

Cross-Border Estate Planning—The Israeli Angle

By Alon Kaplan and Lyat Eyal

Preamble

Cross-border estate planning is challenging in every jurisdiction and raises many legal issues. Adding to the uncertainties is the EU Succession Regulation effective as of August 17, 2015, creating additional planning hurdles. This article discusses a number of the main points to consider from the Israeli perspective. It is not intended to cover all aspects of planning and/or implementation.¹

Israel is a country of immigration and emigration. In the global environment, individuals may reside in one country with their family members while maintaining business activities in other jurisdictions, thereby owning assets in a number of countries. Individuals also maintain multiple residences and domiciles (where applicable) or jurisdictions of residence where they spend time. Some high net worth families may also own assets in a number of jurisdictions irrespective of personal status in these countries. These are just a few examples of instances requiring careful consideration of the succession rules in each jurisdiction and planning accordingly before it is too late. The Succession Law 1965 and the Succession Regulations 1998 govern succession matters in Israel. Cross-border matters may require the review of additional legislation such as marital laws and tax laws as well as court precedents.

Probate Proceedings

Israel does not recognize foreign probate court orders. A petition for an inheritance or probate order, as the case may be, must be filed with the competent authority in Israel to obtain authority to distribute estate assets located in Israel. The procedure is required regardless of the place of residence, domicile, citizenship of the deceased or the situs of other assets of the estate. The procedure involves public notices, requires original duly authenticated documentation, legal opinions, and takes approximately one year to complete.

Jurisdiction

The Succession Law² provides that an Israeli court has jurisdiction to hear matters involving the inheritance of an individual residing in Israel at the time of his death or an individual who owned assets in Israel.

For the purpose of the Succession Law, one's residence is defined as the place of the individual's

center of life. While the center of life is not defined in the Succession Law, it is defined by the Tax Ordinance 1961. Israeli law creates a rebuttable presumption that an individual is an Israeli resident if he is present in Israel for 183 days per year or 30 days in the current tax year and 425 days cumulatively during the previous two years. Additionally, an individual is an Israeli resident if his "center of life" is deemed to be in Israel. The center of life is a factual determination taking into account facts and circumstances such as: (i) the place of the individual's permanent home; (ii) the place of residence of family members; (iii) the individual's place of business or his place of employment; (iv) the individual's place of economic and social interests and activities; (v) the place in which the individual is active in various organizations. It has been established that one's center of life is not determined by the individual's intention at any given time but rather the place to which the individual has the most factual ties.³

The case of *Mastora Kahana v. Meir Kahana*⁴ presented complicated familial and multi-jurisdictional issues. There, the decedent had immigrated to Israel from France in 1962. The decedent died in Israel in 1979. The decedent had been married 7 times and fathered 27 children. He owned assets in Israel and the then-current wife and their mutual children resided in Israel. He was also survived by family members in France. Decedent's Last Will and Testament bequeathed all assets to his then current wife, Mastora, who submitted the Will to probate in Israel. One of Decedent's sons objected to the probate proceedings in Israel on the grounds that the Israeli court did not have jurisdiction over the estate's assets in France. The Israeli Court ruled that once Section 136 of the Succession Law grants Israeli courts with jurisdiction over probate matters, such jurisdiction extends to the worldwide estate, and is not limited to assets located in Israel. Nonetheless, the governing law to be followed by the Israeli court may be foreign law, as detailed below.

Governing Law

As a general rule, Israeli Law provides that an estate is subject to the laws of the jurisdiction in which a testator resides at the time of the testator's death.⁵ Unlike laws in other jurisdictions, the Succession Law does not impose forced heirship rules. As stated above, residence under Section 137 of the Succession Laws is determined by the "center of life" test de-

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