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Key Takeaways from 'Estate Planning to Avoid Family Dispute' Webinar

Alfred Ip (Partner of Hugill & Ip) and Kerby Lau (Barrister-at-law of Des Voeux Chambers), wills and probate specialists, spoke at the LexisNexis Knowledge Sharing webinar on 27 August 2020, in which they discussed the importance of proper estate planning and the probate process in Hong Kong while also highlighting some of the most common pitfalls and how to avoid them.

1. The Importance of Estate Planning

A common misconception that most people encountered is that a deceased's spouse would automatically inherit the entire wealth, which is not the case. **According to the intestacy rules in Hong Kong, the surviving spouse is entitled to a sum of \$500,000 from the residuary estate and the rest is split among the deceased's children in equal shares.** Under Hong Kong laws, it is required to appoint two administrators to look after the wealth of the surviving young beneficiaries. Complexity arises when the deceased's spouse would have to find another person to administer the estate on behalf of the young beneficiaries and when the deceased spouse does not have a good relationship with the administrators. Further, the production of a lot of public documents in order to prove a marriage and child relationship may delay the whole probate process. So, when dealing with such complexities, **it is only prudent to appoint a professional administrator to properly administer the estate.**

2. The Essentials of a Proper Probate Process

The key is that the probate process very much depends on whether there is a will or not. **A properly drafted will and a proper probate process in place would certainly resolve these complexities including spending millions of dollars on the litigation.** Accordingly, there are possible consequences of having improper and/or no estate planning. In such circumstances, the simplest practice is to consult a lawyer as well.

3. The Key Rule & Legislations

In light of this, certain legislations and rules apply. The Probate and Administration Ordinance (Cap 10) (“PAO”) is concerned with the post-death situation and governs the granting of probates and letters of administration and the general administration of the estate. The essential subsidiary legislation, Non-Contentious Probate Rules (Cap 10A) operates in conjunction with this ordinance. Other statutes relevant concerning wills and testamentary succession and the law relating to intestacies are the Wills Ordinance (Cap 30) and the Intestates’ Estates Ordinance (Cap 73) respectively.

4. A Notable Case

A notable case, *Re Estate of Au Kong Tim* [2018] 5 HKC 185, also highlighted the importance of a solicitor’s role in the preparation and execution of wills. Accordingly, **even if a deceased or a testator was not suffered by any mental disease or illness, the will produced by the solicitors may still be invalid if there was insufficient inquiries and no proper steps and precautions taken in preparing the will.** The Court of Appeal laid out the key factors of a non-exhaustive checklist and the “Golden Rule” for legal practitioners to follow in their practice.

Other resources on this topic:

-  **Halsbury's Laws of Hong Kong – Family Law; Wills, Probate, Administration and Succession**
-  **The Annotated Ordinances of Hong Kong – Probate and Administration Ordinance (Cap 10); Intestates' Estates Ordinance (Cap 73)**
-  **Hong Kong Encyclopaedia of Forms and Precedents – Family; Wills and Probate**
-  **Lexis Advance® Hong Kong Practical Guidance – Private Client**
-  **Hotten and Ho on Family and Divorce Law in Hong Kong**
-  **Butterworths Hong Kong Family Law Handbook – Third Edition**
-  **Hong Kong Family Court Practice – Third Edition**

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