.e., those who become residents of Israel for the first time

b. Returning residents, i.e., those who resided abroad for a period of at least six consecutive years and return to reside in Israel

c. Long-term returning residents, i.e., those who resided abroad for a period of at least ten consecutive years and return to reside in Israel

BENEFITS TO NEW IMMIGRANTS AND RETURNING ISRAELI RESIDENTS

The Tax Ordinance provides an exemption from tax and reporting obligations to new immigrants and long-term returning residents on all forms of income whether active or passive, earned income and capital gains, or derived from sources outside Israel for a period of ten years. The exemption applies even if the assets are purchased after the individuals change their residence to Israel during this period.

Returning residents are entitled to tax benefits relating to assets purchased during their residence abroad after they were no longer considered residents of Israel for tax purposes. These include passive income derived from said assets (exempt from taxes in Israel for a five-year period), and capital gains derived from the sale of said assets (exempt from taxes in Israel for a period of ten years as long as there is no right via the asset, directly or indirectly, to assets located in Israel).

A new immigrant or a long-term returning resident may be entitled to a one-year accommodation period in which they will not be considered residents of Israel for the purpose of its tax laws. This enables individuals to get settled and decide whether they wish to change their jurisdiction of residence to Israel. In order to enforce this benefit, certain procedures and formalities must be followed with various offices of the Israeli Government, including the Ministry of Absorption. In the event that the individual has applied for the accommodation year and remains an Israeli resident thereafter, the one-year period will be part of their ten-year exemption period. In the event that the individual returns to his or her original home country, during or upon the termination of the accommodation period, they will not be considered an Israeli resident during the period of residing in Israel.

Under Israeli law, a corporation is an Israeli resident for tax purposes if it is incorporated in Israel or if the management and control of the corporation incorporated abroad is conducted from Israel. Where a new immigrant or long term returning resident owning and managing a foreign corporation moves to reside in Israel, such residence in Israel by the owner does not subject the foreign corporation to Israeli taxes solely due to the residence of the owner for a period of 10 years.

REAL ESTATE OWNERSHIP

Israel does not restrict the ownership of real property to Israeli residents, unlike certain countries such as Switzerland or Australia. Real estate may be owned by non-residents or by temporary residents as well as new immigrants or returning residents. The taxation of real estate transactions was revised in 2014 abolishing, as a general rule, tax exemptions for individual non-residents. Capital gains from the sale of real property in Israel owned by non-residents will be exempt from Israeli taxes if the sale price is up to ILS 4.5 million (USD 1.1 million) and the owner provides evidence from the tax authority in their country of residence that he or she does not own real property in that country.

CONCLUSION

Israel encourages immigration and has taken legislative action to stand behind its encouragement. Over the 70 years of statehood, the country has absorbed waves of immigrants from around the world, including from Western countries and societies as well as third world countries. The advantageous legislation granting tax benefits is relevant to high net worth individuals with significant assets abroad. There have been periods of protest over the past few years during governmental budget discussions to have the benefits abolished but these have been suppressed to date. In the event that the legislation will be revised or abolished, it will be likely to apply to individuals who immigrate after the legislation is revised.

"The Global Residence and Citizenship REVIEW"
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ISRAEL - ESTATE PLANNING CONSIDERATIONS FOR THE NEW IMMIGRANT

Dr. Alon Kaplan | Lyat Eyal

PREAMBLE

Immigration is always complex. From language barriers, real property issues on to education, medical affairs all the way through to where to shop for the items you prefer, it is never simple. Add to the mix of these immediate decisions the legal issues relating to estate planning and many people surrender at that point. The legal estate planning issues remain unresolved for years even sometimes forever.

As a new State celebrating its 70th anniversary, Israel has always been a country of immigration relying on immigrants to form the basis of its population. This article will focus on certain suggested planning for the new immigrants prior to or upon their immigration to the country.

ISRAELI RESIDENCE

Israeli residence for tax purposes is a rebuttable presumption based on a day count of presence in Israel. Generally, a presumption of residence in Israel is established for presence in Israel during at least 183 days annually or presence in Israel for at least 30 days in any given year and at least 425 days cumulatively in that tax year together with the immediately preceding two years.

Further, residence is based on a 'center of life test' which is a subjective test taking into consideration many factors such as one's permanent home, the jurisdiction of residence of immediate family members, one's business activities or place of employment as well as activities in organizations, worship locations and activities at various institutions.

NEW IMMIGRANTS

Notwithstanding, the Tax Ordinance [New Version] (the "Tax Ordinance") provides tax benefits to new immigrants and Israelis returning to reside in Israel[1]. The Tax Ordinance defines different categories of immigration status as set forth below:

- New immigrants, i.e., individuals moving to reside in Israel who have never been Israeli residents in the past.
- Returning residents, i.e., individuals who resided in Israel and then emigrated and resided abroad for a period of at least six consecutive years and then return to reside in Israel.
- Long-term returning residents, i.e., individuals who resided in Israel and then emigrated and resided abroad for a period of at least ten consecutive years and then return to reside in Israel.

The Tax Ordinance grants new immigrants and long-term returning residents an exemption from tax and reporting obligations for a period of ten years on all forms of income, active or passive, as long as they are derived from sources abroad.

Returning residents are entitled to tax benefits relating to assets purchased during their residence abroad once they were no longer residents of Israel for tax purposes ("Exempt Assets"). These include:

1. A tax exemption for a period of five years from tax payments on passive income derived from Exempt Assets.

A tax exemption from capital gains taxes derived from the sale of Exempt Assets, providing there is no right via the asset, directly or indirectly, to assets

1 As this issue has been strongly debated with pressure from global economic forums to abolish said reporting and tax exemptions, the benefits mentioned herein are relevant at the time of writing this article.

located in Israel.

The Tax Ordinance defines a corporation as an Israeli resident for tax purposes if it is incorporated in Israel or if the management and control of the corporation incorporated abroad is conducted from Israel. Where a new immigrant or long term returning resident owning and managing a foreign corporation immigrates to Israel, such residence in Israel by the owner does not subject the foreign corporation to management and control in Israel and the foreign corporation will not be taxed in Israel on overseas income solely due to the residence of its shareholder for a period of ten years.

Notwithstanding the tax benefits to immigration, a new immigrant may be entitled to a one-year accommodation period in which they will not be considered residents of Israel for the purpose of its tax laws. This enables individuals to consider whether they wish to reside in Israel permanently. In order to enforce the accommodation year, certain procedures and formalities must be followed with various offices of the Israeli Government, including the Ministry of Absorption. In the event that the individual has applied for the accommodation year and remains an Israeli resident thereafter, the one-year period will be part of the individual's ten-year exemption period. In the event that the individual returns to his original home country, during or upon the termination of the accommodation period, the individual will not be considered an Israeli resident during the accommodation year.

REAL ESTATE OWNERSHIP

There are no restrictions in Israel on ownership of real property by residents or non-residents. Non-residents and/or new immigrants may purchase real properties upon their immigration to the country. Real property transactions involve a number of taxes, such as purchase taxes, capital gains on land taxes and land betterment taxes. There are certain tax advantages for the purchase of residential properties by new immigrants, although careful consideration should be given in planning the purchase and the ownership structure of the property if it is to be owned by an entity other than the individual new immigrant.

THE REAL ESTATE TRUST

A real estate trust may be established in order to hold real property in Israel. The real property is purchased by a company (an Israeli company is preferable for administrative purpose but not legally required), acting as trustee for the beneficial owner of the property (the 'Bare Trustee').

The Bare Trustee is the registered owner of the real property at the Land Registry with a declaration of trust at the Land Tax Authority in favor of the individual beneficial owner.

This real estate trust enables real property transactions to be taxed as though the property is held by the individual beneficial owner rather than by the registered owner as a company and may be utilized within foreign trust structures.

FOREIGN WILLS

The Israeli Succession Law 1965 (the "Succession Law") governs succession matters in Israel. Under the Succession Law, a will is valid based on the criteria below:

- It is valid under Israeli law.
- It is valid under the law of the country where it was executed.
- It is valid under the law of the country of domicile or of residence of the testator, whether at the time of the execution or at the time of death.
- It is valid under the law of the country of citizenship of the testator, whether at the time of the execution or at the time of death.
- It is valid under the law of the lex situs, if it bequeaths real property.

The Succession Law provides for four types of wills: **(i)** a handwritten will which requires a document written, in its entirety, dated and signed by the testator; **(ii)** a will in the presence of witnesses which requires a written/typed document signed by the testator in the presence of two witnesses; **(iii)** a deathbed will which is valid only if made by a person facing imminent death (a subjective view). The individual orally expresses his wishes in the presence of two competent adult witnesses. The witnesses then draft the testator's wishes and deposit the written document with the Registrar of Inheritance Affairs. The will is valid only for a period of up to one month from the date thereof; **(iv)** a will in the presence of an authority which requires an oral declaration by the testator before an authority who then drafts a written document evidencing the oral statement, reads it to the testator who declares it to be his last will confirmed by the authority. An 'authority' is defined in the Succession Law[2] as one of the following: **a)** a district court judge; **b)** a Registrar judge; **c)** a religious court judge; **d)** an Israeli notary.

2 Section 22a.

Wills executed by new immigrants under the laws of their country of origin are likely to be found valid under the Succession Law. However, in many circumstances, over time, said wills may not be relevant as they relate to assets that are no longer owned by the testator. It may generally be recommended for new immigrants to execute updated wills under Israeli law to bequeath their worldwide assets.

INTESTATE SUCCESSION

Legal heirs are defined by the Succession Law[3] in circumstances of intestate succession:

- The decedent's spouse;
- The decedent's children and their issue;
- The decedent's parents and their issue;
- The decedent's grandparents and their issue;
- The State (in the absence of other heirs).

The order of distribution is firstly to the spouse and children. Where a decedent is not survived by a spouse or children, the legal heirs are the decedent's parents and their issue and if no such surviving relatives, then the decedent's grandparents and their issue. The State is an heir only where there are no other surviving family members.

PROBATE IN ISRAEL

The Succession Law4 provides that an Israeli court has jurisdiction over matters involving the inheritance of an individual residing in Israel at the time of his death or a foreign resident who passed away owning assets in Israel. As a result, the Israeli court has jurisdiction over the worldwide estate of a new immigrant resident of Israel and Israeli law will govern the distribution of the decedent new immigrant's estate5. Moreover, Israel does not recognize foreign probate court orders and proceedings in Israel must be commenced irrespective of any proceedings filed in other jurisdictions.

TRUSTS

Trusts are governed by the Trust Law 1979. Estate planning utilizing trust structures is common in many jurisdictions. The establishment of inter-vivos trusts may prevent the requirement for inheritance or probate legal proceedings as trusts, if established and managed during a testator's lifetime in accordance with the legal requirements, hold assets that do not form part of a decedent's estate, thereby alleviating the requirement for a last will and testament for the trust. It is common for new immigrants to immigrate having established foreign trusts for their estate planning in their country of origin. Planning should include a review of said trusts for Israeli estate planning and taxation purposes. Below is a general summary of the taxation of trusts based on the trust categories defined by the Tax Ordinance, generally based on the jurisdiction of residence of the settlor and the beneficiaries. The trustee's jurisdiction of residence or business activities does not affect the taxation of the trust. In addition, careful consideration should be given to immigrating with trusts as some trusts may be subject to reporting and/or tax obligations in Israel despite the benefits granted to new immigrants described herein.

- The Israeli residents trust;
- The foreign resident trust;
- The Israeli resident beneficiary trust;
- The foreign beneficiary trust;
- The testamentary trust.

THE ISRAELI RESIDENTS TRUST

The Israeli residents trust is:

(i) A trust settled by a resident of Israel for the benefit of Israeli resident beneficiaries; or

(ii) A trust where all settlors are deceased and there is an Israeli resident beneficiary.

This trust is subject to reporting obligations and tax payments on its worldwide income at the rates applicable to individuals for the various types of income of the trust. This trust is also the default category for trusts that do not fit within the definition of other trust types.

THE FOREIGN RESIDENT TRUST

The foreign resident trust is settled by a non-resident for the benefit of non-resident beneficiaries or registered Israeli charities. The trust must not

3 Section 10.

4 Section 136.

5 Succession Law, Section 137.

have had any Israeli resident beneficiaries at any time since its settlement.

This trust is subject to reporting and tax obligations in Israel only to the extent that it holds Israeli assets or receives Israeli source income.

THE ISRAELI RESIDENT BENEFICIARY TRUST

The Israeli resident beneficiary trust is a trust: **(i)** established by a non-resident of Israel; and **(ii)** at least one of the beneficiaries of the trust is a resident of Israel, excluding Israeli registered charities.

Two additional criteria must be met for the trust to be classified as an Israeli resident beneficiary trust. Firstly, the settlor and the beneficiaries must be immediate family members (i.e., the settlor is a spouse, parent, grandparent, child or grandchild of the beneficiary) ("Relatives Trust"). A broader family relationship (i.e., siblings, nieces, nephews, aunts, uncles) will only permit classification as an Israeli resident beneficiary trust upon the submission of evidence to the tax assessment officer of the tax authority that such a trust was settled in good faith and that the beneficiary did not provide consideration for such settlement in his favor. Secondly, that the settlor is alive.

If any one of these additional criteria is not met, the trust is not a Relatives Trust, it is to be classified and taxed as an Israeli resident trust.

The Israeli resident beneficiary trust that qualifies as a Relatives Trust is subject to tax as follows:

1. Distributions to Israeli resident beneficiaries will be taxed at the rate of 30% of the distribution amount. In the event that the trustee is in a position to provide evidence that the distribution is solely of capital and not of income, said distribution is not taxable.
2. The trustee may opt, under certain circumstances, to subject the trust income allocated to an Israeli resident beneficiary to tax at the rate of 25% in the tax year in which the income accrued. Upon annual tax payments on income by the trust, distributions to the beneficiary are not subject to additional taxes. This route, once chosen by the trustee, is irreversible.

The Israeli Resident Beneficiary Trust that fails to qualify as Relatives Trust is categorized as an Israeli Residents Trust subject to reporting and tax obligations as set forth above.

THE FOREIGN BENEFICIARY TRUST

A foreign beneficiary trust is a trust established by an Israeli resident for the benefit of a foreign resident beneficiary. The trust is entitled to the tax exemptions listed below but is subject to reporting obligations upon its settlement as well as annually as confirmation of the beneficiaries' residence abroad.

Such a trust must meet all of the following conditions:

a. It does not fall within the definition of an Israeli residents trust.
b. It is irrevocable.
c. All of the beneficiaries are identified and are foreign residents.
d. At least one settlor is an Israeli resident.

A foreign beneficiary trust is regarded as a foreign resident individual and is taxed in the same manner in which an individual foreign resident is taxed in Israel. If the assets and the income derived therefrom are derived from sources abroad, there is no taxation in Israel. If the assets or the income derived therefrom are derived from sources within Israel, they are subject to Israeli taxation. Taxes may be applicable upon the settlement of the trust.

THE TESTAMENTARY TRUST

This trust is settled by a last will and testament of an Israeli resident. It is treated for tax purposes as an Israeli residents trust, if it has at least one Israeli resident beneficiary or as a foreign beneficiary trust, if there are no Israeli resident beneficiaries.

CONCLUSION

This article summarized only some issues for estate planning considerations by new immigrants. In addition, coordination with the new immigrant's country of origin may be crucial in order to limit probate proceedings, costs and taxes. While, as a general rule, Israel does not impose estate or gift taxes, many countries do. There are also rules in foreign jurisdictions relating to forced heirship or marital shares which may require review and cross-border planning.

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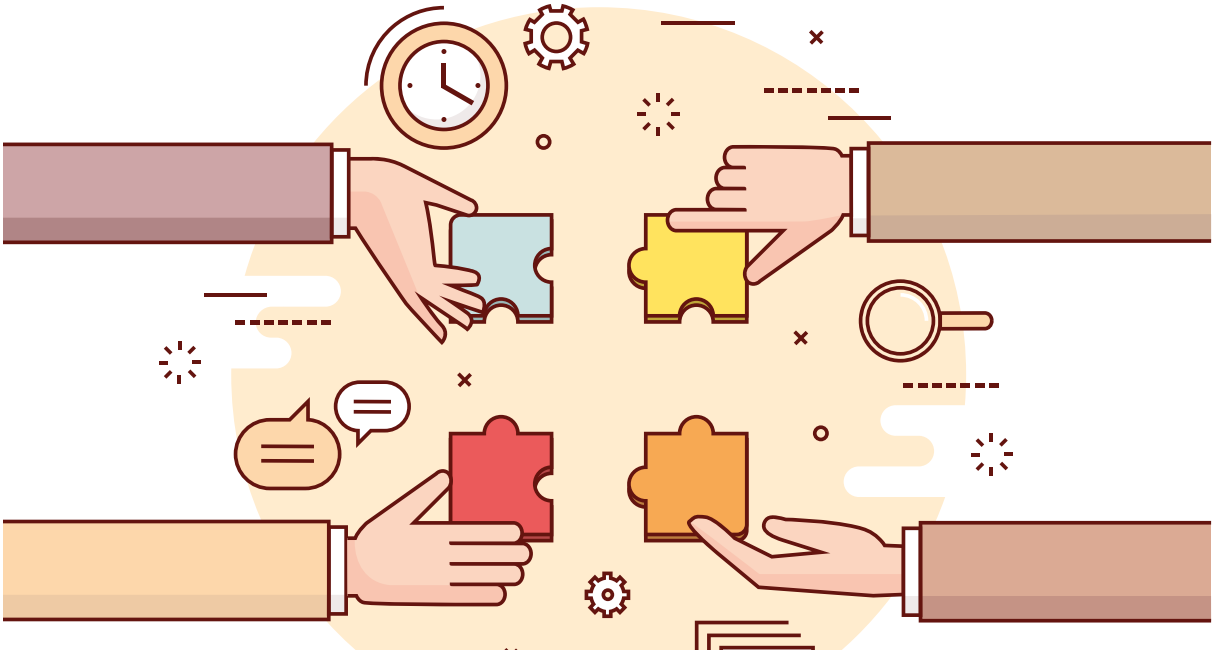

SUCCESSION IN ISRAEL

MEYTAL LIBERMAN AND **DR ALON KAPLAN** HIGHLIGHT PROVISIONS IN ISRAELI LAW THAT CAN MAKE A TRUST INEFFECTIVE

KEY POINTS

WHAT IS THE ISSUE?
Special care should be given when drafting a trust deed, and to the trust's management after creation. Succession law and trust law in Israel have certain provisions that may turn a trust ineffective when the settlor of the trust wishes to avoid inheritance procedure.

WHAT DOES IT MEAN FOR ME?
Practitioners should understand the risk of the inheritance procedure, which may invalidate a trust.

WHAT CAN I TAKE AWAY?
An understanding of the possible conflicts between the trust law and the succession law.

THE CONCEPT OF a trust has been well established in Israel throughout its history. In the Ottoman period, the Muslim trust, known as *waqf*, was widely used by both Jewish and Muslim people. One of the well-known *waqfs* was that of Hürrem Sultan, which was known as the *Miri Mukafah Waqf Haski Sultany*, meaning 'the real estate trust of Haski Sultany'.[1] *Waqfs* still exist, and are governed by Shari'a law and the Muslim Shari'a courts in Israel. Trusts continued to form a part of Israel's economic and legal culture under the *British Mandate*, as well under the English common law, as evident in the *Charitable Trusts Ordinance, 1924–1925*.[2] This tradition was later drawn into the Israeli legal system through different legal arrangements and case law, and was finally formally implemented under the Israeli *Trust Law* in 1979.[3]

The Israeli *Succession Law*[4] was enacted in 1965, and comprises the core inheritance law in Israel, together with case law and other relevant legislation.

This article will focus on the relationship between the trust law and

the inheritance law in Israel, while specifically addressing the transfer of assets upon death under each of these laws.

INHERITANCE LAW IN ISRAEL

All inheritance proceedings in Israel are governed by the *Succession Law*, which provides in s2 that the lawful heirs of the deceased are the beneficiaries under their will, and, in the absence of a will, the heirs under law, as determined in accordance with the mechanism detailed in ss10–17.

Another cornerstone of the inheritance law in Israel is the principle of freedom of testation. This principle manifests in s27, which provides in subsection (a) that 'an undertaking to make a will, to change it, to cancel it, or to refrain from doing any of the same – is invalid', and in subsection (b) that 'a provision in a will the negates or limits the right of the testator to change the will or to cancel it – is invalid'.

The *Succession Law* provides in s8a that 'an agreement regarding a person's inheritance or a waiver of his inheritance, made during the lifetime of that person, is void'. Subsection 8b states that '[a] gift made by a person, such that it shall be granted to the recipient only following the death of the donor, shall have no validity, unless made in a will pursuant to the provisions of this law'.

It therefore follows that, if a person wishes to grant a gift, they must do so during their lifetime, or under a will; any gift that is to become effective upon demise is void. Given the principle of freedom of testation, there is no limitation on the gift itself – i.e. there is no forced heirship under the *Succession Law*.

It should also be noted that, under s39, a will becomes effective only on the issuance of a probate order with respect thereof. The probate process may take from several months up to a year – during which time, limitations are usually imposed on the deceased's assets.

'If a person wishes to grant a gift, they must do so during their lifetime, or under a will'

THE CREATION OF A TRUST UNDER THE *TRUST LAW*

The Israeli *Trust Law* defines a trust in s1 as the duty imposed on a person to hold or to otherwise deal with assets under their control for the benefit of another or for some other purpose.

Under the *Trust Law*, a trust may be created by a contract, deed or testament, as set out below:

- A trust created by contract requires an agreement between the settlor and the trustee, with no specific procedure necessary for its creation.
- A trust created by a deed must be in writing and signed in the presence of an Israeli notary. This trust is known as *hekdesh* (i.e. an *inter vivos* trust). It becomes operative during the lifetime of the settlor on the transfer of the assets of the settlor to the control of the trustee.
- A testamentary trust, also referred to under the *Trust Law* as a testamentary *hekdesh*, refers to a trust that is created by way of probate proceedings under the *Succession Law*. Accordingly, a testamentary trust must comply with the formal requirements under the *Succession Law* for executing a will. These include signing the will in the presence of two witnesses or an Israeli notary. A testamentary trust becomes valid only on the issuance of a probate order with respect thereof.

THE INVALIDATION OF A TRUST UNDER THE *SUCCESSION LAW*

Due to the limitations set by s8 of the *Succession Law* mentioned above, a trust contract between the settlor and the trustee, under which control of the trust's assets passes to the trustee only on the death of the settlor, is ineffective.

The control must be granted during the lifetime of the settlor, or alternatively, the trust must be a *hekdesh* (i.e. *inter vivos* trust), with assets effectively transferred to the control of the trustee during the lifetime of the settlor, or a testamentary trust, which becomes effective on the issuance of a probate order with respect thereof.

It therefore follows that, if a trust is created pursuant to a contract, the death of one of the parties to the contract will terminate the trust relationship, and require a succession procedure in order to transfer the rights of the deceased to their heirs.

It should also be noted that the choice of the form of the trust, as mentioned above, requires consideration of personal and family circumstances, as well as tax planning considerations.

ENDURING POWER OF ATTORNEY

This article focuses on the transfer of assets on death, but reality shows that legal capacity issues should also be considered during the lifetime of a person. To deal with such issues, new legislation was recently implemented: *Amendment No 18 to the Legal Capacity and Guardianship Law*,[5] which regulates the creation and use of an enduring power of attorney (EPA). The EPA allows a competent person (the appointer) to appoint another person (the delegate) to attend to their personal and/or medical and/or property affairs when the appointer is no longer in a position to properly understand the matter and attend to these affairs by themselves. Certain matters require an express authorisation or approval of the court.

The demise of the appointer will terminate the power of the delegate, and consequently an inheritance will be required with the appointer's assets. Because of this, the creation of an *inter vivos* trust during the lifetime of the appointer would probably provide a more effective solution to manage the assets of the appointer during their lifetime and after their demise.

CONCLUSION

The inter-relationship of the *Succession Law* and the *Trust Law* is complex and challenging. If a person wishes to create a trust that would prevail after their demise, special care should be given to the form of the trust – i.e. a trust contract, an *inter vivos* trust or a testamentary trust – as well as to its drafting and subsequent management. Other factors should also be considered, such as tax and family circumstances.

Once an *inter vivos* trust is created, the irrevocable settlement of assets into the trust and under the control of the trustee should be made and completed during the lifetime of the settlor. Otherwise, the settlement may be contested by potential heirs of the settlor after their demise, which may result in costly and cumbersome litigation in court.

1 Different Appeal (Jerusalem) 2/97 *Machmed and Ibrahim Abed Rabu* v *Administrator General Jerusalem*, par 42 (13 September 2006), Nevo Legal Database (by subscription) (Isr) **2** *Charitable Trusts Ordinance 1924, Official Gazette of the Government of Palestine*, issue no 116 of 1 June 1924, at pp672–680; *Charitable Trusts (Amendment) Ordinance 1925, Official Gazette of the Government of Palestine*, issue no 142 of 1 July 1925 at pp343–345 **3** *Trust Law, 5739-1979*, 33 LSI 41 (1966–1967) (Isr) **4** *Succession Law, 5725-1965*, 19 LSI 215 (1964–1965) (Isr) **5** *Legal Capacity and Guardianship Law (Amendment 18), 5776-2016*, 2550 SH 798 (2016) (Isr)

THE TALES OF A FAMILY BUSINESS IN ISRAEL

Dr. Alon Kaplan

THE FAMILY OFFICE IN ISRAEL

The number of billionaires in Israel this year is 106. This includes those with Israeli Identity cards who have significant business activity in Israel. In dollar terms, the wealth of the 500 richest persons in Israeli is estimated to be $ 172 billion.

In Israel there are two types of family office: the single-family office, which provides services to one family exclusively, and the multi-family office, which provides services to more than one family at a time.

The Israeli family businesses are usually composed of the first, second and third generations. It is believed that 70% of the wealth is still held by the first generation. Only 20% is managed by the first and second generation and 10% is managed by the third generation. The general trend is the development of the single-family office, which is usually established by the second generation.

In Israel's modern economy, we find new rich families whose wealth was created in the high-tech industry. When the entrepreneur makes his first "exit," his life-style would continue, but to enable him to go on with his business activities, he would need the family's trusted advisor to assist him to manage his affairs and take care of the family needs including transferring the business to other members of the family and future generations.

A common practice by families looking to regulate the internal family relationships is by using a family constitution. A family constitution is a formal document which sets out the rights, values, responsibilities and rules applying to stakeholders in the family business and provides plans and structures to deal with situations which arise in the course of the family business.

Reality shows us that situations such as marriage, divorce, death and incapacity require more than a contractual treaty among the family members, and the legal instruments of matrimonial agreements, succession and estate planning, corporate instruments and trusts may provide solutions that are more comprehensive.

Advisors of the family may seek to "fortify" and enforce the constitution by some legal documents. In modern business life most economic and commercial businesses are run through companies. Israel's company law is governed and regulated by the company law of 1999. The use of by-laws of the company enables the shareholders to protect their rights in the business and ensure the implementation of the family constitution through shareholder agreements and company by-laws where the contractual obligations between the parties be protected and enforced using the legal documents of the company which runs the family business. The by-laws may provide protection and special rights attached to the shares in the company.

The following cases serve as an illustration of the use of corporate and legal documents to regulate the relationships among members of a family business who receive or inherit a share in the family business:

W. FAMILY BUSINESS

The family conglomerate included shares in a large industrial production plant, a medium sized bank and a substantial holding in a communication enterprise.

The founder of the business decided to pre-empt succession struggle and transferred his holdings in the business to his son (63%) and to his daughter (37%). The basic idea was to appoint the son as the leader of the business. The transfer of shares took place when the founder reached retirement age.

After executing the transfer, the founder had second thoughts.

He realized that his son could use his majority shareholding in a negative manner which might affect the status of the shares and the rights of the daughter. The founder prepared legal documents which would become part of the by-laws of the family companies which would protect the minority shareholding of the daughter from the dilution of rights and ensure the minority shareholder right to appoint directors to the board of directors of the companies and participate in their management.

The above documents were prepared and signed by the founder during his lifetime and delivered to the family members after his demise with certain legal procedures implemented to ensure the success of the scheme.

THE "E" CASE

The late Mr. G, the founder and shareholder of the E group, prepared his family's transfer of assets using the instruments of a will and company law in a different manner: Mr. G. appointed his two sons to participate as directors of the companies during his lifetime. The companies are listed in the Israel Stock Exchange. After the demise of Mr. G., it was revealed to the public that Mr. G. had left a will. Under the provisions of the will the two sons received equal shares in all the holdings of the companies of the estate.

It was reported that the two sons entered into a shareholder agreement which included certain provisions for cooperation in the management of the companies. In case of death of a shareholder the surviving shareholder was granted an option of buying the shares of the estate and other provisions which were to ensure the safe continuation of the management of the business.

It is interesting to note that there was another heir, Mr. G's daughter. It was reported that she did not get any of the shares of the business and will not be involved in its management and activities. Instead, she received certain financial and real estate assets of Mr. G. who chose to separate the daughter from the activities of the family business.

An additional layer of safety would be the creation of a trust which would become the legal owner of the business and compass all the provisions the (settlor) founder would wish to have in order to ensure the transfer of the family business across the generations. The law of trusts enacted in Israel in 1979 enables the creation of an "inter vivos" trust that would already operate during the lifetime of the (settlor) founder and continue to exist after his demise without limitation of time.

The above cases illustrate innovative solutions of financial and legal advisers to create a viable family constitution which would avoid conflicts among the family members and keep the family cruising on calm waters.

CONCLUSION

The tales of family disputes could be a script for many films and TV programs. In addition, we often read of family disputes litigated in court to resolve these matters. The patriarch of business families needs to get proper advice and support from consultants specializing in estate planning, trusts and taxation. Proper planning of the future of the management and control the family business will ensure peace and a friendly atmosphere in the family and in their business.

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INHERITANCE LAW AND PROCEDURE IN ISRAEL

Dr. Alon Kaplan | Meytal Liberman

INTRODUCTION

Israel is a small country, about the same size as Belgium in Europe or New Jersey in North America. It is located on the eastern shore of the Mediterranean Sea and has excellent access by air and sea to Europe, Africa, Asia and North America.[1] Since 2010, Israel is a member of the OECD.[2]

Israel is a country of immigration. Formal statistics[3] show that at the time of its establishment, Israel's population was only 872,700 people, out of which 716,700 (82%) Jews, and 156,000 (18%) Muslims, Christians and Druze. formal statistics[4] further show Israel's phenomenal population growth, as Israel's population in the end of 2018 was 8,955,300, out of which 6,554,700 (73%) Jews, 1,874,800 (21%) Muslims and 525,800 (6%) others. All of whom enjoy equal legal rights in all areas of life. It is also interesting to note that since the establishment of the State of Israel and until 2017, approximately 110,000 immigrants were born the USA.[5]

Israel is known as a "start-up nation" when relating to high-tech and technology. This sector of the economy is a source of tremendous wealth and has created a new generation of rich families. The magazine Israel 21c reported that in the year 2017[6] Israeli high-tech exits totalled in $7.44 billion. This amount represents an increase of 9% over 2016, and 9% of those deals were worth $400 million to $1 billion.

This demographic and economic environment provides a fertile ground for US persons, whether US or Israel residents, to invest in assets in Israel.

PREAMBLE: INHERITANCE LAW IN ISRAEL

Inheritance in Israel is governed by the Succession Law.[7] According to section 2 of the Succession Law, the estate of a deceased passes to his heirs in accordance with the law – intestate inheritance, unless the deceased has left a valid will, in which case the estate is bequeathed in accordance thereof.

1 Alon Kaplan (General Editor), *Trusts in Prime Jurisdictions*, fourth edition (April 2016), chapter on Israel.

2 http://www.oecd.org/israel/israelsaccessiontotheoecd.htm.

3 Central Bureau of Statistics, *Population, by Religion and Population Group*, *available at* https://www.cbs.gov.il/he/publications/DocLib/2004/2.%20Shnaton%20Population/st02_01.pdf (last accessed: Jan. 22, 2019).

4 Central Bureau of Statistics, *Population, by Population Group*, *available at* https://www.cbs.gov.il/he/publications/doclib/2019/yarhon1218/b1.pdf (last accessed: Jan. 22, 2019).

5 Central Bureau of Statistic, *Immigrants, (1) By Period of Immigration, Country of Birth and Last Country of Residence*, *available at* https://www.cbs.gov.il/he/publications/doclib/2018/4.%20shnatonimmigration/st04_04.pdf (last accessed: Jan. 22, 2019).

6 ISRAEL21c Staff, *Israeli high-tech exits in 2017 totaled $7.44 billion*, ISRAEL21C (Dec. 31, 2017), available at https://www.israel21c.org/israeli-high-tech-exits-in-2017-totaled-7-44-billion (last accessed: Jan. 22, 2019).

7 Succession Law, 5725-1965, 19 SH 215 (1964-65) (Isr.).

INTESTATE INHERITANCE

In the absence of a valid will, the Succession law provides a mechanism that determines the order of inheritance, and the portion of each heir. Accordingly, the first right of inheritance is divided equally between the spouse of the deceased and his children. The spouse receives one-half of the estate and the children divide the remaining half between them in equal shares.[8]

INHERITANCE UNDER A WILL

Alternatively, the estate can be distributed a set out in the testator's will. Under the Succession law, a will can be made in one of four ways, as set forth below:[9]

- **a.** A handwritten will[10] - such will shall be written entirely in the testator's own hand and shall be dated and signed by the testator.
- **b.** A will made in the presence of witnesses[11] - such will is written and dated, and signed by the testator before two witnesses after the testator has declared before the witnesses that it is the testator's will. The witnesses must attest by their signature upon the will that the testator declared and signed the will as stated.
- **c.** A Will made before an authority[12] - such will must be made by the testator stating its provisions orally before a Judge, a Court Registrar, the Registrar of Inheritance, or a Member of the Religious Court, or by a deposit of a written will by the testator with any of these authorities. It is further provided that for this purpose, a notary is equivalent to a judge.
- **d.** An oral will[13] - People who are on their deathbeds, or who in all circumstances reasonably regard themselves as facing death, may declare a will orally before two witnesses. The testator's directions and the circumstances of the making of the will must be recorded in a memorandum signed by the two witnesses and deposited with the Registrar of Inheritance. An oral will becomes invalid one month within one month, provided the circumstances which warranted its making has changed, and the testator is still alive.

Despite the formal requirements mentioned above, the court is authorized to validate a will even if it is defective or missing certain formal requirements, provided the court is convinced that it reflects the true and free will of the testator.

FREEDOM OF TESTATION

The principle of Freedom of Testation is one of the cornerstones of the Israeli inheritance law. Section 27, whose title is "Liberty to bequeath", provides that an undertaking to make a will, to change it, or to cancel it, or not to make any thereof – is invalid. It further provides, that a provision of a will that negates or limits the right of the testator to change the will or cancel it – is invalid.[14]

The principle of Freedom of Testation is also evident in Section 8 of the Succession Law, which provides that "an agreement in respect of the succession of a deceased and a renouncement regarding such succession, executed prior to the demise of the deceased, are void." The section further provides that that "a gift granted by a donor during the donor's lifetime, when such gift is to be effectively provided to the donee subsequent to the donor's demise, is also null and void, unless such gift was included within a valid will."

Justice Cheshin stressed the importance of the freedom of testation in the Lishitzky[15] case:

If there is a foundation principle, if you will, a super-principle, in inheritance law, there is none but the principle that instruct us that a person, any person, is at liberty to bequeath his estate, and the principle that derives from it, whereby the living are obliged to keep the deceased's wishes. The freedom of testation

8 Succession Law, §§ 11, 12.

9 Succession Law, §§ 18-23.

10 Succession Law, § 19.

11 Succession Law, § 20.

12 Succession Law, § 22.

13 Succession Law, § 23.

14 Section 36 of the Succession Law clarifies and provides that the testator may cancel a will by expressly stating so in a new will, or by destroying the will.

15 CA 4660/94 *Attorney-Gen. v. Lishitzky* 55(1) PD 88, 115 [1999] (Isr.).

and the obligation to keep the deceased's wishes – two sides of the same coin – the two, as one, derive from the human dignity, and the personal autonomy derived from the dignity.

The principle of Freedom of Testation also manifests in the fact that there is no forced heirship in Israel, and the order and portions of inheritance set forth in the Succession Law applies only in the absence of a valid will, and where a valid will is made with respect to the entirety of a person's estate, it shall apply on the entire estate accordingly.

MAINTENANCE OUT OF THE ESTATE

An exemption to the principle of the freedom of testation is the right to receive maintenance out of the estate.[16] Section 56 of the Succession Law provides that where the deceased left a spouse, children or parents that are in need of maintenance, shall be entitled to such maintenance, regardless whether the deceased has made a valid will.

Moreover, section 63 of the Succession Law provides a "claw-back" rule and determines that in the event that the estate is insufficient to provide maintenance to all that are entitled to it, the court is authorized to view transfers of assets carried out without proper consideration during the two years period prior to the death of the deceased as part of the estate, except for gifts and donations made in as customary under the circumstances.

Section 57 defines the scope of the right for maintenance out of the estate, and *inter alia* provides that a child under 18 years of age of the deceased, who is handicapped, or mentally ill, or cognitively disabled is entitled to maintenance.

Chief Justice Shamgar in the case of Levitt[17] clarified that it is insufficient to belong to the class of persons that are entitled to maintenance out of the estate, and that a "need of maintenance" should also be established, and where such need is not properly established, the testator may bequeath his entire estate to another. Chief Justice Shamgar continued and held that such need exists only when the applicant for maintenance cannot properly satisfy his basic needs. According to Shamgar, the wishes of the testator should be enforced only to a certain extent. The limit lies where a first degree relative of the testator becomes an unreasonable burden on the society. The maintenance out of the estate manifests the notion that the existence of a family relationship justifies imposing an obligation of maintenance, in specific instances, upon the estate.

INHERITANCE PROCEDURE IN ISRAEL

Under the Succession Law, the rights of the heirs in the estate are created only upon the issuance of order with respect to the estate by the competent authority. In circumstances where the deceased left a will, an application should be made for a probate order, and only upon the issuance of the order the will becomes valid and enforceable. It should also be noted that only a probate order issued in Israel in accordance with the Succession Law is regarded as valid, and probate orders issued by foreign authorities are invalid.[18] However, in circumstances where the deceased left a will relating to only a part of his or her estate, or the deceased did not leave a will at all, an application should be made for an inheritance order.[19]

Both an application for a probate order and an application for an Inheritance order are made to the Registrar of Inheritance, and it is authorized to declare the rights of the heirs accordingly.[20] However, is the circumstances described in section 67A of the Succession Law, the Registrar of Inheritance must forward the application to the Family Court. Such circumstances arise, for example, when the application is contested, when the will is defected, or when the Administrator General represents in the application minor. The Family Court is authorized accordingly to issue the relevant order.[21]

Probate procedure in Israel requires that the original will be submitted with the Registrar of Inheritance, except to an oral will. In the absence of an original will, such as when the original has already been submitted in another jurisdiction, a separate

16 Succession Law, §§ 56-65.

17 CA 393/93 *Doe v. the estate of Israel Levitt* (Apr. 3, 1994), Nevo Legal Database (by subscription) (Isr.).

18 Succession Law, § 39.

19 Succession Law, § 66.

20 Succession Law, § 66.

21 Succession Law, § 67A(b).

application should be made to the court to approve the submission of a copy.[22]

Section 54 of the Inheritance Regulations[23] provides that a copy of any application, including an application for a probate or inheritance order, shall be submitted to the review of the Administrator General, who may, in its discretion, conduct additional inspection of the application and require further information and documents.

Section 17 of the Inheritance Regulations requires that a notice with respect to the application for the inheritance or probate order be published in one daily newspaper and in the formal publication of the State of Israel (*Reshumot*). The notice includes an invitation to contest the application.

Section 14 of the Inheritance Regulations provides that an application for a probate or inheritance order shall be dismissed, unless notifications are sent with respect thereof as follows:

a. In the instance of an application for an inheritance order – notifications to the heirs under law listed in the application.

b. In the case of an application for a probate order – notifications to the beneficiaries under the will, together with a copy of the will itself. If the beneficiaries under the will do not include children of the deceased or their children, parents of the deceased or their children, or the deceased's spouse, than such notifications should be delivered to the deceased's children and spouse at the time of his death, and if none of whom is alive – to the deceased's parents, and if none of whom is alive – to the deceased's siblings.

As evident from the above, the inheritance procedure in Israel is a complex and cumbersome procedure. It may also be uncomfortable for the deceased's family members due to the requirement to disclose the contents of the will.

CROSS-BORDER INHERITANCE

The Succession Law deals with private international issues relating to one's estate in chapter 7, sections 135-144.

A. Jurisdiction of the Israeli court

Section 135 and 136 of the Succession Law provide that the Israeli court is has jurisdiction over the estate of any person (a) whose center of life was in Israel, or (b) has left assets in Israel, on the day of his or her death. Each of these two alternatives raises its own difficulties.

Determining one's Center of Life may prove to be a difficult task. In the case of Nafissi,[24] two spouses married each other in Iran in 1944. The husband visited Israel in 1979, purchased an apartment, and then returned to Iran. Later on, the spouses immigrated to Israel in 1983 with their children, and in 1987 a dispute arose between the spouse. Section 15 of the Financial Relations between Spouses[25] sets forth a default rule and provides that the applicable matrimonial regime is that of the spouses' center of life at the time of their marriage. The Supreme Court referred to section 135 of the Succession Law and affirmed that a person's center of life is where a person has the majority of ties to, whereas such ties are established on a factual basis, rather than a subjective one. In the case of Nafissi, the spouses had ties to more than one jurisdiction, thereby making the determination of where their center of life was complex. Furthermore, Justice Goldberg quoted Justice Barak, who said:

Needless to mention, that it is often difficult to point out a specific point in time, where a person ceases from permanently residing in a country, and surly a space in time exists where one's center of life is as if floating between its previous location and its new location.[26]

The other alternative - that the deceased has left assets in Israel – arises further difficulties. The Succession Law does not set a minimal threshold such assets are required to meet, nor does it refer to types of assets. A common example of absurdity of this requirement is of a backpacker who visits Israel and dies as a result of a car accident. *Prima facie*, since the backpacker left an asset in Israel – the backpack, the Israeli court has jurisdiction over his estate. Furthermore, the location of certain types of assets may be difficult to determine, such as intellectual property or bearer shares of a company.

The complexity of described above may cause

22 Succession Law, § 68(b).

23 Inheritance Regulations, 1998, KT 5923 (Isr.).

24 CFH *Nafissi v. Nafissi* 50(3) PD 573 [1996] (Isr.).

25 Financial Relations between Spouses Law, 5733-1973, 712 SH 267 (1973) (Isr.).

26 *Supra* note 23, *Nafissi v. Nafissi,* at 598.

an adverse effect and prevent the fulfillment of the deceased's wishes. It is therefore recommended to write a separate will for each relevant jurisdiction.

B. The applicable Law

Section 137 of the Succession Law continues and provides that the law of the deceased's center of life at the time of his or her death shall apply to his or her estate, unless an exception listed in Sections 138-140 is applicable.[27]

A person's center of life is determined in accordance with the person's ties to a specific jurisdiction, as detailed above with respect to the question of jurisdiction. The determination of the applicable law may have significant implications, such as when the applicable law is of a jurisdiction which has forced heirship rules.

Section 142 of the Succession Law deals with a situation of Renvoi, and provides that despite the aforesaid in the Succession Law, if the law of a jurisdiction A applies, and this law reverts to the law of jurisdiction B, than this reversion shall not apply and the law of jurisdiction A shall apply, unless the law of jurisdiction A reverts to the law of Israel, then the law of Israel shall apply.

In circumstances where the Israeli court has jurisdiction of the matter, it can nonetheless refuse to take jurisdiction where there is a more appropriate forum available to the parties - Forum Non Conveniens. The court shall accept such claim only if the ties of the parties and of the dispute between them to the foreign jurisdiction are significantly stronger than those to Israel. A Recent decision of the Supreme Court goes further and holds that the todays modern life and technological developments have reduced the importance of the "majority of ties" test with respect to Forum Non Conveniens claims.[28]

CONCLUSION

Inheritance law and procedure in Israel are very complex, an may result in adverse effect if not planned and managed properly. Therefore, for estate planning purposes, it is recommended to make a separate will relating to every relevant jurisdiction, thereby enabling the beneficiaries to initiate inheritance procedures in each jurisdiction separatory.

It should also be noted that the Israeli law provides another instrument for estate planning – a private trust under the Trust Law.[29] Such trust can be created during the lifetime of the settlor – an *inter vivos* trust, or upon death - a testamentary trust. The *inter vivos* trust deed is a secret document, contrary to a will, and the only copy the trust deed is deposited with the Notary. The settlor may set the terms and conditions of the trust as he sees fit. Once the assets are settled into the trust during the lifetime of the settlor, they are removed from his estate, and therefore the need for an inheritance or probate order with respect thereof becomes superfluous, provided the trust is irrevocable and was set properly.

It is important to note that there are no estate tax and gift tax in Israel, and if the trust is created and managed properly, the transfer of assets from the settlor to the trustee is not considered as a tax event.[30]

Estate planning in Israel requires special expertise, including with respect to taxation, and special care to the personal circumstances of a person, therefore its highly recommended to consult with professionals for this purpose.

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27 Sections 138-140 of the Succession Law list the exceptions to the center of life rule: Section 138 provides that assets inherited only according to the law of their location, shall be subject to that same law; Section 139 provides that the capacity of the testator to bequeath his assets will be governed by the law of his center of life at the time of preparation of his will; and Section 140 provides that (a) a will is valid according to its form if it is valid according to Israeli law, the law of the place where it was made, the law of the center of life or normal residence or citizenship of the testator at the time of making the will or at the time of his death, or, in the event that the will relates to fixed property, also according to the law of the location of the property. (b) Regarding the applicability of the foreign law in accordance with this section, the necessary capacity of the testator or the witnesses to the will, will be viewed as relating to form.

28 PCA 2736/98 *Habboub Bros. Co v. Nike International Ltd* 54(1) PD 614 [2000] (Isr.).

29 Trust Law, 5739-1979, 33 SH 41 (1966-1967) (Isr.).

30 Income Tax Ordinance [New Version6 ,5721-1961 ,] DMI 120, §§ 75C-75R (1961) (Isr.).

ISRAEL: THE TRUST LAW AND THE HEKDESH DEED

Dr. Alon Kaplan | Lyat Eyal | Meytal Liberman

ABSTRACT

This article will review the provisions of the Israeli Trust Law, 1979 (the "Trust Law") as they refer to the trust settled by Hekdesh deed, a legal structure with certain similarities to foundations in some foreign jurisdictions. The Israeli trust is not a separate legal entity thereby requiring an underlying company in various circumstances. The Hekdesh together with the underlying company are referred to in this article as the "Israeli Foundation".

INTRODUCTION

The unique legal structure of the "Israeli Foundation" stems from the Trust Law[1] coupled with professional experience and practice resulting from a number of legal issues, including the requirement for a legal entity to hold trust assets. In addition, the Trust Law's clash with the Succession Law 1965[2] (the "Succession Law"), which provides that inter vivos agreements relating to one's inheritance are invalid, and that bequests must be included in a last will and testament,[3] requires the execution of the Hekdesh deed to be before an Israeli notary. This article will cover the provisions of the Trust Law governing the Hekdesh deed.

The establishment and commencement of the Israeli Foundation

The settlement of assets for the benefit of a beneficiary or for some other purpose into a Hekdesh, also known as an endowment, requires a written document, executed by way of a deed, signed before an Israeli notary,[4] in which the settlor describes his intent to settle a trust together with the terms, purpose and assets thereof.[5]

In practice, the Hekdesh is settled by a deed for inter vivos settlements, or as a testamentary trust within a last will and testament.[6] The Hekdesh deed includes the terms of the trust, such as the settlor, trustee, and beneficiary. The inter vivos trust is commenced upon the transfer of possession in the trust assets to the trustee,[7] who is permitted to accept additional trust assets at any time from the settlor and/or from third parties.[8] The testamentary trust is commenced upon the issuance of a probate court order and the transfer of the estate assets to the trustee.[9]

The Underlying Company the the legal structure of the "Israeli Foundation"

The Hekdesh is not recognized as a legal entity,[10] therefore, common practice of trustees is to hold the assets of the Hekdesh via an underlying company

1 Trust Law, 5739-1979, 33 LSI 41 (1966-1967) (Isr.).
2 Succession Law, 5725-1965, 19 LSI 215 (1964-65) (Isr.).
3 Ibid, §8.
4 The Hekdesh deed is one of a number of documents permitted under Section 17(a) of the Trust Law.
5 Trust Law, § 17(a).
6 Ibid.
7 Trust Law, § 17(b).
8 Trust Law, § 18(a).
9 Ibid, § 17(a).
10 PCA 46/94 Zacks-Abramov v. Land Registry Officer 50(2) PD 202 [1996] (Isr.).

incorporated in accordance with the provisions of the Income Tax Ordinance (the "Ordinance"),[11] thereby creating a designated legal entity to hold the Hekdesh assets on behalf of the trustee. Such legal structure is refered in this article as the "Israeli Foundation".

The Ordinance provides for the incorporation of an underlying company defined as a company that holds trust assets for the trustee, whether directly or indirectly in accordance with the terms set forth below:

(1) It is incorporated solely for the purpose of holding the trust assets.

(2) Notice of the incorporation of the underlying company is to be provided to the tax authority within 90 days of the underlying company's incorporation where it is an underlying company of the following trusts: (i) an Israeli resident trust; (ii) an Israeli resident beneficiary trust; (iii) A testamentary trust of which an Israeli resident is a beneficiary; (iv) any trust in which the trust assets are in Israel.

(3) The trustee holds all of the underlying company's shares, directly or indirectly; the term "indirect holding" is only a holding through another company which is one that meets the provisions of paragraphs (1) and (2) and all of the shares are held by the trustee.

The Trustee

The trustee is responsible to act for the benefit of the beneficiary or for another purpose.[12] The trustee of a Hekdesh is appointed within the Hekdesh deed, and if no trustee is appointed at any time during the term of the trust, an appointment may be made by the court.[13] The trustee must manage the bookkeeping of the trust and report to the beneficiaries, at least annually on the activities of the trust.[14] The trustee may not be a minor, legally incapacitated, in bankruptcy or a corporate entity under receivership. In addition, a beneficiary may not be appointed as trustee unless specifically permitted in the Hekdesh deed.[15] A trustee may resign at any time upon providing written notice to the parties authorized to appoint successor trustees and may be removed by the court for failure to fulfill the duties of trustee or for other reasons in the trustee's discretion.[16] The trustee is not entitled to remuneration for the services of trustee unless such services are within the realm of the trustee's business activities. Nonetheless, a court may award a trustee a fee for services in the court's discretion, based on the realm of activities. Notwithstanding, a trustee may be entitled to the reimbursement of expenses in the performance of the trustee's duties.[17]

Trust Assets

The trustee must hold the trust assets separate and apart from other assets in a manner easily identifying the trust assets.[18] Holding the trust assets via and underlying company as mentioned above assists the trustee to fulfil this requirement. The trust assets that are not required for the daily activities of the trust, must be invested by the trustee with the purpose of the preservation thereof and increasing their value.[19] Only debts resulting from the trust assets or from the trust's activities may be paid from the trust assets.[20]

Beneficiary Rights

A beneficiary's rights under the Hekdesh deed

11 Income Tax Ordinance (New Version), 5721-1961 (Isr.).
12 Trust Law, § 1.
13 Trust Law, § 21.
14 Trust Law, § 7. Section 11 of the Trust Law provides that Section 7 is subject to the terms of the trust, therefore, the trustee's obligation to report to the beneficiaries can be altered or cancled in the trust deed. Such exemption does not, however, exept the trustee from filing tax repors with the Israeli Tax Authory as required under law.
15 Trust Law, §21.
16 Trust Law, §22.
17 Trust Law, §8.
18 Trust Law, §3(c).
19 Trust Law, §6. Section 11 of the Trust Law provides that Section 6 is subject to the terms of the trust, thereofore the settlor may determine otherwise, thereby exempting the trustee from liability should any losses occur to the trust assest. Such exmption may be required, for example, if the trustee holds a family business in trust.
20 Trust Law, § 3(b).

may not be assigned, hypothecated or subjected to a lien unless permitted by the Hekdesh deed. Notwithstanding the preceding paragraph, a court may permits liens or other forms of hypothecation of the trust assets in order to cover alimony payments and/or taxes owned by the beneficiary or under special circumstances payment of other debts of the beneficiary from the trust assets in the court's discretion.[21]

Revisions and termination of the "Israeli Foundation"

The terms of a Hekdesh deed may not be amended by the settlor nor may he remove trust assets or terminate the trust without specifically reserving these powers to the settlor in the Hekdesh deed. Alternatively, such amendments may be made by the settlor if all of the beneficiaries confirm said amendments, or upon receipt of court approval.[22]

Under certain circumstances, the court may authorize the trustee to use the trust assets for the fulfillment of the vital needs of a beneficiary, or those dependent on the beneficiary, in a manner that is contrary to the Hekdesh deed.[23] The court may also amend or terminate Hekdesh deed provisions if it is satisfied that circumstances warrant said revisions which are in accordance with the settlor's intentions.[24]

Recognition of foreign trust structures in Israel

Common practice in Israel shows that various trust structures operate in Israel. These structures include not only common law trusts, but also foundations, establishments and settlements under the laws of jurisdictions such as Liechtenstein and Panama. Such legal entities can be found, for example, in the records of the Registrar of Companies as foreign corporations.[25]

Moreover, the Ordinance defines a trust as "an arrangement, according to which a trustee holds the trust's assets in favour of a beneficiary, which was established in Israel or outside Israel, whether it is defined under the law applicable to it as a trust or whether defined otherwise." The Ordinance further provides that a trustee is "a person that assets or income of assets were attributed to him, or that he holds assets in trust... For this purpose, attribution to an underlying company shall be regarded as an attribution to the trustee, and a legal entity listed in the First Schedule A shall be regarded as trustee."[26] The legal entities listed in said First Schedule A are the following: a foundation under the laws of Liechtenstein, Panama, the Bahamas, and the Netherlands Antilles; an Establishment under the laws of Liechtenstein; and a Reg. Trust under the laws of Liechtenstein.[27]

CONCLUSION

Israel recognizes foreign trust structures. Nonetheless, as the trust practice has evolved over the past few years, there is an increase is the settlement of Israeli trusts coupled with Israeli underlying companies to hold assets in Israel and internationally. While the Trust Law has been valid since 1979, precedents are not as common as in other jurisdictions due to the infancy of the practice.

21 Trust Law, § 20.
22 Trust Law, § 18(b).
23 Trust Law, §19(b).
24 Trust Law, §23.
25 Review of the records of the Registrar of Companies of 7 January 2019 shows, for example, a company named "Favorit Establishment", which was incorporated on 19 November 1987 in Liechtenstein.
26 Income Tax Ordinance, §75C.
27 Income Tax Ordinance, First Schedule A.

POWER SURGE

Dr Alon Kaplan and Meytal Liberman introduce Israel's new continuous power of attorney for vulnerable clients

KEY POINTS

WHAT IS THE ISSUE?

Israel's Legal Capacity and Guardianship Law was amended in 2016 to introduce the continuous power of attorney (CPA) into Israeli law.

WHAT DOES IT MEAN FOR ME?

The CPA can be used in situations where a person has impaired or reduced capacity and wishes to plan for the future.

WHAT CAN I TAKE AWAY?

A CPA should be considered when conducting estate planning for a client who is resident or holds assets in Israel.

In recent years, the paternalistic approach to people with disabilities in Israel has been replaced with a new, more inclusive approach. This seeks to recognise the existence of various types and degrees of disability, and the need to respect the individual's wishes to the furthest extent possible. The new approach is also intended to allow the individual to be involved in decisions. It has been brought into Israeli law by way of the 2016 amendment (the Amendment)[1] to the *Legal Capacity and Guardianship Law* (the Law),[2] creating new legal instruments to be utilised by people with disabilities, namely the continuous power of attorney (CPA).[3]

The CPA

Section 14(a) of Israel's *Agency Law*[4] provides that agency terminates, *inter alia*, on the loss of capacity of the agent or the principal. Therefore, a person who wishes to leave instructions for another to execute, when that person's legal capacity is impaired, cannot do so by a regular power of attorney.

The proper instrument to achieve that is the CPA. This tool allows an appointer to authorise another (an agent) to act on their behalf in accordance with predetermined instructions in circumstances when the appointer's legal capacity is impaired.[5]

It should be noted that the CPA can be viewed as a parallel mechanism to the guardian, as the purpose of both is to create a function – the agent/guardian – to assist the appointer/client who encounters certain difficulties in their day-to-day life. However, each mechanism achieves this goal differently.

Eligibility requirements

The appointer and the agent must be eligible under the Law to appoint and be execution. The agent must also comply with several requirements in order to be appointed. These include, *inter alia*, that the agent must:

- also be a legally competent adult;
- not be the attorney executing the CPA;
- not be an agent in more than three CPAs;[6]
- not provide medical care or housing to the appointer for a fee; and
- if appointed with respect to the appointer's proprietary affairs, not be bankrupt.

Scope of the CPA

According to the Law, the CPA may be given with respect to the appointer's personal, medical or proprietary affairs. The general rule is that the agent is authorised to exercise any power conferred on them in accordance with the CPA as if it were exercised by the appointer. However, there are exemptions to this rule:

- **actions that the agent cannot be authorised to carry out:** those that, by their nature, should be carried out personally, such as adoption and a conversion of religion;
- **actions that require the express authorisation of the appointer:** such as donations, gifts, loans and any other financial transaction in the value of ILS100,000–500,000, and giving consent to a psychiatric treatment or hospitalisation; and
- **actions that require the authorisation of the court:** those that may have significant implications on the appointer, such as financial transactions of a value higher than ILS500,000, sale or long-term lease of real property and withdrawal of funds from a pension plan.

Procedure and activation

The CPA is executed in an online form published by the Office of the Administrator General (AG)[7] and structured in accordance with the Law and regulations thereof.[8] The form can be filled in and executed only by a qualified attorney who is licensed for this purpose by the Israeli Ministry of Justice and the Israel Bar Association. Once the CPA is executed, it must be deposited with the AG, which then adds its confirmation to the CPA.

The CPA becomes effective when the appointer 'ceases to understand matters'. This event is determined in accordance with the conditions stipulated in the CPA by the appointer. The appointer is free to determine these conditions as they see fit, provided that the CPA is not activated on the decision of the agent solely.

By default, the CPA is activated on the issuance of a medical expert's opinion stating that the medical circumstances of the appointer require activation of the CPA. The agent must then provide a declaration to the AG stating that the conditions for activation have been fulfilled; the AG will then issue a confirmation that the CPA has been activated.

Despite the general rule that the CPA is activated when the appointer 'ceases to understand matters', the CPA can be activated with respect to the appointer's proprietary affairs only (and not with respect to the appointer's personal and medical affairs) on a predetermined date, regardless of the appointer's being unable to understand matters. Usually, the date is set for shortly after the execution of the CPA, while the appointer is still legally competent. In such a case, the relationship between the appointer and the agent in the time between the execution of the CPA and its activation by the AG is considered as a regular agency under the *Agency Law*.

It is important to note that the activation of the CPA does not derogate from the appointer's right to cancel it, and the Law states expressly that the coming into force of a CPA, by itself, does not negate a person's legal capacity. Nonetheless, the appointer may expressly state in the CPA that it will remain in force should they ask to cancel it in the future while legally incapacitated. In this case, the CPA will remain in force, though the appointer and the agent may apply to the court to cancel it.

Appointment of a guardian

Under the Law, the appointment of a guardian is seen as a last resort, since it limits a person's right to self-determination, freedom and other personal liberties. Therefore, s.33A of the Law guides the court on what factors should be considered when an application to appoint a guardian is made. It provides that the court shall not appoint a guardian to an adult unless all the following requirements have been met:

- Without the appointment, the person's rights, interests or needs may be harmed.
- A CPA relating to the matters in respect of which the appointment is requested has not been deposited with the AG.
- After an examination of the alternatives, in the current circumstances, the court has concluded that the purpose of the appointment and the wellbeing of the person cannot be obtained by other means that limit the person's rights, freedom and independence to a lesser degree.

The section also provides that, in circumstances where a person is unable to attend to their own affairs, but is able to make decisions with respect thereof, the court will not appoint a guardian, unless such appointment is restricted to the extent necessary. In the 2019 case of *AA et al* v *the Attorney General – the Ministry of Labor, Social Affairs and Social Services*,[9] the court enforced the section and denied a son's application to appoint a guardian to his father because the father had previously signed a CPA.

Conclusion

The Amendment has radically changed Israel's approach towards people with disabilities, and its new instruments, namely the CPA, provide individuals with a means of fulfilling their wishes when they are no longer able to manage their affairs.

It is highly recommended that any practitioner or family office that provides services to individuals who are resident in Israel or hold assets in Israel consider using these tools in order to provide the client with a comprehensive estate planning service.

1. *Legal Capacity and Guardianship Law* (Amendment no. 18), 5776-2016, 2550 SH 798 (2016) (Isr)
2. *Legal Capacity and Guardianship Law,* 5722-1962, 16 SH 106 (1961-1962) (Isr)
3. Similar to an 'enduring' or 'durable' or 'lasting' power of attorney
4. *Agency Law*, 5725-1965, 19 SH 231 (1964-1965) (Isr)
5. The Law, Second 1 Chapter: Continuous Power of Attorney
6. Unless they are a relative of the appointer.
7. A draft version of the form is available at bit.ly/2FefMDb (Hebrew). The online formal form is available only to qualified and licensed attorneys.
8. At s.32M, and *Legal Capacity and Guardianship Regulations* (Continuous Power of Attorney, Preliminary Instructions to a Guardian, and a Document for the Expression of Will), 2017, KT 7801, 968, s.2 (Isr.)
9. 21463-01-19 Fam Ct (7 February 2019) (Isr)

THE ISRAELI TRUST

The use of the *hekdesh* as an efficient estate-planning instrument

BY DR ALON KAPLAN AND MEYTAL LIBERMAN

ABSTRACT

- *Israel's trust law applies to any trust relationship; however, the main route to create a private trust is by creating a* hekdesh, *also known as an endowment. The* hekdesh *is a document signed unilaterally by the settlor and can be executed either before a notary or as a last will and testament.*

- *Since a trust under Israeli law, including a* hekdesh, *is not considered a legal entity, common practice is to use an underlying company to hold the trust assets. The use of a* hekdesh *combined with an underlying company offers an efficient instrument for estate planning, contrary to a trust created by a contract between the settlor and the trustee.*

- *This article will review the trust under Israeli law, with an emphasis on the* hekdesh *and its use. It will also investigate the recognition of foreign trusts under Israeli law.*

The legal system in Israel is known as a mixed legal system, since it incorporates elements from both common law and civil law. Its civil-law influences derive from the Ottoman Empire era, while the UK government introduced English principles of common law and equity during the British Mandate (1923–1948); these were then gradually replaced by new independent *Knesset* (Parliament) legislation and decisions of the Supreme Court of Israel (the Supreme Court) on the establishment of the Israeli state.[1]

Trusts in Israel are provided for under the *Trust Law, 5739–1979* (the Law),[2] s.1 of which defines a trust as 'the duty imposed on a trustee to hold or to otherwise deal with assets under its control for the benefit of another, or for some other purpose'. Under s.2 of the Law, a trust can be created either in accordance with the law, by a contract with the trustee or by deed of *hekdesh* (endowment). In this article, we outline the principal types of trust, with particular attention paid to the *hekdesh*.

A TRUST CREATED UNDER LAW

A trust that is created in accordance with the law is a relationship that complies with the definition of s.1 that its terms and conditions are determined in legislation. Section 42 of the Law provides that the provisions of the Law shall apply where no other Israeli law contains special provisions on the matter in question. It therefore follows that, in the circumstances of a trust relationship subject to a specific law, the Law can be viewed as a complementary mechanism only.

TRUSTEES APPOINTED BY A JUDICIAL AUTHORITY

Scholar Shlomo Kerem[3] sets out the four main characteristics of a trustee appointed by a judicial authority as follows:

- The scope of the trustee's powers to act is determined by the legislation. The trustee receives control over the property by way of law, and they do not need any other legal means in order to execute their duties, such as a licence, ownership or any other right in the property.
- A special law sets out the modus of the appointing body and the powers, duties and obligations conferred to the trustee.
- The trustee's demise terminates the powers of the acting trustee.
- The appointing authority may replace the trustee without need of transferring any right of ownership.

'Section 42 of the Law provides that the provisions of the Law shall apply where no other Israeli law contains special provisions on the matter in question'

A good example of such a trustee is an estate executor appointed in accordance with the *Succession Law, 5725-1965* (the Succession Law).[4] Under ss.77 and 78, the court may appoint an executor, who, under s.82, is subject to the instructions of the court, and must assemble the assets of the estate, manage the estate, discharge the debts of the estate and distribute the balance of the estate among the heirs, in accordance with a succession order or a probate order, and do anything else necessary for the execution of the succession order or of the probate order. Further, under s.86, the executor must keep accounts and file reports to the Administrator General (AG) regularly.

ADMINISTRATIVE STATUTORY BODIES ACTING IN THE CAPTIVITY OF A TRUSTEE

These are bodies of the state that effectively act in the capacity of a trustee on behalf of the state in matters of need, such as those listed below:

1 The Library of Congress, 'Introduction to Israel's Legal System', bit.ly/2HMYJJZ
2 33 LSI 41 (1966-1967) (Isr)
3 Shlomo Kerem, *Trust Law*, 5739-1979, 144 (4th ed., 2004)
4 *Succession Law, 5725-1965*, 19 SH 215, §§ 77-96 (1964-65) (Isr.)

‘Section 23 of the Contracts Law provides that a contract may be made orally, in writing or in some other form, unless a form is a condition of validity by virtue of law or agreement between the parties’

- The AG as the Public Trustee: s.36 of the Law provides that the Minister of Justice shall appoint a Public Trustee, who may be appointed by the court as a trustee of trusts. Accordingly, the AG was appointed to act in the capacity of Public Trustee in 1985.[5] In the case of the *Public Trustee* v *Agmon*,[6] Justice Barak held that the court holds the authority to supervise the Public Trustee’s activity, and to give instructions when necessary to uphold the purposes of the trust, including instruction regarding the appropriate time to release the Public Trustee from office.
- The AG as the administrator of abandoned assets: according to s.2(b) of the *Administrator General Law*,[7] the AG is responsible for the administration of abandoned assets. Section 1 defines an abandoned asset as an asset without a known owner, or without a person entitled to or capable of administering the asset, which has a connection to Israel: the asset is either situated in Israel or belongs to an Israeli resident, citizen or corporation.

TRUSTEES APPOINTED WITH THE CONSENT OF A GOVERNMENTAL REGULATORY BODY

Kerem points out the mutual characteristics of such consensual trustees:[8]

- Legislation is limited to the minimum required to ensure the proper operation of the trustee.
- Subject to the said minimum legislation, the parties are free to agree between them on the powers of the trustee, and its rights and obligations.
- The parties must confer on the trustee power and authorities by transferring the proprietary rights in the assets to the trustee, or by granting the trustee control and power over the assets.

A debenture trustee, whose modus operandi is governed by the *Securities Law*,[9] and a trustee of employee stock option incentive programmes, whose modus operandi is governed by the Income Tax Rules (Tax Relief in the Allocation of Shares to Employees),[10] serve as good examples of such trustees.

A TRUST CREATED UNDER A CONTRACT

A trust created by a contract is one governed by the Israeli contracts laws[11] and accordingly requires an agreement between the settlor and the trustee. Under this framework, a trust contract can be viewed as being established for the benefit of a third party in accordance with s.34 of the *Contracts (General Part) Law, 1973* (the Contracts Law), thereby granting the beneficiary a right to enforce the trust contract.

Section 23 of the Contracts Law provides that a contract may be made orally, in writing or in some other form, unless a form is a condition of validity by virtue of law or agreement between the parties. Since the Law does not require the fulfilment of any form conditions, and it applies to any trust relationship that complies with the definition set

5 Government Notices 3250, 22/09/1985
6 PCA 9420/04 *Pub. Tr.* v *Agmon* 59(1) PD 627 (2005) (Isr.)
7 *Administrator General Law*, 5738-1978, 883 SH 61 (1978) (Isr.)
8 See note 3
9 *Securities Law, 5728-1968*, 541 SH 234 (1968) (Isr.)
10 Income Tax Rules (Tax Relief in the Allocation of Shares to Employees), 5763-2003, KT 6222, 448 (Isr.)
11 *Contracts (General Part) Law, 5733-1973*, 27 SH 117 (1972-1973) (Isr.) and *Contracts (Remedies for Breach of Contract) Law, 5731-1970*, 25 SH 11 (1970-1971) (Isr.), and relevant case law relating thereto

forth in s.1, it therefore follows that, to determine whether a contract can be regarded as a trust contract, the nature of the relationship between the parties should be examined.

Goren J affirmed this in the case of *Arnon* v *Pieutrekovsky*,[12] stating:

> 'A transaction shall be regarded as a trust transaction subject to the provisions of the Trust Law if the conditions of the definition stipulated in the Law have been materially fulfilled. The applicability of the definition of a trust on a transaction is not subject to the mere wishes of the parties, and despite using the phrase "trust" in the transaction between them, the transaction shall not be a trust transaction and subject to the provisions of the law if its contents do not go in line with the definition of the trust in the Law.'[13]

As mentioned above, s.23 of the Contracts Law provides that a contact may be entered orally, i.e. without a written document. Therefore, a trust relationship may be created by the mere behaviour of the parties. This is commonly known as an 'implied trust'. Shamgar J addressed this issue in the case of *Wallas* v *Gat*,[14] stating the following:

> 'The Implied Trust was created in the Common Law to deal with circumstances where the behavior of the parties and their actions imply that they intended to create a trust, but for some reason, this intention was not explicitly expressed ... It is implied from their relationship and
>
> behavior, that although the asset is registered under the name of one of them, the beneficial ownership belongs to the other.'

'While the transfer of assets to a trustee during the lifetime of the settlor does not usually give rise to any special difficulties, this may not be the case when a testamentary trust is concerned'

A TRUST CREATED BY DEED OF *HEKDESH* (ENDOWMENT)

Section 17 of the Law deals with the creation of a *hekdesh*, and provides in s.17(a) that a *hekdesh* is created when a property is dedicated in favour of a beneficiary or for some other purpose by a written document, in which the *hekdesh*'s creator expresses their intention to create the *hekdesh* and determines its objectives, property and conditions, and when such written document takes one of the following forms:

- A written document signed by the *hekdesh*'s creator before a notary. A trust created in this manner is commonly known as an *inter vivos* trust under Israeli law.
- A written will from the *hekdesh*'s creator, created in accordance with the Succession Law,[15] which provides that a written will can be made before two witnesses, the court or a notary, or in the handwriting of the testator.[16] A trust created in this manner is commonly known as a testamentary trust under Israeli law.
- A payment instruction in accordance with s.147 of the Succession Law, which provides that payments made to beneficiaries under an insurance policy are not included in one's estate. Accordingly, the setting out of beneficiaries in an insurance policy is regarded as a *hekdesh*.

12 File No. 548/06 District Court (Tel Aviv), *Arnon* v *Pieutrekovsky* (30 June 2013), Nevo Legal Database (by subscription) (Isr.)
13 See note 3
14 CA 3829/91 *Wallas* v *Gat* 48(1) PD 801, 810 [1994] (Isr.)
15 9 LSI 215 (1964–1965) (Isr.)
16 Succession Law

COMMENCEMENT OF A *HEKDESH*

Section 17(b) of the Law provides that the *hekdesh* shall become effective on the transfer of control of the *hekdesh* property to the trustee. Accordingly, an *inter vivos* trust commences on the transfer of the trust assets to the control of the trustee, and a testamentary trust commences on the issuance of a probate order with respect to the will, which effectively transfers the assets to the control of the trustee.

While the transfer of assets to a trustee during the lifetime of the settlor does not usually give rise to any special difficulties, this may not be the case when a testamentary trust is concerned. Section 54 of the *Succession Regulations, 1998*[17] provides that a copy of an application for a probate order shall be submitted to the review of the AG,[18] which may, at its discretion, conduct additional inspection of the application and request further information and documents. Further to that inspection, the AG may also intervene in the probate procedure and effectively alter the terms and conditions of the testamentary trust set forth by the testator.

A DECLARATION OF A *HEKDESH* BY THE COURT

Section 17(c) further provides that, when any property is *de facto* a *hekdesh*, but no instrument of *hekdesh* exists with respect thereof, the court may declare the existence of a *hekdesh* and may determine its objectives, property, conditions and date of commencement.

In the case of *Weinstein* v *Fox*,[19] the testator bequeathed his entire estate to his children, who were resident in the US, on the provision that they immigrate to Israel, and that all the assets of the estate and the income derived therefrom remain in Israel. Under these circumstances, the executor of the estate, Advocate Fox, applied to the court to release him from his position of executor of the estate, but simultaneously appoint him as trustee with respect to the assets under his control for the period until the children of the deceased immigrate to Israel. Ultimately, the Supreme Court approved his appointment as trustee and declared the existence of a *hekdesh* under s.17(c).

THE CHARITABLE TRUST: THE PUBLIC *HEKDESH*

As regards charitable trusts, s.26 of the Law provides that:

> 'A trustee of a trust, the objective or one of the objectives of which, is the furtherance of a public purpose (hereinafter: public hekdesh) shall, within three months from the date on which he becomes a trustee, inform the Registrar of the existence of the hekdesh and of the particulars enumerated hereunder, unless notification thereof has been made previously, and he shall inform the Registrar of any change in those particulars within three months of the date thereof. Notification of the existence of a public hekdesh shall be accompanied by a copy of the instrument of hekdesh.'

As evident from the wording of this section, such a public *hekdesh* is not required to meet the conditions of s.17 of the Law. Hence, a trust pursuant to contract, where one of its objectives is the furtherance of a public purpose, would be considered as a public *hekdesh*, and therefore subject to registration with the registrar.

17 KT 5923 (Isr.)
18 A governmental department within the Ministry of Justice, which *inter alia* supervises inheritance guardianship and charity procedures in Israel.
19 CA 5717/95 *Weinstein* v *Fox* 54(5) PD 792 [2000] (Isr.)

'A trust pursuant to contract, where one of its objectives is the furtherance of a public purpose, would be considered as a public *hekdesh*, and therefore subject to registration with the registrar'

USE OF COMPANIES

The trust, including the *hekdesh*, is not recognised as a legal entity in Israel,[20] and, therefore, a common practice of trustees is to hold the assets of a trust via an underlying company incorporated in accordance with the provisions of the *Income Tax Ordinance (New Version), 5721-1961* (the Ordinance),[21] thereby creating a designated legal entity to hold the *hekdesh* assets on behalf of the trustee.

According to the Ordinance, such an underlying company is defined as a company that holds trust assets for the trustee, whether directly or indirectly, in accordance with the terms set forth below:

- That the underlying company is incorporated solely for the purpose of holding the trust assets.
- That notice of the incorporation of the underlying company be provided to the tax authority within 90 days of the underlying company's incorporation where it is an underlying company of the following trusts:
  - an Israeli resident trust;
  - an Israeli resident beneficiary trust;
  - a testamentary trust of which an Israeli resident is a beneficiary; or
  - any trust in which the trust assets are in Israel.
- That the trustee holds all of the underlying company's shares, directly or indirectly; the term 'indirect holding' is only a holding through another company, which is one that meets the provisions of paras.(1) and (2) of the Ordinance, as mentioned above, and all of the shares are held by the trustee.

TRUSTS AND ESTATE PLANNING

A trust, properly set up, can serve as a good mechanism to transfer assets to the next generation. To understand the advantages of a trust for estate-planning purposes in Israel, the difficulties and complexity of the inheritance procedure in Israel should first be demonstrated.

Under the Succession Law, the rights of the heirs in the estate are created only on the issuance of order with respect to the estate by the competent authority. In circumstances where the deceased left a will, an application should be made for a probate order, and only on the issuance of the order does the will become valid and enforceable. It should also be noted that only a probate order issued in Israel in accordance with the Succession Law is regarded as valid, and probate orders issued by foreign authorities are invalid.[22]

However, in circumstances where the deceased left a will relating to only a part of their estate, or the deceased did not leave a will at all, an application should be made for an inheritance order.[23]

Both an application for a probate order and an application for an inheritance order are made to the Registrar of Inheritance, which is authorised to declare the rights of the heirs accordingly.[24] However, in the circumstances described in s.67A of the Succession Law, the Registrar of Inheritance must forward the application to the relevant court. Such circumstances arise, for example, when the application is contested, when the will is defected, or when the AG represents a minor in the application. The court is authorised accordingly to issue the relevant order.[25]

20 PCA 46/94 *Zacks-Abramov* v *Land Registry Officer* 50(2) PD 202 [1996] (Isr.)
21 *Income Tax Ordinance (New Version), 5721-1961*, 6 DMI 120 (1961) (Isr.)

22 Succession Law, § 39
23 At § 66
24 *Ibid*
25 At § 67A(b)

Probate procedure in Israel requires that the original will be submitted with the Registrar of Inheritance, except for an oral will. In the absence of an original will, such as when the original has already been submitted in another jurisdiction, a separate application should be made to the court to approve the submission of a copy.[26]

Section 54 of the *Inheritance Regulations* (the Regulations)[27] provides that a copy of any application, including an application for a probate or inheritance order, shall be submitted to the review of the AG, which may, in its discretion, conduct additional inspection of the application and require further information and documents.

Section 17 of the Regulations requires that a notice with respect to the application for the inheritance or probate order be published in one daily newspaper and in the formal publication of the State of Israel (*Reshumot*). The notice includes an invitation to contest the application.

Section 14(b)(4) of the Regulations provides that an application for a probate or inheritance order shall be dismissed unless a registered mail certificate or an affidavit were attached to the application, which confirms that a notice on the submission of the application has been delivered to the heirs under law, the beneficiaries under a will or the deceased's family members, as set forth below:

- In the case of an inheritance application: a notice on the submission of an application for an inheritance order shall be delivered to all heirs listed in the application, and shall include the portion of each of them in the estate.
- In the case of a probate application: a notice on the submission of an application for a probate order shall be delivered to all beneficiaries under the will, together with a copy of the will. If the beneficiaries under the will do not include the children of the deceased or their children, the parents of the deceased or their children, or the spouse of the deceased, such notice shall be delivered, in addition, to the children of the deceased and to the person who was the deceased's spouse at the time of their death. If the deceased left no spouse or children, such notice shall be delivered to the deceased's parents, and if the deceased left no parents either, then such notice shall be delivered to their sibling.

The inheritance procedure in fact allows the scrutiny and intervention of the court, where otherwise such would be avoided, thereby effectively changing the instructions of the testator. In the case of *The Estate of the deceased GB* v *The Administrator General*,[28] the deceased left a will where he bequeathed his estate to a *hekdesh*, whose purpose was the well-being of his two incapacitated sons. The deceased appointed two trustees for the *hekdesh*. On the demise of the deceased, one of the trustees was appointed as a guardian of the two sons. The Family Court of Tel Aviv (the Court) held that a guardian, due to their responsibility and the trust given in them by the court to take care of the incapacitated person, is subject to more supervision in comparison to a trustee, who is independent and exercises discretion in the management of the trust. Therefore, the Court held that both trustees are to be subject to the supervision of the AG as if both have been appointed as guardians.

Another important issue relating to estate planning concerns s.8(b) of the Succession Law, which provides that a gift granted by a donor

26 At § 68(b)
27 *Inheritance Regulations*, 1998, KT 5923 (Isr.)

28 File no. 12695/06 Family Court (Tel Aviv) *The Estate of the deceased GB* v *The Administrator General* (Apr. 16, 2008) Nevo Legal Database (by subscription) (Isr.).

‘Evidence on the operation of foreign trust-like entities in Israel can be found in the records of the Israeli Registrar of Companies as foreign corporations’

during the donor’s lifetime, when such gift is to be effectively provided to the donee after the donor’s demise, is null and void, unless such gift was included within a valid will.

In the case of *Doe* v *Doe*,[29] the deceased made several wills and one draft of will prior to his demise. In the first wills, the deceased bequeathed his estate mainly to his family members, whereas in the last two wills and the draft will he bequeathed his estate to another person, and instructed that the two persons whom had been added as co-owners to his bank account execute certain payments, which were not expressly stated in the wills.

The Supreme Court determined that the written and executed wills of the deceased were void due to unjust influence,[30] and the addition of the co-owners to the bank account was made unlawfully, and was therefore also void. Under these circumstances, the court held that no *hekdesh* was properly set up.

It was further argued that a trust had been created by an oral contract in accordance with s.2 of the Law. The Supreme Court held that the purpose of the deceased was to set up an arrangement of payments to be executed on his demise; therefore, it did not accord with s.8(b) of the Succession Law, which requires that such arrangements be set up by will. The Supreme Court continued and held that the creation of such trust should have been made in accordance with s.17 of the Law.

As evident from the above, the inheritance procedure in Israel is a complex and cumbersome procedure. It may also be uncomfortable for the deceased’s family members, who are required to disclose the contents of the will. Due to this reason, it is usually advisable to set up an *inter vivos* trust, rather than a testamentary trust, and special attention should be paid to the transfer of assets into the trust in order to avoid a situation where such transfer is struck down by the court under s.8(b), as mentioned above.

RECOGNITION OF FOREIGN TRUSTS AND TRUST-LIKE STRUCTURES IN ISRAEL

Several different wealth management or legacy structures can be found in operation in Israel. These structures include not only common-law trusts, but also foundations, establishments and settlements made under the laws of other jurisdictions. Evidence on the operation of foreign trust-like entities in Israel can be found in the records of the Israeli Registrar of Companies as foreign corporations.[31]

Further, s.75C of Israel’s *Income Tax Ordinance (New Version), 5721-1961* (the Income Tax Law)[32] defines a trust as an arrangement according to which a trustee holds the trust’s assets in favour of a beneficiary, which was established in Israel or outside Israel, whether it is defined under the law applicable to it as a trust or whether defined otherwise.

The Income Tax Law further provides that a trustee is ‘a person to whom assets or income of assets are attributed, or who holds assets in trust … For this purpose … a legal entity listed in the First Schedule A shall be regarded as a trustee;

29 File no. 7033/15 Supreme Court, *Doe* v *Doe* (1 September 2016) Nevo Legal Database (by subscription) (Isr.)

30 Section 30 of the Succession Law provides that a will made as a result of unjust influence – i.e. not out of free will – is void.

31 A review of the records of the Registrar of Companies shows, for example, a company named ‘Favorit Establishment’, which was incorporated on 19 November 1987 in Liechtenstein.

32 *Income Tax Ordinance (New Version), 5721-1961*, 6 DMI 120, Fourth2 Chapter: Trusts (1961) (Isr.) (the Income Tax Law).

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THE USE OF REAL ESTATE TRUST FOR HOLDING OF AND MANAGEMENT OF PROPERTY IN ISRAEL

Dr. Alon Kaplan | Meytal Liberman

Abstract

Real estate trust in Israel is a useful legal structure for families who wish to register real property in the name of a corporate body acting as a 'transparent entity' and keep tax advantages granted to individual persons. This structure may be found particularly useful and efficient for non-Israeli families that decide to invest in real estate in Israel or have a second home for the family compound.

Introduction

Real estate trusts (RETs) have been used in Israel for many years and for various purposes, including legitimate tax planning, asset protection, and commercial transactions.

For instance, the RET was used in the 19th century by Jewish people living in Jerusalem in order to purchase land and protect their property from confiscation by the Ottoman rulers. This was achieved by placing the property in a Moslem trust known as a *Waqf*, thus ensuring that the Moslem government would not interfere with the ownership rights of the land.[1]

Another old example of the historical use of a RET can be found in the establishment of Tel Aviv in 1909. At that time, it was prohibited for Jewish residents to purchase land, thus the land was purchased by a non-resident investor, who acted as trustee for the new settlors.[2]

Trusts in Israel are governed by the Trust Law.[3] In addition, other laws contribute to the enhancement of the various uses of trusts, such as the Agency Law[4] and the Real Property Taxation Law.[5] This framework is augmented by court cases and rulings of the Israeli Tax Authority.

RETs in Israel

The RET in Israel is a legal structure under which real estate is purchased by a trustee, or is transferred to a trustee, and the trustee acts as a nominee or bare trustee for an identifiable beneficiary. Israeli law, namely the Real Property Taxation Law and the Trust Law, provide the legal structure for such an RET.

The RET in Israel is a legal structure under which real estate is purchased by a trustee, or is transferred to a trustee, and the trustee acts

* Alon Kaplan, TEP, Advocate & Notary, Founder and Manager at *Alon Kaplan, Advocate & Notary*, of 1 King David Boulevard, Tel Aviv 6495301, Israel. Tel: +972-3-5084966; Fax: +972-3-5084969; Email: alon@alonkaplan-law.com

† Meytal Liberman, TEP, Advocate & Notary, Associate Attorney at *Alon Kaplan, Advocate & Notary*, of 1 King David Boulevard, Tel Aviv 6495301, Israel. Tel: +972-3-5084966; Fax: +972-3-5084969; Email: meytal@alonkaplan-law.com

1. Ron Shaham, 'Christian and Jewish 'Waqf' in Palestine during the Late Ottoman Period' (1991) 54(3) Bulletin of the School of Oriental and African Studies 460.

2. Shimon Rubinstein, *Constraints and Hope in the Matter of Land Purchases by Jews in the Land of Israel at the End of the Ottoman Period* (Hebrew) <http://www.kkl.org.il/files/HEBREW_FILES/machon-mediniut-karkait/karka-41/karka-41-1996-10.pdf>.

3. (1966–1967) 5739-1979, 33 LSI 41 (Isr).

4. (1964–1965) 5725-1965, 19 LSI 231 (Isr).

5. (1963) (Capital Gains and Purchase) 5723-1963, 17 LSI 193 (Isr).

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as a nominee or bare trustee for an identifiable beneficiary

Under such a structure, the trustee is registered as the legal owner of the real estate but under Israeli Tax laws, namely the Income Tax Ordinance[6] and the Real Property Taxation Law, the beneficiary of the real estate is considered as the real owner, similar to a beneficiary of a bare trust in the common law.[7]

The trustee may be registered directly in its name in the Land Registry, but it may also hold the real estate indirectly via an underlying company registered for this purpose—a special purpose vehicle (SPV), whose shares are wholly held by the trustee.

An example of how this presumption works can be gleaned from a recently published case where a father purchased an apartment in Israel and invested most of the funds required to purchase the property.[8] The apartment was registered in the name of his daughter. The apartment was used alternatively for the parents and the daughter upon her visits to Israel. After the demise of the mother, the daughter filed a claim against the father demanding the eviction of the father from the apartment, claiming that she had the ownership of the apartment. The court dismissed the claim recognizing the ownership rights of the father who provided evidence that the apartment was his property held by the daughter as a trustee for the father.

Another interesting case was ruled upon by the Supreme Court.[9] In that matter, a trustee was registered in the Land Registry as the owner of a real estate property. The registration did not reference the fact that the property was held in trust.[10] The trustee was declared bankrupt and a creditor tried to attach the property for the satisfaction of his claim against the trustee. The court was presented with evidence that the property was held in trust for beneficiaries, and, upon accepting this evidence, ruled that the creditor had no right against the real estate property even though the Land Registry did not have any reference to the rights of the beneficiaries.

This was an important precedent reconfirming the concept of holding real estate in trust for a beneficiary and ensuring beneficiaries' rights against third parties.

Taxation of real estate in Israel

A sale for the purposes of the Real Property Taxation Law is considered as such whether it was made for consideration, or not. However, it should be noted, that the transfer of real estate under inheritance procedure is not considered as a sale, and therefore does not trigger the imposition of any of the taxes mentioned above. In fact, Israeli law does not provide for any estate tax, thus the transfer of any property upon death, including real estate, is not subject to any tax in Israel.

Under the Real Property Taxation Law, two main taxes are imposed upon a sale of real estate: Capital Gains Tax on the seller and a Purchase Tax on the purchaser. The Capital Gains Tax is calculated in accordance with the increase in the value of the property since its purchase; the time period during which the seller owned the property; and the existence of other real properties owned by the seller. The Purchase Tax represents a certain percentage of the purchase price. This percentage is set in accordance with other real properties owned by the purchaser.

Tax exemption for an RET

A pre-ruling published in 2012 by the Israeli Tax Authority[11] dealt with the transfer of real estate properties into a private trust. In this case, an elderly

6. [New Version] (1961) 5721-1961, 6 LSI [NV] 120 (Isr).
7. *Trusts and Taxes*, see <https://www.gov.uk/trusts-taxes/types-of-trust>.
8. Family Case (TA) 19831-04-10 *RG v MP* (7 July 2013) Nevo Legal Database (by subscription) (Isr).
9. CA 5955/09 *Amster (Receiver) v Tauber Tov* (19 July 2011) Nevo Legal Database (by subscription) (Isr).
10. Such a reference is possible under a procedure named 'caveat' under s 4 of the Trust Law, and Land Law (1968-1969) 5729-1969, 23 LSI 293, 127 (Isr).
11. Tax Ruling no 3324/12, *The Establishment of a Hekdesh – Tax Ruling in Agreement* <https://www.misim.gov.il/tmmisuyweb/frmShowLinkedAbs.aspx?num=20120030> accessed 10 December 2018 (Hebrew).

person created a trust in his favour and in favour of other beneficiaries. The Israeli Tax Authority recognized the establishment of a trust regulated under section 17 of the Trust Law known as *Hekdesh*. The Israeli Tax Authority confirmed that the transfer of the real estate property to the trust was exempt from tax, thus recognizing in this case an RET.

The Israeli Tax Authority confirmed that the transfer of the real estate property to the trust was exempt from tax, thus recognizing in this case an RET

The importance of the ruling is in the clarification given, for the first time, regarding the existence of tax exemption for the transfer of real property by a beneficiary into an RET.

Until this ruling there had been no orderly source showing that when an owner of real property transfers the property to a trustee and becomes a beneficiary of the RET, the transfer is tax exempt. The ruling stated as follows:

> If the creation of a trust (by the settlor/beneficiary) and the vesting of the trust's properties to the trustee, designated until the end of his days to benefit the beneficiary, his welfare and quality of life, while still alive, and after his death, in favor of specific beneficiaries, which the beneficiary determined in the trust document and in the aforementioned will, will not be deemed to be a 'sale of a right in land' in the sense of the law.

Conclusion

Real estate investments in Israel are in great demand by both Israeli and foreign investors. Some investors choose to hold properties they purchase in the name of a trustee.

However, if an investor is considering using this structure to invest in real estate in Israel, he should note that there are some issues of trust, inheritance, and tax laws, which require proper consultations and consideration. Therefore, expert advice is recommended.

***Alon Kaplan**, PhD (Zurich), TEP, President of STEP Israel, practices law in Tel Aviv, specializing in Trusts and Estates. He is General Editor of Trusts in Prime Jurisdictions (4th edition, April 2016), the Israel Country Correspondent for Oxford Journals' Trusts and Trustees, and author of Trusts in Israel: Development and Current Practice (Helbing Lichtenhahn Verlag 2015), and Trusts and Estate Planning in Israel (Juris Publishing 2016). E-mail: alon@alonkaplan-law.com.*

***Meytal Liberman**, LL.B, LL.M, TEP, was admitted to the Israel Bar in 2013. She advises clients from Israel and overseas on trusts and estate planning as an Associate Advocate at Dr. Alon Kaplan, Advocate & Notary, where she also completed her legal internship. Meytal has been a member of the Society of Trusts and Estates Practitioners (STEP) since 2015, after she had completed two years of studies and earned a Diploma in International Trust Management. Meytal is the General Editor and contributor of the book "Trust in Israel: Theory and Practice" by Alon Kaplan, which was published in Hebrew in 2017. E-mail: meytal@alonkaplan-law.com.*

the Minister of Finance may, by order, add corporate bodies to First Schedule A.'

The legal entities listed in said First Schedule A are the following:

- a foundation under the laws of Liechtenstein, Panama, the Bahamas, and the Netherlands Antilles (Curaçao);
- an establishment under the laws of Liechtenstein; and
- a registered trust enterprise (trust reg.) under the laws of Liechtenstein.

The fact that foreign trusts are recognised under Israeli law is demonstrated more forcefully in the case of *Lnl Reg Trust* v *Levine*,[33] where a trust entity litigated in the Israeli District Court (the District Court). In this case, the trust entity, Lnl Reg Trust, was established in 1965 for holding assets and the administration thereof for a family. A dispute arose with respect to the validity of a certain document executed by the founder, where he left instructions to the trustee, since it was not probated as a will.

The importance of this case lies in the fact that the legal capacity of a Liechtenstein trust reg. entity was effectively recognised by the Israeli District Court, since it was able to file a claim and litigate in Israel. Further, the District Court reviewed the by-laws of the trust entity and other legal arrangements within the trust and determined the rights of the beneficiaries accordingly.

TAX CONSIDERATIONS

Under the Income Tax Law, trusts with an Israeli-resident settlor, or an Israeli-resident beneficiary, or that have assets situated in Israel, are subject to reporting and tax in Israel. As can be inferred, the location of the trustee is irrelevant for this purpose. The transferring of assets to a trust, whether a testamentary trust or an *inter vivos* trust, may, however, impose reporting and tax obligations on the trustee.

It should be noted that there is no gift or estate tax in Israel, and, should a person decide to transfer their assets by way of inheritance to a trustee in accordance with the Succession Law, or by way of will, the transfer would not be considered a tax event in Israel, regardless of the nature of the assets.[34]

The Ordinance provides for tax benefits to new immigrants and long-term returning residents, namely an exemption from tax and reporting obligations for a period of ten years on all forms of income, active or passive, as long as they are derived from sources abroad. These benefits may be applied to a trust of such new immigrants and long-term returning residents accordingly.

CONCLUSION

The Israeli trust institution, which has its foundations in Israeli case law, became statutory on the enactment of the Law in 1979, and has since continued its development through court cases.

The above analysis demonstrates that a trust can be considered as an efficient instrument to plan an estate, as it both minimises the need for inheritance procedures and allows a greater degree of control over the assets, provided it is set up properly.

For this purpose, it is therefore recommended to set up a trust in accordance with the procedure set out in s.17 of the Law, preferably as an *inter vivos* trust that does not require probate proceedings. The trust instrument should be drafted carefully, with special care given to future events that may occur, such as death and divorce of beneficiaries. It is also highly recommended to use an underlying company to hold the trust assets, thereby holding them by a designated separate legal entity. The transfer of the assets to the underlying company can be made either during the lifetime of the settlor or by way of succession to the trustee or underlying company as heirs. Although it is usually preferred to transfer the assets during the life of the settlor, the type of assets and the tax consequences of the transactions should also be considered.

33 File no. 1327/96 District Court (TA) *Lnl Reg Trust* v *Levine* (2 January 2008) Nevo Legal Database (by subscription) (Isr.)

34 It should be noted that, in the case of a sale of a real property that was received by way of inheritance, the *Taxation of Real Property Law (Capital Gains and Purchase), 5723-1963*, 17 SH 193 (1963) (Isr.) provides that the time period in which the property was owned by the deceased is taken into account when capital gains tax due is calculated.

TRUSTS AND ESTATES IN ISRAEL

Dr. Alon Kaplan | Meytal Liberman

An overview of Inheritance and trust laws in Israel and their implications on Israeli and US persons.

INTRODUCTION

Israel is a small country, about the same size as Belgium in Europe or New Jersey in North America. It is located on the eastern shore of the Mediterranean Sea and has excellent access by air and sea to Europe, Africa, Asia and North America.[1] Since 2010, Israel is a member of the OECD.[2]

Israel is a country of immigration. Formal statistics[3] show that at the time of its establishment, Israel's population was only 872,700 people, out of which 716,700 (82%) Jews, and 156,000 (18%) Muslims, Christians and Druze. formal statistics[4] further show Israel's phenomenal population growth, as Israel's population in the end of 2018 was 8,955,300, out of which 6,554,700 (73%) Jews, 1,874,800 (21%) Muslims and 525,800 (6%) others. All of whom enjoy equal legal rights in all areas of life. It is also interesting to note that since the establishment of the State of Israel and until 2017, approximately 110,000 immigrants were born the USA.[5]

Israel's high-tech economy is a source of tremendous wealth and has created a new generation of rich families.

Moreover, Israel is known as a "start-up nation" when relating to high-tech and technology. This sector of the economy is a source of tremendous wealth and has created a new generation of rich families. The magazine Israel 21c reported that in the year 2017[6] Israeli high-tech exits totalled in $7.44 billion. This amount represents an increase of 9% over 2016, and 9% of those deals were worth $400 million to $1 billion.

This demographic and economic environment provides a fertile ground for US persons, whether US or Israel residents, to invest in assets in Israel.

INHERITANCE IN ISRAEL

Inheritance in Israel is governed by the Succession Law.[7] According to section 2 of the Succession Law, the estate of a deceased passes to his heirs in accordance with the law – intestate inheritance, unless the deceased has left a valid will, in which case the estate is bequeathed in accordance thereof.

The Israeli court has jurisdiction over a person's estate provided that the person's center of life at the time of his or her death was in Israel, or that the person left assets in Israel.[8] Accordingly, the Israeli court has jurisdiction, for example, over the estate of a US resident who passes way leaving assets in Israel, as well as on a US person who immigrated to Israel.

Intestate inheritance

In the absence of a valid will, the Succession

law provides a mechanism that determines the order of inheritance, and the portion of each heir. Accordingly, the first right of inheritance is divided equally between the spouse of the deceased and his children. The spouse receives one-half of the estate and the children divide the remaining half between them in equal shares.[9]

Inheritance under a will

Alternatively, the estate can be distributed a set out in the testator's will. Under the Succession law, a will can be made in one of four ways, as set forth below:[10]

a) A handwritten will[11] – such will shall be written entirely in the testator's own hand and shall be dated and signed by the testator.

b) A will made in the presence of witnesses[12] – such will is written and dated, and signed by the testator before two witnesses after the testator has declared before the witnesses that it is the testator's will. The witnesses must attest by their signature upon the will that the testator declared and signed the will as stated.

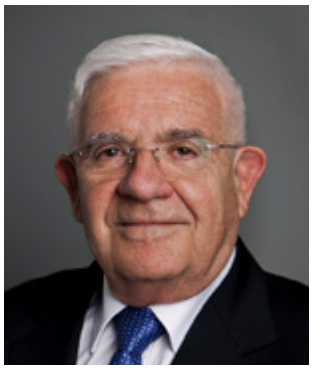
c) A Will made before an authority[13] – such will must be made by the testator stating its provisions orally before a Judge, a Court Registrar, the Registrar of Inheritance, or a Member of the Religious Court, or by a deposit of a written will by the testator with any of these authorities. It is further provided that for this purpose, a notary is equivalent to a judge.

d) An oral will[14] – people who are on their deathbeds, or who in all circumstances reasonably regard themselves as facing death, may declare a will orally before two witnesses. The testator's directions and the circumstances of the making of the will must be recorded in a memorandum signed by the two witnesses and deposited with the Registrar of Inheritance. An oral will becomes invalid one month within one month, provided the circumstances which warranted its making has changed, and the testator is still alive.

Despite the formal requirements mentioned above, the court is authorized to validate a will even if it is defective or missing certain formal requirements, provided the court is convinced that it reflects the true and free will of the testator.

Freedom of testation

The principle of Freedom of Testation is one of the



DR. ALON KAPLAN
TEP, ADVOCATE & NOTARY

MEYTAL LIBERMAN
TEP, ADVOCATE

cornerstones of the Israeli inheritance law. Section 27, whose title is "Liberty to bequeath", provides that an undertaking to make a will, to change it, or to cancel it, or not to make any thereof – is invalid. It further provides, that a provision of a will that negates or limits the right of the testator to change the will or cancel it – is invalid.

The principle of Freedom of Testation is also evident in Section 8 of the Succession Law, which

People who are on their deathbeds, or who reasonably regard themselves as facing death, may declare a will orally before two witnesses.

provides that "an agreement in respect of the succession of a deceased and a renouncement regarding such succession, executed prior to the demise of the deceased, are void." The section further provides that that "a gift granted by a donor during the donor's lifetime, when such gift is to be effectively provided to the donee subsequent to the

donor's demise, is also null and void, unless such gift was included within a valid will."

Justice Cheshin stressed the importance of the freedom of testation in the Lishitzky[15] case:

> *If there is a foundation principle, if you will, a super-principle, in inheritance law, there is none but the principle that instruct us that a person, any person, is at liberty to bequeath his estate, and the principle that derives from it, whereby the living are obliged to keep the deceased's wishes. The freedom of testation and the obligation to keep the deceased's wishes – two sides of the same coin – the two as one derive from the human dignity, and the personal autonomy derived from the dignity.*

Maintenance out of the estate

An exemption to the principle of the freedom of testation is the right to receive maintenance out of the estate.[16] Section 56 of the Succession Law provides that where the deceased left a spouse, children or parents that are in need of maintenance, shall be entitled to such maintenance, regardless whether the deceased has made a valid will.

Moreover, section 63 of the Succession Law provides a "claw-back" rule and determines that in the event that the estate is insufficient to provide maintenance to all that are entitled to it, the court is authorized to view transfers of assets carried out without proper consideration during the two years period prior to the death of the deceased as part of the estate, except for gifts and donations made in as customary under the circumstances.

Section 57 defines the scope of the right for maintenance out of the estate, and inter alia provides that a child under 18 years of age of the deceased, who is handicapped, or mentally ill, or cognitively disabled is entitled to maintenance.

Chief Justice Shamgar in the case of Levitt[17] clarified that it is insufficient to belong to the class of persons that are entitled to maintenance out of the estate, and that a "need of maintenance" should also be established, and where such need is not properly established, the testator may bequeath his entire estate to another. Chief Justice Shamgar continued and held that such need exists only when the applicant for maintenance cannot properly satisfy his basic needs. According to Shamgar, the wishes of the testator should be enforced only to a certain extent. The limit lies where a first degree relative of the testator becomes an unreasonable burden on the society. The maintenance out of the estate manifests the notion that the existence of a family relationship justifies imposing an obligation of maintenance, in specific instances, upon the estate.

Only a probate order issued in Israel in accordance with the Succession Law is valid. Probate orders issued by foreign authorities are invalid.

Inheritance procedure in Israel

Under the Succession Law, the rights of the heirs in the estate are created only upon the issuance of order with respect to the estate by the competent authority. In circumstances where the deceased left a will, an application should be made for a probate order, and only upon the issuance of the order the will becomes valid and enforceable. It should also be noted that only a probate order issued in Israel in accordance with the Succession Law is regarded as valid, and probate orders issued by foreign authorities are invalid.[18] However, in circumstances where the deceased left a will relating to only a part of his or her estate, or the deceased did not leave a will at all, an application should be made for an inheritance order.[19]

Both an application for a probate order and an application for an Inheritance order are made to the Registrar of Inheritance, and it is authorized to declare the rights of the heirs accordingly.[20] However, is the circumstances described in section 67A of the Succession Law, the Registrar of Inheritance must forward the application to the Family Court. Such circumstances arise, for example, when the application is contested, when the will is defected, or when the Administrator General represents in the application minor. The Family Court is authorized accordingly to issue the relevant order.[21]

Probate procedure in Israel requires that the original will be submitted with the Registrar of Inheritance, except to an oral will. In the absence of an original will, such as when the original has already been submitted in another jurisdiction, a separate application should be made to the court to approve the submission of a copy.[22]

Section 54 of the Inheritance Regulations[23] provides that a copy of any application, including an application for a probate or inheritance order, shall be submitted to the review of the Administrator General, who may, in its discretion, conduct additional inspection of the application and require further information and documents.

Section 17 of the Inheritance Regulations requires that a notice with respect to the application for the inheritance or probate order be published in one daily newspaper and in the formal publication of the State of Israel (Reshumot). The notice includes an invitation to contest the application.

Section 14 of the Inheritance Regulations provides that an application for a probate or inheritance order shall be dismissed, unless notifications are sent with respect thereof as follows:

a) In the instance of an application for an inheritance order – notifications to the heirs under law listed in the application.

b) In the case of an application for a probate order – notifications to the beneficiaries under the will, together with a copy of the will itself. If the beneficiaries under the will do not include children of the deceased or their children, parents of the deceased or their children, or the deceased's spouse, than such notifications should be delivered to the deceased's children and spouse at the time of his death, and if none of whom is alive – to the deceased's parents, and if none of whom is alive – to the deceased's siblings.

As evident from the above, the inheritance procedure in Israel is a complex and cumbersome procedure. It may also be uncomfortable for the deceased's family members due to the requirement to disclose the contents of the will.

THE ISRAELI TRUST

Another possible way to transfer assets is by creating a trust under the Trust Law. [24] The Trust Law defines in section 1 a trust as the duty imposed on a trustee to hold or to otherwise deal with assets under its control for the benefit of another or for some other purpose.

A trust can be created either in accordance with the law, by a contract with the trustee, or by deed of *Hekdesh* (endowment):[25]

a) A Trust that is created in accordance with the law is a relationship that complies with the definition of section 1 that its terms and conditions are determined in legislation, such as the *modus operandi* of an estate executor[26], or a company liquidator.[27]

b) A trust created by a contract is governed by the contracts law,[28] and requires accordingly an agreement between the settlor and the trustee with no specific procedure necessary for its validity.

Once the assets are settled into the trust during the lifetime of the settlor, they are removed from his estate ... provided the trust is irrevocable and was set properly.

c) A Trust created by a deed of *Hekdesh* refers to two types of trust:

- An *inter vivos* trust – such trust must be in writing and signed in the presence of a notary. This Trust becomes operative during the lifetime of the settlor upon transfer of the assets of the trust to the control of the trustee.[29]
- A testamentary trust – such trust must comply with the formal requirements under the Succession Law for executing a will as detailed above.[30] A Testamentary trust will become valid upon issuance of a probate order with respect thereof.[31]

The *inter vivos* Hekdesh is a secret document, contrary to a will, and the only copy the trust deed is deposited with the Notary. The settlor may set the terms and conditions of the trust as he sees fit. Once the assets are settled into the trust during the

lifetime of the settlor, they are removed from his estate, and therefore the need for an inheritance or probate order with respect thereof becomes superfluous, provided the trust is irrevocable and was set properly.

TAX CONSIDERATIONS

There is no gift tax and estate tax in Israel and should a person decide to transfer his or her assets by way of inheritance in accordance with the Succession law, or by way of will, the transfer is would not be considered as a tax event, regardless of the nature of the assets. However, such transfer of assets in Israel may be regarded as a tax event under US law in circumstances where the deceased is a US person.

Should a person decide to transfer his or her assets by way of creating a trust – an inter vivos trust or a testamentary trust – than there may be applicable reporting and tax obligations in accordance with the law for the taxation of trusts from 2006, which was later amended in 2014.[32] Although the transfer of assets to a trustee in a testamentary trust is not considered a tax event, there may be reporting and tax obligation imposed upon the trustee and beneficiaries under the law for the taxation of trusts.

In a situation where a US person owns assets in Israel, or an Israeli resident owns assets in the US, a separate procedure must be executed in each jurisdiction.

In circumstances where a US person owns assets in Israel, or an Israeli resident owns assets in the US, or where a US person or Israeli resident is related to a trust, reporting and tax obligations may be applicable both in Israel and in the US.

Furthermore, it should also be noted that Israel and the US have been parties to a treaty for the avoidance of double taxation since 1975,[33] and Israel is a party to many other such treaties,[34] yet these treaties usually do not regulate estate tax.

CONCLUSION

Inheritance procedure in Israel is complex. In a situation where a US person owns assets in Israel, or an Israeli resident owns assets in the US, a separate procedure must be executed in each jurisdiction. The creation of a trust may provide a good alternative, especially if the person wishes that his or her assets will be managed in accordance with his or her instructions for a relatively long period of time after his death. However, tax implications and possible conflict of laws should be taken into consideration when deciding the best course of action. Given the complexity of such situation, it is highly recommended to consult with professionals, and a fertile cooperation between US and Israeli professional is highly important. ■

ABOUT THE AUTHORS

Dr. Alon Kaplan, LLM (Jerusalem), PhD (Zurich), TEP, practices law in Tel Aviv specializing in Trusts and Estates. Alon is a member of the Israel Bar Association, Frankfurt Bar, and the New York bar. He serves as a member of the international board of the Weizmann Institute, and a member of the board of the Israel-Switzerland Chamber of Commerce. Alon is the co-chairman of the committee on International private law of the Israel Bar Association. He is the General Editor of *Trusts in Prime Jurisdictions* (4th edition, April 2016), the Israel Country Correspondent for Oxford Journals' *Trusts and Trustees*, author of *Trusts in Israel: Development and current practice* (2015 Helbing Lichtenhahn Verlag) and *Trusts and Estate planning in Israel* (Oct. 2016, Juris Publishing).
alon@alonkaplan-law.com

Meytal Liberman, LLB (Bar-Ilan), LLM (Tel Aviv), TEP, was admitted to the Israel Bar in 2013. She advises private clients from Israel and overseas on trusts and estate planning as an Associate Advocate at the law office of Herzog Fox & Neeman, after acquiring expertise in her field of practice as an Associate Advocate at Dr. Alon Kaplan, Advocate & Notary. Meytal has been a member of the Society of Trusts and Estates Practitioners (STEP) since 2015. She holds a Diploma in International Trust Management and is the General Editor and contributor of the book *Trust in Israel: Theory and Practice* by Alon Kaplan, which was published in Hebrew in 2017.
libermanm@hfn.co.il

CONTACT:

Dr. Alon Kaplan, Advocate & Notary
1 King David Boulevard
Tel Aviv 6495301
Israel

Tel +972-3-508-4966
Fax +972-3-508-4969
office@alonkaplan-law.com
www.alonkaplan-law.com

Meytal Liberman, Advocate
Herzog, Fox & Neeman Law Office
Asia House, 4 Weizmann St.
Tel Aviv 6423904
Israel
www.hfn.co.il
libermanm@hfn.com.il

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TRUSTS AND ESTATE PLANNING IN ISRAEL

Dr. Alon Kaplan | Meytal Libermany

Abstract

Israel has long been a 'home' for many international families. The Law of Trust, the Law of Contract, and the Law of Agency together form the legal framework for trusts and estate planning in Israel.

Introduction

Israel is a country of immigration, and its total population as of November 2018 is 8.9 million.[1] Since its establishment in 1948, 3.2 million people have immigrated to Israel, out of which 26,000 have immigrated during 2017. Out of the 2017 new immigrants, 62 per cent immigrated from the former USSR, namely Russia and Ukraine, 12 per cent from France, and 10 per cent from the USA. Most of them settled in Israel's large cities, such as Jerusalem, Tel Aviv, and Haifa, and hold an academic degree.[2] This data demonstrates that there is a growing need for wealth and estate planning in Israel for new immigrants, a majority having a well-established financial background.

In addition to this community of immigrants, there is a growing number of High Net Worth Individuals, who are Israeli residents, that have succeeded in accumulating wealth from high-tech and real estate businesses in Israel and overseas.

Families in the modern era of globalization and the movement of people and assets require adequate planning for the holding of assets, investments, cross-generational transfer of assets, cross-border succession issues, and similar areas.

Trusts under Israeli law

A trust is considered as a legitimate planning instrument for families in Israel that has been in use for many years. The first trust law was legislated in 1924 at the time of the British Mandate (1922–1948) relating to public charities and was based on the common law trust.[3] Private trusts were utilized by Zionist organizations and Jewish families who immigrated to Israel from Europe, the USA, Canada, and South Africa, as these were jurisdictions in which individuals and professionals were familiar with the trust regime. Following the establishment of the state of Israel in 1948, court precedents were established in matters of inheritance, gifts, and trusts.

A trust is considered as a legitimate planning instrument for families in Israel that has been in use for many years

Trusts in Israel today are governed by the Trust Law[4] of 1979. The Israeli Trust Law provides a very

* Dr. Alon Kaplan, TEP, Advocate & Notary, Founder and Manager at *Alon Kaplan, Advocate & Notary*, of 1 King David Boulevard, Tel Aviv 6495301, Israel. Tel: +972-3-5084966; Fax: +972-3-5084969; E-mail: alon@alonkaplan-law.com.

† Meytal Liberman, TEP, Advocate & Notary, Associate Attorney at *Alon Kaplan, Advocate & Notary*, of 1 King David Boulevard, Tel Aviv 6495301, Israel. Tel: +972-3-5084966; Fax: +972-3-5084969; E-mail: meytal@alonkaplan-law.com.

1. Central Bureau of Statistics, see <http://www.cbs.gov.il/reader/?MIval=cw_usr_view_SHTML&ID=629> accessed 28 November 2018.

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4. (1966–1967) 5739-1979, 33 LSI 41 (Isr).

broad definition of a trust. Section 1 of the Law provides:

> A trust is a relationship to any property, by virtue of which a trustee is bound to hold the same or to act in respect thereof in the interest of a beneficiary or for some other purpose.

It therefore follows that the Trust Law is applicable to any relationship that is fiduciary in nature and involves property, and it does not require a transfer of legal title in the trust assets to the trustee.

That the Trust Law is applicable to any relationship that is fiduciary in nature and involves property

The Trust Law also provides in section 2 how such relationship can be created and provides that: 'A trust is created by law, by a contract with a trustee or by an instrument of *hekdesh*':

1. A trust created by law is a relationship complying with the terms of section 1 mentioned above, and which is also regulated legislatively, as in the cases of estate executors and company liquidators.
2. A trust created by contract requires an agreement between the settlor and the trustee with no specific procedure necessary for binding the parties legally. Such trust is subject to the Trust Law and to the Israeli Contracts Law.
3. A trust created by an instrument of *hekdesh* (also known as 'endowment') refers to two types of trusts: an *inter vivos* trust and a testamentary trust:[5]
   a. An *inter vivos* endowment trust[6] is created upon the execution of a trust deed before an Israeli notary, and it becomes operative upon the transfer of the assets of the settlor to the control of the trustee.
   b. A testamentary trust[7] is created by way of probate proceedings under the Succession Law.[8] Accordingly, a testamentary trust must comply with the formal requirements under the Succession Law for executing a will. These include signing the will in the presence of two witnesses or an Israeli notary. A testamentary trust becomes valid only upon the issuance of a probate order with respect thereof.

The Trust Law also provides in section 2 how such relationship can be created and provides that: 'A trust is created by law, by a contract with a trustee or by an instrument of hekdesh*'*

The Israeli Trust Law allows the creation of both charitable and private trusts, and does not set a perpetuity period for trusts.

In certain cases, Israeli practitioners chose to create trusts for their clients under foreign trust regimes. Such have been recognized as valid trust structures by the Israeli courts and the Israeli Tax Authority.

The use of real estate trusts for investments and holding of property in Israel

Real estate trusts (RETs) have been used in Israel for many years and for various purposes, including for residence and commercial transactions. A RET is a legal structure under which real estate is purchased by a trustee or is transferred to a trustee, and the trustee acts as a nominee or 'Bare Trustee' for an identifiable beneficiary. Israeli law, namely the Real Property Taxation Law[9] and the Trust Law, provides the legal structure for such an RET. These laws allow the registration of the trustee as the legal owner of the

5. ibid, s 17.
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8. (1964–1965) (Isr) 5725-1965, 19 LSI 215
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real estate while the beneficiary of the real estate is considered as the real owner, like a beneficiary of a bare trust in the common law. For tax reasons, a RET must have a named beneficiary and cannot be a discretionary trust.

Under the Real Property Taxation Law, two main taxes are imposed upon a sale of real estate: A Capital Gains Tax on the seller and a Purchase Tax on the purchaser. The Capital Gains Tax is calculated in accordance with the appreciation in the value of the property since its purchase, the time period during which the seller owned the property, and the existence of other real properties owned by the seller. The Purchase Tax (similar to a stamp duty in other countries) is computed as a certain percentage of the purchase price. This percentage is calculated in accordance with other real properties owned by the purchaser.

Conclusion

Immigration to Israel over the years has brought with it diverse population from various countries in the world that requires the special benefits of trusts, tax, estate, and succession planning. It is highly recommended to consult with experts in the field.

Recent legal enactments in the fields of due diligence procedures, Anti-Money Laundering regulations, exchange of information, FATCA, and CRS, oblige professionals to pay special attention when providing such consultations and services.

When considering estate planning in Israel, one should be aware of the importance of inheritance issues, personal and real estate taxation, and the possible conflict between the Trust Law and the Succession Law.

For a more elaborate discussion on these issues, see *Trusts in Prime Jurisdictions*[10] and *Trusts and Estate Planning in Israel.*[11]

Book reviews

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TRUSTS & ESTATE PLANNING IN ISRAEL

ALON KAPLAN

BOOK REVIEW BY ZIVA ROBERTSON

Trusts & Estate Planning in Israel by A. Kaplan

Trusts have formed part of English law for many centuries. They first arose in feudal times, when a landowner called by his lord to go to the battlefield entrusted his property to a relative, only to discover on his return that his land had been appropriated by the relative for himself. The doctrine of equity intervened to protect the interest of the soldier by holding that although the title to the land - the legal interest - was held by the relative, the beneficial owner entitled to enjoy the asset was the soldier. And we never looked back.

With the growth of the British empire - including the Mandate over Palestine before the Israeli war of independence - the trust concept travelled far and wide, and continued to grow and evolve so as to provide solutions for very modern problems. While retaining many of its original features, the concept has developed a little differently in different jurisdictions. Layer upon layer, it has become an instrument in wealth and estate planning.

Which is why many trust practitioners, in a moment of honest reflection, will admit that Trust Law was their pet hate as students. It is fluid but difficult. It is modern, yet archaic. It is clear in parts, but obscure in others. And there is such a lot of it, that you could spend years studying it and practising it before you can say with confidence that you truly understand it.

Few people take the trouble. Alon Kaplan is one. With years of practice and teaching in this area, Kaplan founded the first Israeli branch of STEP, the Society of Trusts and Estates Practitioners, which now numbers 150 members in Israel (and 20,000 worldwide). His book, Trusts & Estate Planning in Israel, is the fruit of his PHD thesis and research in this complex legal field. In Israel, like elsewhere, trusts constitute a flexible tool for succession planning, tax structuring, charitable giving, an umbrella for corporate holdings and many other uses. Kaplan navigates these complexities with clarity, elegance and erudition and explains the interplay between civil and Rabbinical law; trusts according to Islamic law; the creation of trusts by deeds and by contracts; their uses as testamentary instruments; and, significantly in the current climate, their tax treatment in Israeli law.

As trusts and their uses continue to evolve, it is important for private client and tax practitioners in Israel to understand them, their various uses, their tax treatment, their advantages and their limits. Few Israeli practitioners understand them as thoroughly as Kaplan, and few (if any) modern books have been written about trust law in Israel with the same depth and attention to detail as Kaplan's book. This book should take pride of place on the bookshelf of any Israeli private client practitioner who strives for a better understanding of this area of the law.

Ziva Robertson, Partner. McDermott Will & Emery UK LLP

JUST PUBLISHED!

TRUSTS & ESTATE PLANNING IN ISRAEL

Trusts & Estate Planning in Israel

US $95.00 ISBN: 978-1-57823-495-0
1 Hardcover Volume. Published October 2016.

Trusts & Estate Planning in Israel traces the trust concept in Israel from its historical roots, from early 20th century use for private and commercial purposes during the British Mandate, to the current use of Israeli trust law. The creation of trusts by law, by contract, by Hekdesh deed (an Israel trust) and testamentary trusts are analysed.

Estate planning using the Hekdesh or testamentary trust and its tax implications, public and charitable trusts are also explored. Special attention is given to trust protectors, privilege and confidentiality, court jurisdiction, arbitration, taxation and foreign trust recognition.

Author: Dr. Alon Kaplan was admitted to the Israel Bar in 1970. He is also licensed to practice law in New York and Germany. He practices trust law in Tel Aviv, and lectured on that subject at Tel Aviv University. Dr. Kaplan is the founder and president of the Israel Branch of the Society of Trust and Estate Practitioners, and is today a Lecturer and Academic Coordinator of the STEP Diploma Course in Israel. He is an Academician of the International Academy of Estate and Trust Law, and ACTEC-The American College of Trust and Estate Counsel- and has advised the Israel Tax Authority on trust legislation.

Dr. Kaplan is general editor of *Trusts in Prime Jurisdictions 4th edition* (2016), and was also editor of the books *Israel Law and Business Guide* and, *Israeli Business Law: An Essential Guide*.

Advance Praise:

"The book will aid all practitioners concerned with Israeli Trusts and trusts taxation. It gathers in one place rich and varied information on a multitude of topics relevant to the informed and careful use of trusts in Israel, as well as to the use outside Israel of trusts with Israeli connections."

– ***Adam Hofri-Winogradow,*** Step Journal. Associate Professor in the Faculty of Law at the Hebrew University of Jerusalem.

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TRUSTS IN ISRAEL THEORY AND PRACTICE

DR. ALON KAPLAN | EDITING BY MEYTAL LIBERMAN

INTRODUCTION TO ALON'S BOOK **TRUSTS IN ISRAEL, THEORY AND PRACTICE**

Published december 2017 by halachot publishing | israel

By Daniel Paserman, Advocate and CPA- Director and Secretary of STEP Israel

The Israeli Trust Law was enacted in 1979, but in the early years the use of trusts in Israel was not extensive. The turning point was only two decades later with the establishment of the Israeli branch of STEP International in 1998. The establishment of STEP gave the field of trusts considerable exposure among the professionals in the field of private clients and the use of trusts.

The founder and drive behind the Israeli branch of STEP was attorney Alon Kaplan. Alon was in fact one of the fathers of this field in Israel and he was largely responsible for making trusts one of the most useful tools in the planning of transfer of estate between generations. Alon led the way and became a guru in all matters pertaining to trusts, not only in Israel, but in many other countries as well. He has been a leading figure in the STEP Worldwide organization for many years.

About 10 years later, the law of taxation of trusts was enacted under Israeli law, and Alon was a member of a committee that accompanied the legislation process. Regulating the taxation of trusts made it even more popular, and today it serves different clients for various uses.

After many years of lecturing all over the world, writing and editing books and articles in English, and after completing his doctoral dissertation at the University of Zurich, Alon wrote a book on trusts in Israel in Hebrew. The book is a comprehensive guide combining theory and practice with regard to trusts in particular, family planning and transfer of estate between generations. The book is a mandatary item in the library of anyone dealing with private clients

The book includes a broad historical overview of the trust institution, and an exhaustive explanation of the basic concepts in the field. It deals with the relationship between the laws of trusteeship and the law of inheritance, contract law, statutory law and even deals with religious trusts (like the Waqf in Islam, and the Jewish Hekdesh. Another important and useful part of the book deals with the taxation of trusts in Israel, a major issue for all those involved in the field.

This year, the Israeli branch of STEP celebrates twenty years of activity, and the person who led the organization throughout the entire period is Dr. Alon Kaplan. In this respect, Alon's publication of the book in Hebrew is a kind of closure and a significant milestone in a long and glorious legal career. We all hope that he will continue to contribute to the organization for many more years energetically and with determination which characterizes him.

Well done!

Adv. Daniel Paserman

Head of the Tax Department | Gornitzky & Co. | Secretary of STEP Israel

נאמנות בישראל: הלכה למעשה

ד"ר אלון קפלן | עריכה על-ידי מיטל ליברמן

הקדמה לספרו של אלון נאמנות בישראל: הלכה למעשה

פורסם בדצמבר 2017 | הוצאת הלכות | ישראל

מאת דניאל פסרמן, עורך- דין ורואה חשבון - מנהל ומזכיר, ארגון STEP ישראל

חוק הנאמנות הישראלי נחקק בשנת 1979, אך בשנים הראשונות השימוש בנאמנויות בישראל לא רווח. היה זה רק כעבור כשני עשורים שחל המפנה, עם היווסדו של הסניף הישראלי של ארגון STEP העולמי בשנת 1998. הקמת הארגון הקנתה לתחום הנאמנויות חשיפה משמעותית בקרב קהל אנשי המקצוע בתחום הלקוחות הפרטיים, והשימוש במכשיר גבר.

המייסד והרוח החיה מאחורי הסניף הישראלי של STEP היה עורך דין אלון קפלן. אלון היה למעשה מאבות התחום בישראל, ומי שתרם תרומה אדירה להפיכתו לאחד מהכלים השימושיים ביותר בתכנון העברה בין דורית והסדרה משפחתית. אלון פרץ דרך בהקשר זה, והפך לגורו בכל הקשור לנאמנויות, לא רק בישראל אלא במדינות רבות נוספות. שמו הולך לפניו בקרב כל העוסקים בתחום בעולם, והוא היה פעיל דומיננטי בארגון STEP העולמי במשך שנים רבות.

כעבור כעשור, כאשר נחקק פרק מיסוי הנאמנויות בדין הישראלי, אלון נטל חלק בועדה שישבה על המדוכה וליווה את הליכי החקיקה. הסדרת מיסוי הנאמנויות הפכה את המכשיר לנפוץ עוד יותר, וכיום הוא משמש קהלים רבים לשימושים שונים.

לאחר שנים ארוכות של הרצאות בכל רחבי העולם וכתיבה ועריכה של ספרים ומאמרים בשפה האנגלית, ולאחר שהשלים את עבודת הדוקטורט שלו באוניברסיטת צירוך, התפנה אלון לכתוב ספר בנושא נאמנויות בישראל בשפה העברית. הספר מהווה מדריך מקיף המשלב תיאוריה ופרקטיקה בכל הקשור לנאמנויות בפרט ולתכנון משפחתי והעברה בין דורית בכלל, והוא פריט חובה בארון הספרים של כל מי שעוסק בתחום הלקוחות הפרטיים.

הספר כולל סקירה היסטורית רחבה של מוסד הנאמנות, וכולל הסבר ממצה אודות מושגי יסוד בתחום. הספר מתייחס ליחס בין דיני הנאמנויות לבין דיני הירושה, דיני החוזים, חוק השליחות ועוד, ואף עוסק בנאמנות הדתית (הן של הווקף המוסלמי והן ההקדש היהודי). חלק חשוב ושימושי אחר בספר דן במיסוי נאמנויות בישראל, נושא מהותי לכל העוסקים בתחום.

השנה חוגג הסניף הישראלי של STEP עשרים שנות פעילות, כאשר מי שהוביל את הארגון בגאון לאורך כל התקופה הוא ד"ר אלון קפלן. מבחינה זו פרסום ספרו של אלון בעברית מהווה מעין סגירת מעגל וציון דרך משמעותי בקריירה משפטית ארוכה ומפוארת. כולנו תקווה שאלון ימשיך להוביל ולתרום לארגון עוד שנים רבות, בנחרצות, בנחישות ובפעלתנות שכל כך מאפיינים אותו.

כה לחי!

עו"ד, רו"ח דניאל פסרמן

ראש תחום מסים במשרד גורניצ'קי ושות', מזכיר ארגון STEP ישראל

הוצאת הלכות

גאה להציג ספר חדש:

נאמנות בישראל: הלכה למעשה

מאת: ד"ר אלון קפלן (עו"ד ונוטריון, TEP) **ובעריכת מיטל ליברמן** (עו"ד, TEP)

- המחבר, ד"ר אלון קפלן, עו"ד, מציג בפני הקורא תמונה מקיפה של מוסד הנאמנות, המספקת תובנות לגבי אופן השימוש במוסד זה היום לאור הרקע ההיסטורי, התרבותי והמשפטי שלו. הספר מיועד הן לאנשי מקצוע והן לקהל הרחב. אלה גם אלה בספר מדריך מעשי וחשוב אשר יאפשר להם להכיר, בין היתר, טרמינולוגיה בסיסית ומושגי יסוד בתחום הנאמנות, הדרכים השונות בהן ניתן להקים נאמנות בישראל (על פי חוק, על פי חוזה ועל פי כתב הקדש), נאמנות וירושה, נאמנות ושליחות, מיסוי נאמנויות, נאמנויות לצרכי צדקה, נאמנויות להחזקת נדל"ן, הפרוטקטור ומעמדו בנאמנות, חיסיון וסודיות בנאמנות, נאמנות ובוררות, ה"פמילי אופיס", ו"הנאמנות הבינלאומית" - הנאמנות ומשפט בינלאומי פרטי.

- ד"ר אלון קפלן הוא בוגר האוניברסיטה העברית לתואר ראשון ושני במשפטים וד"ר למשפטים מאוניברסיטת צירך, הוא חבר לשכות עורכי דין בישראל בפרנקפורט ובניו יורק, וכן הוא הנשיא והמייסד של אגודת הנאמנים "סטפ ישראל", המהווה חלק מארגון הבינלאומי STEP. הספר מבוסס על עבודת המחקר של המחבר שהוכנה במסגרת לימודי הדוקטורט שלו באוניברסיטת צירך, והוא מצטרף למחקרים וספרים נוספים שנכתבו בהשתתפותו של המחבר בשפה האנגלית.

- מיטל ליברמן, עו"ד, עורכת הספר ומחברת אורחת, הוסמכה כחברה בלשכת עורכי הדין בישראל בשנת 2013. היא בוגרת הפקולטה למשפטים של אוניברסיטת בר-אילן משנת 2012 (LLB), ומוסמכת הפקולטה למשפטים של אוניברסיטת תל אביב משנת 2015(LLM). כמו כן, מיטל חברה בארגון הבינלאומי STEP, וזאת לאחר שהשלימה שנתיים של לימודים והוענקה לה דיפלומה בניהול נאמנויות בינלאומיות.

מחיר הספר: 350 ש"ח (לא כולל מע"מ) **בלבד**

לפרטים נוספים והזמנות:

הוצאת הלכות בע"מ רחוב ז' בחשוון 6, רמת השרון 4722006

טלפון: 03-5490545 דוא"ל dror@halachot.net פקס 03-5492687

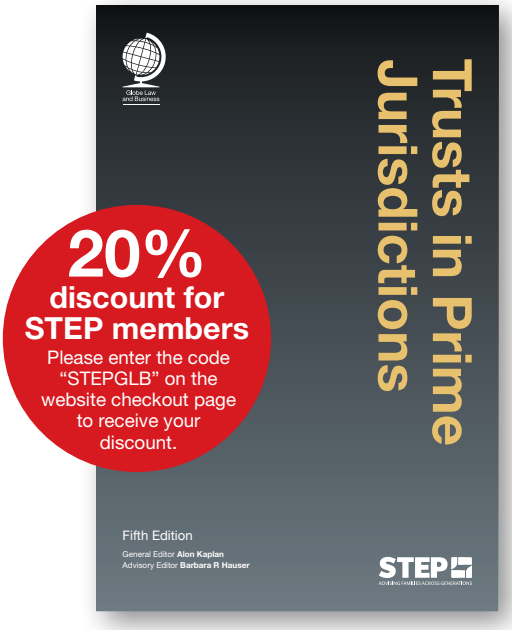
TRUSTS IN PRIME JURISDICTIONS

FIFTH EDITION

GENERAL EDITOR: DR. ALON KAPLAN | CONSULTING EDITOR: BARBARA R HAUSER

New Edition Published by Globe Law Business

Co-published in association with STEP



As globalisation continues apace, opportunities are arising for practitioners in trust jurisdictions that did not exist a few years ago. Growth continues in the traditional trust jurisdictions, especially in civil law jurisdictions where trusts and foundations have previously been used in a limited capacity. In parallel, the concept of the foundation has been adopted by several common law jurisdictions that, until recently, have relied exclusively on trusts – notably Jersey and Gibraltar.

The fifth edition of 'Trusts in Prime Jurisdictions' has been fully updated and features a number of new chapters on topics including trust and real estate trust in Israel, what it means to be a fiduciary family office, the role of the trust protector, Islamic (Waqf) trusts, and trusts in relation to divorce. In addition, new for this edition are chapters on Germany and Bermuda.

Produced in association with STEP, this edition provides a solid grounding in the use of trusts in a wide range of important jurisdictions and contexts. It also examines related topics such as trust taxation, anti-money laundering laws, the OECD initiative, CRS, exchange of information, transparency of registers and the notion that countries are entitled to collect taxes beyond their borders, among others.

Written by leading professionals and recognised academics, many of whom are STEP members, the fifth edition of 'Trusts in Prime Jurisdictions' will be an essential resource for all lawyers, trust practitioners and banking professionals working in the field.

BOOK REVIEW

"A treasure of information including updated legislations are at the reader's disposal, thus making this book a must-have and not just to be seen."

Dr Angelo Venardos TEP, Heritage Trust Group

For full details, including free sample chapter, go to:
www.globelawandbusiness.com/books/trusts-in-prime-jurisdictions-fifth-edition

Book Review - Trusts in Prime Jurisdictions, Fourth Edition

Dr Angelo Venardos, August 2016

Dr Angelo Venardos TEP is Founder and CEO at the Heritage Trust Group, Singapore.

By Dr Alon Kaplan
Reviewed by Dr Angelo Venardos

This book, an addition to the series written by practitioners for practitioners, is testament to Dr Alon Kaplan's focus on detail. It covers 23 jurisdictions – from Australia to the Bahamas, and Gibraltar to Singapore – and identifies issues both for financial advisors in today's ever-complex and challenging world, and for those who wish to venture for the first time into this line of advisory business.

Focusing on the vital issues in the industry, from data and information leaks to tax and compliance laws, *Trusts in Prime Jurisdictions* not only provides a bird's-eye view of what could have happened, but also gives an overview of the liabilities and risk issues in the financial world today. From a trustee's perspective, it is well received due to the breadth of information on subjects from the *Hague Convention on the Law Applicable to Trusts and on their Recognition, 1985* (the Hague Convention) to the Islamic concept of *waqf*.

The preface, by Geoffrey Shindler, highlights phases in the duty of trust practitioners and points out the chapters that have been updated. In the foreword, Dr Kaplan and Barbara R Hauser note events that have had a huge impact on the financial world, from terrorist attacks to the global financial crisis and countermeasures against 'tax haven' jurisdictions.

David Harvey's introduction of STEP elucidates how the Society not only focuses on training and development through the sharing of knowledge and resources, but also advocates the philanthropic way of advising through cross-border working environments.

Part one explores the Hague Convention and the *Uniform Trust Code*. The first chapter, by Hein Kötz, looks at the Hague Convention and details issues with the acquisition of land by widows and their children, and the competence of settlors. This chapter is a Swiss Army knife for practitioners who wish to explore the Hague Convention. It also explains the *inter vivos* trust and how long it can last, and the exemptions of the rule against perpetuities.

Part two assesses the different changes in each jurisdiction. The Singapore section shows how the regulation of trustees works and how this defines the 'trust business' in Singapore.

Part three covers special topics. In the section on the trust protector, the writer reinforces the role's importance and the different powers that can be granted to the protector. Judge Mohammad Abu Obied provides a thorough description on the *waqf* as a form of Islamic trust. The chapter on the English tax treatment of offshore trusts shows how, over the past few years, successive UK governments have enacted legislation with the purpose of attacking trusts.

A chapter on trusts and money laundering, written by Yehuda Shaffer, a Deputy State Attorney in Israel, provides background on anti-money laundering and counter-terrorist financing standards. How the Financial Action Task Force examines contextual information is also explained, from law enforcement to different arrangements of legal persons in each jurisdiction. Also reiterated is how the OECD initiatives have a developing impact on trust management with respect to the constant changes of laws for improved transparency.

Hauser gives attention to international family governance, contributing her knowledge of family governance and family trusts.

Lastly, Filippo Noseda discusses 'trusts under attack – privacy, transparency and conflict with the taxman'. He covers structuring in light of the US *Foreign Account Tax Compliance Act* and Common Reporting Standard, and the impact on the bottom line of the Edward Snowden revelations.

Trusts in Prime Jurisdictions offers a vast amount of practical, as well as theoretical, knowledge. It covers a lot of ground and provides priceless practitioner experience that would be of great assistance to junior colleagues. A treasure of information is at the reader's disposal, making this book a must-have, and not just for trust practitioners.

Jaffa Port

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Design by Ayala Eylath

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Address | כתובת

1 King David Boulevard, Tel Aviv 6495301 Israel

שדרות דוד המלך 1, תל אביב 6495301

Direct | ישיר

Tel +972 3 508 4966 טל. | Fax +972 3 508 4969 פקס

Office | משרד

Tel +972 3 695 4463 טל. | Fax +972 3 695 5575 פקס

office@alonkaplan-law.com | www.alonkaplan-law.com