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Trusts and Estates in Israel

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 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 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

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

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 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. ■

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