ALON KAPLAN

ADVOCATE & NOTARY

A SPECIAL COLLECTION OF ARTICLES ON TRUSTS & ESTATE

2017 - 2018

STEP ISRAEL

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ISRAEL

ALON KAPLAN
ADVOCATE & NOTARY

ISRAEL
TRUST & ESTATE PLANNING

A COLLECTION OF ARTICLES

INTRODUCTION

The articles compiled in this booklet are for presentation to the participants of the STEP Israel conference 2018.

This year marks 20 years since the founding of the STEP Israel branch and 70 years since the State of Israel's independence.

The 20 years existence of the STEP Israel branch marks dramatic developments in the law and practice of trusts, succession and personal taxation which form the legal base for estate planning in Israel.

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 eight million in 2018, integrating elements of continental and common law legal systems.

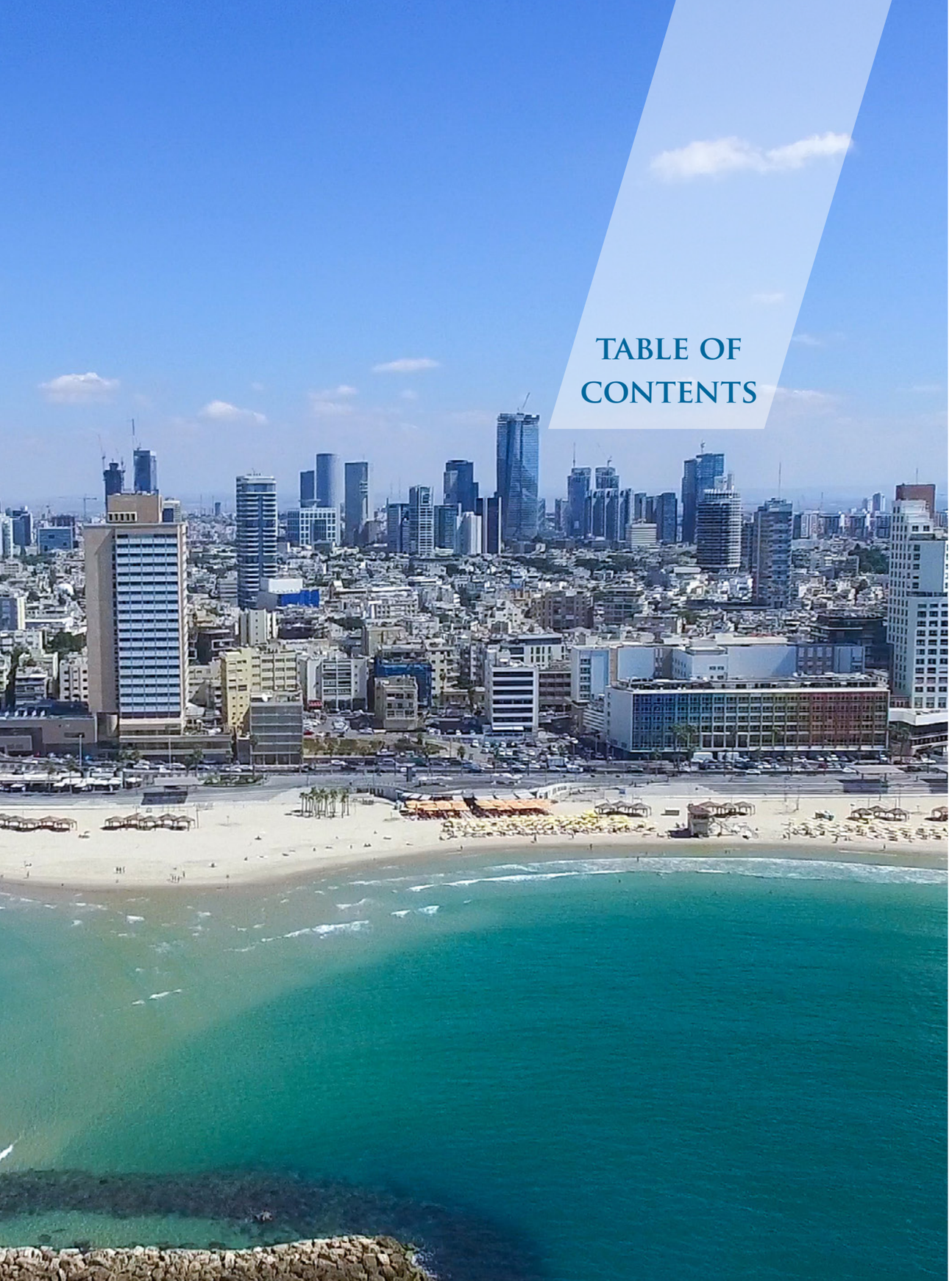
The articles represent a small portion of the vast legal writing on this subject.

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

Alon Kaplan, June 2018

Contributors & Editors

Dr. Alon Kaplan, Meytal Liberman, Lyat Eyal, Alan Aronson, Orna Ronkin-Noor, Ori Ephraim
Dana Levy, Ellen Goldman



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"שִׁיר הַמַּעֲלוֹת בְּשׁוּב ה' אֶת שִׁיבַת צִיּוֹן הָיִינוּ כְּחֹלְמִים" (תהילים קכו, א) -
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אָמַר לָהֶם: "אֲנִי חוֹנִי הַמְּעַגֵּל" – וְלֹא הֶאֱמִינוּ לוֹ.
הָלַךְ לְבֵית הַמִּדְרָשׁ,
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אָמַר רָבָא! זֶה שֶׁאוֹמְרִין הַבְּרִיּוֹת: "אוֹ חַבְרוּתָא אוֹ מִיתוּתָא".

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

ESTATE PLANNING FROM THE TALMUD TIME

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 fmous for his ability to successfully pray for rain.

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, Real Estate, Tax, International Transactions and Aircraft Transactions. 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 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

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.

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.

TEAM

Dr. jur. Alon Kaplan Advocate & Notary | LLM (Jerusalem) PhD (Zurich) | 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".

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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.

Meytal Liberman | LLM (Tel Aviv) | TEP

Associate Advocate

Meytal 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 Dr. Alon Kaplan, Advocate & Notary, where she also completed her legal internship.

Meytal earned her LL.B. Degree at Bar Ilan University in 2012, and her LL.M. 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 her Diploma in International Trust Management.

In January 2018, Meytal has been qualified by the Administrator General and the Israel Bar Association to execute Enduring POAs and to provide other related services.

In July 2017, Meytal participated in the Columbia Summer Program in American Law, held in Amsterdam by the University of Amsterdam and Columbia University.

Meytal also takes an active part as a member of the - International Private Law Committee of the Israel Bar Association and the Succession Committee of the Tel Aviv District, of the Israel Bar Association.

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. She has also authored articles in her field of expertise, which were published in publications such as Trusts & Trustees, The International Family Office Journal, and STEP Journal.

ABOUT US

The Law Firm Aronson, Ronkin-Noor, Eyal, was established in 2015 by Alan Aronson, Adv., Orna Ronkin-Noor, Adv. and Lyat Eyal, Adv. who had been colleagues at Alon Kaplan Law Firm for more than ten years. Collectively, they were with Alon Kaplan Law Firm for over twenty years. As Alon Kaplan Law Firm ceased its business activities, Alan, Orna and Lyat established a new firm and are maintaining the level of services, expertise, knowledge, experience and professionalism provided by Alon Kaplan Law Firm.

Aronson, Ronkin-Noor, Eyal Law Firm serves clients from Israel, Europe and the Americas in the areas of private client practice, estate planning, private banking, commercial activities and international taxation in these areas. The firm also has significant expertise in the area of complex real estate transactions, including those involving trust structures.

The Firm advises private and corporate clients, as well as professionals, including lawyers, accountants, financial professionals and trustees, on the transnational management of financial assets, estate planning, business issues and related taxation matters.

The Firm also provides legal services to foreign corporations and entities seeking to set up operations in Israel via subsidiaries or branches, or through contractual arrangements with local entities, including advice on employment law issues which are unique to the Israeli legal system. In addition, the Firm provides Israeli companies and individuals, with legal advice on a wide range of commercial activities overseas. This includes drafting commercial contracts with international companies, setting up legal structures and trusts in foreign jurisdictions and related international tax planning.

Alan, Orna and Lyat continue to maintain their extensive international network of affiliated firms and agents in the U.K., the U.S., Switzerland, Germany, Panama and other jurisdictions in Europe and the Americas. **Contact Information:** www.are-legal.com | 1 King David Blvd., Tel Aviv, Israel | +972-3-695-4463

PRACTICE AREAS

Private Client Practice

The private client practice of Aronson, Ronkin-Noor, Eyal Law Firm focuses on providing services to individuals, families or legal structures with respect to financial planning, estate planning, the structuring of family and business assets for the purpose of the transfer of assets to future generations, wealth preservation and transition between generations. We also advise professionals, including attorneys, accountants, trustees, family offices representing clients on similar matters.

Trusts

Aronson, Ronkin-Noor, Eyal Law Firm has expertise in advising on the establishment and management of trust structures in Israel and abroad and the taxation of trusts in Israel. We advise

in this evolving and developing area on foreign and Israeli trusts for Israeli and overseas clients. The familiarity and involvement of Israeli residents with the use of trust structures in their business and estate planning is growing. Trusts are structured to meet the client's particular needs, including estate planning, business transactions, asset protection and forced heirship issues. For the purposes of certain services in this area, we cooperate with our international network of affiliated firms and agents globally. The firm also provides legal advice with respect to the taxation of trusts in Israel as this legislation has recently changed with great impact on non residents.

International Banking

Aronson, Ronkin-Noor, Eyal Law Firm provides assistance with private banking services both to individuals and structures in connection with wealth preservation, financial and estate planning.

Estates

Aronson, Ronkin-Noor, Eyal Law Firm advises on all matters related to estates, probate and inheritance matters. This includes lifetime estate planning and drafting of wills, as well as advice on succession legislation in Israel and private international laws applicable to cross border matters. Further, we provide services relating to probate and inheritance procedures, administration of estates and cross-border inheritance matters.

Pre-Immigration Planning

Aronson, Ronkin-Noor, Eyal Law Firm advises non residents on immigration issues as well as Israelis returning to reside in Israel on unique legislation in this area in Israel

Real Property

Aronson, Ronkin-Noor, Eyal Law Firm advises on all aspects of real property transactions in Israel. The firm inspects the legal status of the property prior to the transaction, drafts agreements in accordance with the transaction and undertakes all legal activities involved in the negotiation and implementation of the agreements through their completion. The firm can act in complex real property transactions, including those involving trust structures, and also attends to zoning and town planning proceedings before the relevant authorities.

Company Law/Commercial Transactions/Employment Law

Aronson, Ronkin-Noor, Eyal Law Firm provides a full range of services for Israeli and foreign companies operating in Israel. This includes the establishment and incorporation of companies, drafting of shareholders' agreements and articles of association, as well as ongoing advice for the company's business activities, including employment issues. In addition, we specialize, in cooperation with our international network of affiliated firms and agents globally, in incorporation of companies in foreign jurisdictions, in reliance on double tax treaties, in particular Switzerland, United Kingdom, United States, Germany, Gibraltar, Luxemburg, Cyprus, Panama, Belize, and the British Virgin Islands.

TEAM

Alan Aronson | B.A.| LL.B. | TEP

Partner

Practice Area

Private Client Practice | Trusts | International Banking | Estates | Company Law/Commercial Transactions/Employment Law

Alan Aronson represents a wide range of private and commercial clients' in general commercial matters with a focus on international and Israeli legal structuring in the fields of trusts, estates, wills, private banking, international taxation and real estate.

Alan was admitted as a South African lawyer in 1989 after serving the clerkship and as an associate attorney at Cranko Karp in Johannesburg.

After making Aliyah, he was admitted to the Israel Bar in 1993, and served clerkship and thereafter as a lawyer at J. Weinroth & Co., in Tel Aviv, focusing on international and comparative law.

Alan has been part of Alon Kaplan Law Firm from 1993 until 2014.

Alan was a member of the South African Bar from 1989 to 1991. He is a member of the Society of Trust and Estate Practitioners (STEP) and a member of the International Tax Specialist Group (ITSG). In 2008 Alan was admitted as a notary.

Alan has lectured to business and legal audiences in Israel and overseas, in the framework of STEP and other organizations.

He is also a participant in numerous seminars in Israel and worldwide in the framework of STEP and other organizations.

Orna Ronkin-Noor | B.A.| LL.B. | TEP

Partner

Practice Area

Trusts | Estates | Real Property | Company Law/Commercial Transactions/Employment Law

Orna Ronkin-Noor provides comprehensive legal advice to high net worth private clients and families, Israelis and foreign residents. She assists these clients in personal and business matters in order to provide immediate and ongoing legal advice and advises in the areas of real estate, corporate, labor law, wills, probate, and in all aspects of setting up and operating trusts in Israel and abroad. Orna also advises multi-national corporations in the areas of construction and manpower. Orna works on a regular basis with foreign professionals in international matters.

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Orna also provides legal advice and assistance to Israeli and foreign corporations beginning with setting up entities (new company, branch or subsidiary) and then ongoing legal advice on a wide variety of commercial matters including corporate, contracts, real estate and labor law.

Orna provides legal advice in the setting up of legal structures in Israel and abroad: These include trusts for foreign residents and Israeli residents, land tax trusts, drafting, negotiating and signing real estate transactions, rental contracts, maintenance of properties, drafting wills and creating endowments. Orna is also involved in the opening and management of bank accounts for clients including obtaining bank mortgages.

Orna began her legal career at Alon Kaplan Law Firm in 1998 as a legal clerk and thereafter as a lawyer in 2000 following her admission to the Israel Bar. During the course of her many years working with Alon Kaplan she has gained vast experience in a wide variety of fields in commercial and civil law, trusts, wills and estates.

Orna is a member of the Society of Trust and Estate Practitioners (STEP) and of the International Tax Specialist Group (ITSG).

Orna published in several international journals and has contributed chapters to books dealing with foreign trusts and company formation.

Lyat Eyal | LL.B. | TEP

Partner

Practice Area

Private Client Practice | Trusts | Estates | Pre-Immigration Planning

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.

OBLIGATIONS OF A TRUSTEE OF A PRIVATE TRUST IN ISRAEL

Dr. Alon Kaplan | Meytal Liberman

Trusts & Trustees | 2017

Abstract

This article describes the various types of trusts under Israeli Law, and outlines the main obligations imposed on a trustee under Israeli Law, namely, the Israeli Trust Law.[1]

Introduction

Section 1 surveys the various types of trusts under Israeli Law, and of the Trust Law provides that:

> A trust is a relationship to 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 of for some other purpose.

Section 2 of the Trust Law further provides that 'a trust is created by Law, by contract with a trustee or by an instrument of Hekdesh'.

A trust is created by Law, by contract with a trustee or by an instrument of Hekdesh

It can be concluded from Sections 1 and 2 above that a variety of relationships are considered to be trusts under the Trust Law, not only private trusts, but other fiduciary arrangements as well. Therefore, and for the purpose of this article, the relationships set forth below will be excluded from the term 'private trust', and the obligations specified under Section 'Obligation of the trustee of a Private Trust under section 17 of the Trust Law' below will refer to trustees of a private trust.

A variety of relationships are considered to be trusts under the Trust Law, not only private trusts, but other fiduciary arrangements as well

The types of trusts subjected to the Trust Law

A trust created by a contract

Trust relationships created by a contract[2] usually last for a relatively limited amount of time, such as an escrow bank account opened to facilitate a real property transaction.

Often, such relationships can be considered agency relationships as well,[3] and they are commonly known as 'nominee arrangements'. In these cases, a legal entity is registered as the owner of a certain right, and undertakes in a contract to hold said right for the benefit of a beneficiary. The purpose of this arrangement is usually to provide the legal owner with confidentiality. In addition, the registered owner usually has limited discretion, and may even undertake to transfer the right back to the name of its legal owner upon his first request. The legal owner can, therefore, be considered the principal, and the registered owner the agent. Such arrangements may apply to holding real estate[4] and to holding of shares of a company in a nominee capacity.[5]

A trust created under law

Trust relationships that are created under law can be divided into several categories based on the manner in which the trustee is appointed: (i) trustees appointed by a judicial authority; (ii) trustees appointed under the supervision of an administrative authority; and (iii) trustees appointed with the consent of a government regulatory body.

Trustees appointed by a judicial authority

The main characteristics of a trustee appointed by a judicial authority are set forth below[6]:

i. 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 he does not need any other legal means in order to execute his duties, such as a license, ownership, or any other right in the property.
ii. A special law sets out the *modus operandi* of the appointing body and the powers, duties, and obligations conferred on the trustee.
iii. The trustee's demise terminates the powers of the acting trustee.
iv. The appointing authority may replace the trustee without needing to transfer any right of ownership.

Among these trustees, the following can be found: a company liquidator,[7] a Trustee in Bankruptcy,[8] a Guardian,[9] and an Estate Administrator.[10] For example, the court may instruct the Estate Administrator at any time,[11] and the Estate Administrator must file with the Administrator General a detailed report with respect to the estate under its management.[12]

Trustees appointed under the supervision of an administrative authority

The Public Trustee can be listed as such a trustee. It is appointed by the Minister of Justice,[13] and its activity is supervised by the court.[14] Other such trustees are the Administrator of Abandoned Assets and of Enemy Alien Assets, [15] the Administrator of Absentees' Assets, [16] and the debenture trustee.[17]

Trustees appointed with the consent of a governmental regulatory body

A trustee for an employee stock option incentive program[18] is included in this group. In such case, the consent of the relevant Tax Assessment Officer is required for the appointment,[19] who also supervises the trustee's activity.[20]

* Dr. jur. Alon Kaplan, TEP, Advocate & Notary.
† Meytal Liberman, LL.M., TEP, Advocate.

1. Trust Law, 5739-1979, 33 LSI 41 (1966–67) (Isr).
2. ibid, s 2.
3. Agency Law, 5725-1965, 19 LSI 231 (1964–65) (Isr).
4. Application of this arrangement to real property is commonly known as a 'real property trust'; Real Property Taxation Law (Capital Gains and Purchase) 5723-1963, 17 LSI 193, s 69 (1963) (Isr).
5. eg OM (TA) 548/06 *Arnon v Pieutrekovsky* (1 March 2009), Nevo Legal Database (by subscription) (Isr).
6. Shlomo Kerem, Trust, 144 (4th ed., 2004).
7. Companies Ordinance [New Version] 5743-1983, 37 LSI 761, ss 300, 325 (1983) (Isr).
8. Bankruptcy Ordinance [New Version] 5740-1980, 34 LSI 639, s 46 (1980) (Isr).
9. Capacity and Guardianship Law, 5722-1962, 16 LSI 106, ss 28, 29, 33 (1961–62) (Isr),
10. Succession Law, 5725-1965, 19 LSI 215, s 77 (1964–65) (Isr)
11. ibid, s 83.
12. ibid, s 84.
13. Trust Law (n 1) s 36; Under Government Notice no 3250 of 22 September 1985, 2, the Public Trustee is the Administrator General.
14. PCA 9420/04 *Pub. Tr. v Agmon* [2005] IsrSC 59(1) 627.
15. Administrator General Law, 5738-1978, 883 LSI 61, s 2 (1978) (Isr).
16. Absentees' Property Law, 5710-1950, 4 LSI 68, s 2 (1949–50) (Isr)
17. Securities Law, 5728-1968, 541 LSI 234, ch E2 (1968) (Isr).
18. Income Tax Rules (Tax Relief on the Allotment of Shares to Employees) 2003, KT 6222, 448 (Isr).
19. ibid, s 2.
20. ibid, s 5.

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A 'Blind Trust'

Under the Notice for Preventing Conflict of Interests by Ministers and Deputy Ministers,[21] within 60 days of his or her appointment, a minister must transfer the funds and securities owned by him and his family members to a public and independent trust company, which will hold and manage them as a 'blind trust'. Analysis of the Notice leads to the conclusion that this is, in fact, an agency relationship, as this is a temporary arrangement, which terminates upon the minister's termination of office, or upon his or her demise.

A charitable trust

A charitable trust is a trust which fulfills the requirements of section 26 of the Trust Law, and it is known as a 'Public Hekdesh'. Such charitable trust is registered with the Registrar of Public Trusts (Hekdesh),[22] and the trustee is required to file reports with respect thereof.[23]

Obligation of the trustee of a Private Trust under section 17 of the Trust Law

As mentioned, the various trusts described under Section 2 above either refer to a fiduciary relationship which is not a trust *per se*, or to a trust that is already regulated under Israeli law. The focus of this article is, therefore, on the specific Israeli private trust, which is similar to the Common Law trust.[24] In our opinion, a good definition of such a trust can be found in the Hague Convention,[25] which provides as follows:

> *The focus of this article is, therefore, on the specific Israeli private trust, which is similar to the Common Law trust*

A trust is the legal relationships created—*inter vivos* or on death—by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. A trust has the following characteristics:

i. The assets constitute a separate fund and are not a part of the trustee's own estate;
ii. Title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee; and
iii. The trustee has the power and the duty, in respect of which he is accountable, to manage, employ, or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

A trust as described above can be created under Israeli law in accordance with section 17 of the Trust Law, whereas section 17A(1) refers to an *inter vivos* trust, and section 17A(2) refers to a trust created on death, i.e. a testamentary trust.

The following sections will focus on the Trust Law, and the obligations and supervision it imposes on the trustee of an Israeli Private Trust. The last section, 'Reporting Obligations of Trustees who are Attorneys or Accountants', will address the obligations and supervision imposed specifically on attorneys and accountants.

Accounts and reporting

Section 7 of the Trust Law deals with accounts and reporting obligations. Accordingly, section 7(a) provides that 'the trustee shall keep account as to all the affairs of the trust', and section 7(b) provides that:

> the trustee shall render to the beneficiaries a report on the affairs of the trust once a year and upon termination of his tenure, and shall give them any further information they may reasonable request.

21. Notice on the Rules for Preventing Conflict of Interests by Ministers and Deputy Ministers, 2003, YP, 1139 (Isr) ('**the Notice**').
22. Trust Law (n 1) s 26(c).
23. ibid, s 29.
24. Angelique Devaux, Deanna Beckner, and Margaret Ryznar, 'The Trust as More Than A Common Law Creature' (2014–15) 41 Ohio NU L Rev 91, 92–96.
25. The Hague Convention on the Law Applicable to Trusts and on Their Recognition, 1 July 1985 <https://www.hcch.net/en/instruments/conventions/full-text/?cid=59> accessed 6 March 2016.

Section 11 of the Trust Law provides that these obligations to keep accounts and to report to the beneficiaries are subject to the terms of the trust deed. As a result, the trustee may be exempt from these duties entirely in the trust deed. However, under the Law for the Taxation of Trusts,[26] the trustee is required to keep accounts and to file annual tax reports regardless of the trust deed.

Responsibility for damages

Section 12(a) of the Trust Law provides that the trustee is responsible for damage caused to the trust property of the beneficiaries in consequence of a breach of his duty as trustee, whereas section 12(c) provides that the trustee may apply to the court for directions, and he will bear no responsibility if he acted in good faith in accordance with its directions or with its approval.

Prohibition on benefit and conflict of interests

Section 13 of the Trust Law prohibits the trustee from deriving any benefit for himself or for any of his relatives from the property or activities of the trust, or to act in a conflict of interest between the trust and himself or any of his relatives. However, section 13(c) provides that the court may approve such actions in advance.

Invalidation of actions by the court

Section 14 of the Trust Law deals with certain actions of a trustee, that may affect a third party, and performed in violation of his duties as trustee. This section goes on to state that such actions, in certain cases detailed in the section, may be invalidated by the court. This section broadens the grounds upon which a lawsuit may be brought against the trustee before the court, in addition to ones mentioned in sections 12 and 13 above.[27]

Property of a revoked trust

Section 16 of the Trust Law deals with a situation where a trust was revoked, yet the trust terms contain no instruction as to how the assets should be disposed of. Section 16 sets a default situation, and thus provides that an application should be made to the court in such circumstances, and the court will instruct how the property should be disposed of in accordance with the criteria stipulated in the section.

Appointment of a trustee and the safekeeping of the trust assets

Section 21(b) of the Trust Law provides who in the absence of a trustee, the court may appoint one. Section 22(b) of the Trust law further provides that once a trustee is appointed by the court, his resignation requires the court's approval as well.

Furthermore, section 24 of the Trust Law provides that as long as a trustee has not been appointed, the Public Trustee[28] will take such measures as he deems appropriate to safeguard the trust property and the rights of the beneficiaries.

Supervision of the District Court

Section 39 of the Trust Law lists the persons who are entitled to apply to the court in any matter under the Trust Law. Among these entities are the trustee, the beneficiaries, the settlor, the Attorney General, and any other 'interested person'. As evident, the scope of the section is broad. The purpose of this broad scope is to facilitate the inspection of the affairs of a trust, which is not managed properly, by the court.[29]

Supervision by the Administrator General and the court on testamentary trusts

Section 17(a)(2) of the Trust Law provides that a trust can be created by a written will of the settlor, whereas

26. see n 32, and the section titled 'Reporting obligations to the Israeli Tax Authority' of this article.
27. Kerem (n 6) 581–82.
28. Trust Law (n 1).
29. Kerem (n 6) 807.

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section 17(b) provides that the trust will commence upon the transfer of control of the trust property to the trustee. Furthermore, a Will is valid only if a probate order was issued with respect thereto.[30] Accordingly, a testamentary trust is validated only upon the issuance of a probate order with respect thereto as this in fact grants the trustee control over the trust property.

A testamentary trust, as any other Will, must therefore undergo a probate procedure. This procedure requires that every application for a probate order be examined by the Representative of the Administrator General, who may, at his full discretion, intervene and bring the testamentary trust for the examination of the court.[31]

Reporting obligations to the Israeli Tax Authority

This article does not deal with the issue of taxation of trusts, yet one should note that the Law for the Taxation of Trusts,[32] came into force in 2006,[33] and was amended in 2015.[34] The Law for the Taxation of Trusts classifies trusts into categories, and imposes tax and reporting obligations on the trustees and beneficiaries in accordance with this classification.

Reporting obligations of trustees who are attorneys or accountants

The Trust Law does not require the fulfilment of any prerequisites in order for an entity or a person to be appointed as trustee in a private trust under section 17, other than the general requirement provided in section 21(d) of the Trust Law, whereby the trustee must have the legal capacity to act as such.[35]

However, due to the professional expertise required by the trustee, families often choose the services of attorneys or accountants for this purpose. Both of these professions are now regulated under law, and supervised by their respective professional statutory organization.[36]

When either an attorney or an accountant provides trusteeship services, he must comply with requirements stipulated in Anti-Money Laundering legislation, which includes the AML Law and the AML Order relating to business service providers ('BSPs').[37] Failure to comply with these requirements may result in an ethical offence.[38]

Under the AML Order, a BSP may not provide a service to a client without having first identified the client and without performing a client due diligence procedure pursuant to the form included in the First Schedule of the AML Order.[39] The BSP must gather all relevant documentation pursuant to the form.[40] The BSP must also obtain a declaration from the client as per the form contained in the First Schedule whereby the client is acting on behalf of himself, or alternatively, is acting on behalf of others, who must be identified.[41]

The BSP must then scrutinize the identification data provided to him pursuant to the form, and evaluate the risk of money laundering and of terrorist financing. The risk evaluation must be based, *inter alia*, on the client's characteristics, the type of business service requested, the source of the funds for the business service, the reasonableness of the data included in the form, and the information published on the Internet website of the Supervisor, who is appointed by the Minister of Justice.[42] The BSP must take into account the 'Red Flags' detailed in the Forth Schedule of the AML Order,[43] and confirm that the client is not listed in the List of Terrorist Organizations and Individuals published by the Ministry of Defence.[44] The final risk evaluation will be documented in the client's form, and it must include further information and explanation, if there is an indication of a high risk for money laundering.[45]

A BSP must retain the documents and information gathered under this procedure for a period of at least five years after providing the business service.[46] The Supervisor is authorized to review said documents and information for the purposes of an investigation or in order to supervise implementation of the provisions of the AML Law. Moreover:

> A BSP shall, upon demand, submit to the Supervisor or to any employee authorized by him, documents, information and explanations concerning the performance of his obligations under this order.[47]

Summary

Private trusts under Israeli law consist of a number of trusts relationships that exists under Israeli law. As shown, there are certain trust relationships which are regulated under specific legislation.

As for private trusts, trustees of such trusts are not required to file reports with an authorized entity concerning the affairs of the trust under their responsibility, other than tax reports.[48] However, the activity of a trustee of an Israeli trust is supervised by the court, since the Trust Law provides for various grounds to apply to the court in the matters of the trust, and broadens the scope of those who may apply. In this respect, as in other jurisdictions, the private trust is supervised by the court.

Furthermore, as many of the private trusts in Israel are created and managed by attorneys and accountants, they are subject to the AML legislation, and accordingly are under the scrutiny of the Supervisor.

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30. Succession Law (n 10) s 39.
31. Succession Regulations, 1998, KT 5923, 1256, s 54 (Isr).
32. Income Tax Ordinance [New Version] 5721-1961, 6 LSI [NV] 120, Forth(2) ch: Trusts (1961) (Isr) (the 'Law for the Taxation of Trusts').
33. Amendment No 147 of the Income Tax Ordinance, 5765-2005, 2023 SH 766 (2005) (Isr), which came into force on 1 January 2006.
34. Amendment No 197 of the Income Tax Ordinance, 5773-2013, 2405 SH 116, 140 (2013), which came into force on 1 December 2015.
35. s 21(d) provides that 'a minor, a legally incompetent person, a bankrupt and a corporate body in respect of which a winding-up order has been made, are not qualified to be trustees of a Hekdesh'.
36. Attorneys in Israel are regulated by the Israel Bar Association, which operates under the Bar Association Law, 5721-1961, 347 LSI 178 (1961) (Isr); Accountants in Israel are regulated by the Accountants Council, which operates under the Accountants Law, 5715-1955, 173 LSI 26 (1955)(Isr).
37. Prohibition on Money Laundering Law, 5760-2000, 1753 LSI 293 (2000) (Isr) ('**AML Law**'), and Prohibition on Money Laundering (The Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing Of Terrorism) Order, 2000, KT 7447, 310 (Isr) ('**AML Order**'). s 8B(a) of the AML Law defines a Business Service Provider as:

> an attorney or an accountant when they provide or are asked to provide a business service for a client, as part of their professional services

and Section 8B(c) defines 'business service' as such that includes the

> 'creation or operation of . . . trusts for another'.

38. Bar Association Rules (Professional Ethics), 1986 KT 4965, 1372, s 44A (Isr); Accountants Regulations (Conduct Unbecoming to the Profession), 1965 KT 1738, 2240, s 1A(15) (Isr).
39. AML Order (n 36) s 2(a).
40. ibid, s 3.
41. ibid, s 4.
42. ibid, s 2(c); According to AML Order, s 1, and AML Law (n 36) s 12, the Supervisor is 'an employee of the Ministry of Justice, appointed by the Minister of Justice'. According to Government Notice No. 7223 of 7 March 2016, 4194, Advocate Adi Kominer-Peled was appointed Supervisor by the Minister of Justice, whereas her appointment came into force as of 1 February 2016.
43. The 'Red Flags' are available at <http://www.justice.gov.il/En/Units/FBPS/DNFBPDuties/Pages/Red-Flags.aspx> accessed 6 March 2017.
44. The List of Terrorist Organizations and Individuals is available at < http://www.justice.gov.il/En/Units/FBPS/DNFBPDuties/Pages/List-of-Terrorist-Organizations-and-Individuals.aspx> accessed 6 March 2017.
45. AML Order (n 36) s 2(b).
46. ibid, s 8. This section also provides that the Supervisor may instruct the BSP to retain said documents and information for a period longer than 5 years.
47. AML Order (n 36) s 10.
48. Nonetheless, a trustee may be required to file tax reports with the Israeli Tax Authority under certain conditions. For more on this matter, please see the chapter on taxation of trusts.

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FAMILY OFFICE
A NEW TREND IN ISRAEL

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.

Recent statistics show that Israel's population of 8,5000,000 is comprised of 75% Jews and 25% non-Jews all of whom enjoy equal legal rights in all areas of life. Israel is a country of immigration. More than 40% of residents in Israel were not born in the country. Some wealthy immigrant families relocate with their assets to Israel and others may keep part of their wealth in the country of origin.

There are no formal statistics available regarding the number of high net worth individuals in Israel. A millionaire is defined, generally, as a person with more than US$1 million in liquid assets. An ultra-high net worth individual (UHNWI) is defined as one with over US$30 million.

Dr. Alon Kaplan
Advocate & Notary

According to the report of Berkshire Hathaway Company:
1. There were 79,186 HNWIs in Israel in 2015, which collectively held US$447 billion in wealth.
2. The Israeli HNWI population rose by 2.9% in 2015, following a 3.0% increase in 2014.
3. The Israeli HNWI population is forecast to grow by 17.7% to reach 96,790 in 2020, while HNWI wealth is projected to grow by 24.3% to reach US$579.7 billion.

1. Family Business in Israel
How do Family Businesses cope with their present and future ownership and management of the business? The following stories of family businesses in Israel will demonstrate this:

Iscar family business - Stef and Eitan Wertheimer.
Iscar was founded in 1952 by Stef Wertheimer in the Western Galilee town of Nahariya and moved in 1982 to the Tefen Industrial Zone, about 20 kilometers away. In 1984 Stef, the father, handed over the reins to his son Eitan. In 1995 Eitan Wertheimer passed the CEO's seat to Jacob Harpaz (a non -family executive) and went on to serve as chairman and later president. Iscar is headquartered in the northern Israeli community of Tefen and is now formally known as International Metalworking, or IMC. In 2006 Berkshire Hathaway bought an 80% stake in Iscar for $4 billion. At a later stage, the son Eitan, sold to Berkshire Hathaway his 20% share

for USD 2 billion. The deal gave Iscar a total value of about $ 10 billion, about double its valuation when Berkshire Hathaway bought its initial stake for $4 billion. In an interview to the Israel economist newspaper Eitan was quoted: "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. ... It is preferable that each generation will start his new own business."

1.2. Keter Plastic company, another "happy end".
Sami Sagol developed the Keter Plastic company founded by his father in 1948 .The company is the world's leading manufacturer of plastic consumer products.

Keter Plastic develops, manufactures, and distributes throughout the world a broad range of plastic consumer products. The group has over 25,000 sales points around the world, 18 manufacturing plants, and two distribution centers. The company has 4, 000 workers, including nearly 2, 000 in Israel, and its products are sold in 100 countries.

Keter Plastic signed an agreement for the purchase of 80% of the company by a London based investment fund, BC Partners. The Sagol family would continue to own 20% of the company. Israeli media estimate the acquisition to be at a company value of $1.3 billion. Keter Plastic's 2015 sales totaled €800 million.

According to Forbes magazine Sagol decided to sell the business since the third and fourth generation of the family, four daughters and grandchildren developed other careers and did not intend to continue the family business.

1.3. Strauss family business -The successful story of Strauss family.
The Strauss family business was established 70 years ago by Richard and Hilda Strauss new immigrants from Germany. A small yard with two cows started a business which today is a national and public company working with international business partners PepsiCo, San Miguel, DANONE, Unilever and others. It is the 4th company in the world for coffee production and trade employing 14,000 people worldwide with an annual turnover of USA $ 2 Billion. 39 years after the establishment of the business the founders transferred the ownership and management to their son.

In the year 2000 the family business was passed on to the third generation who is running the business today together with professional executives who are members of the board of directors and not members of the family. According to Ofra Strauss the granddaughter and president of the business today "This was implemented pursuant to a well prepared organizational program which included members of the family committed to the original business vision of the family founders."

2. Transfer of family business to future generations.
There are 3 possible ways to transfer family business to future generations:

2.1. A lifetime gift.

There is no gift tax in Israel between members of the family.

The law of gift 1965 governs this procedure. The founders of the family business may transfer ownership of the business at the time they choose to do so.

2.2. Succession
The Succession Law 1965, governs individuals who were residents of Israel or owned assets in Israel at the time of their death. The fundamental principle guiding this legislation is that of testamentary freedom based on a last will and testament, made under the Succession Law. The freedom of succession enables the founder of the family business to name in his testament who will be the leaders continuing the business and what would be the share of the other members of the family.

Succession procedure has its perils. The heirs, members of the family, may challenge the testament and a court battle may arise. This happened in the famous case of the Offer family:

The late Y. Offer had owned a company which controlled substantial holdings in a bank and a real estate company with ownership of some of the largest shopping centres in Israel. The late Y. Offer bequeathed most of his assets to his daughter (51.7% of shares in Offer investment company) and 15%shares to his son. The son contested the validity of the will, and after a long trial the will was declared valid, and a probate order confirmed the wishes of the late Y. Offer's will.

2.3. Transfer of the family business to future generations by creating a trust.

The Trust Law
A trust structure is recognized in many countries as a good way to hold assets under a 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 in part of the society for many years even before the establishment of the state in 1948.The Israel trust law 1979 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.

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Creation of a trust
A trust may be created either by contract or by deed:
1. A trust created by contract requires an agreement between the settlor and the trustee with no specific procedure necessary for its validity.
2. A Trust created by deed must be in writing and signed in the presence of a notary
3. This Trust is named: "Hekdesh" and becomes operative during the lifetime of the settlor upon transfer of the assets of the trust to the control of the trustee.
4. A valid 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 2 witnesses or a notary.
A Testamentary Trust will become valid after probate of the will which contains the instructions to create a trust.

Conclusion
Family business in Israel is an interesting arena for family offices, asset managers and trust and estate practitioners "According to a recent report by the Institute for Family Business, the family business sector in the UK accounts for a quarter of the nation's gross domestic product , employing nearly 12 million people. However, numerous studies suggest that, despite their economic importance, family business' intergenerational longevity can be very limited, with as few as 10 percent remaining in family ownership by the third generation"(Step Journal February 2017).
It remains to be seen if Israel will follow the UK trend.

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INTER VIVOS HEKDESH VERSUS TESTAMENTARY TRUSTS AND FOUNDATIONS

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Abstract

The Trust Law 1979 governs the creation of trusts in Israel and the Succession Law 1965 governs succession and probate matters. Probate proceedings for estates of non-residents involve procedures with various governmental agencies, including the family court, which requires submission of original documentation, duly authenticated, and in some circumstances translated into Hebrew. The establishment of *inter vivos* structures such as trusts or foundations avoids the probate requirement and the administrative burdens imposed thereby. This article discusses—with a special focus on non-residents—the creation of the Israeli trust named in Hebrew 'Hekdesh', which often is coupled with an Israeli underlying company as an 'inter vivos' trust/foundation and makes a comparison to the settling of a testamentary trust.

Introduction

A trust is defined as a relationship, dealing with any kind of property, by virtue of which a trustee is bound to hold the same or to act with respect thereof in the interest of a beneficiary or for some other purpose.[1] Under the law of trust an Israeli trust may be created by law, by contract, or by deed (Hekdesh).[2] The relevant trust for the purpose of this article is the trust settled by Hekdesh deed. The Hekdesh is a legal structure with many similarities to foundations in a number of jurisdictions. These similarities can lead to the conclusion that the Hekdesh may also be referred to as the 'Israeli Foundation'.

Inter vivos trust/foundation

A 'trust created by contract' is a written agreement between the settlor and the trustee. Such a trust agreement is not valid upon the settlor's demise if it is not arranged in accordance with the requirements of both the Law of Trust and the Succession Law.

An *inter vivos* trust/foundation, in order to be valid upon the testator's death, must satisfy the provisions of both the Trust and the Succession Law. Section 8 of the Succession Law provides that any gifts or bequests that are to take effect after the death of the grantor are only valid if these are included in the grantor's last will and testament. As a result, the creation of an *inter vivos* trust requires that the trustee gains control over the trust assets during the settlor's lifetime. A testamentary trust is a trust which will become operative if it is included in the settlor's last will.

Section 8 of the Succession Law provides that any gifts or bequests that are to take effect after the death of the grantor are only valid if these are included in the grantor's last will and testament. As a result, the creation of an inter vivos trust requires that the trustee gains control over the trust assets during the settlor's lifetime. A testamentary trust is a

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1. Trust Law, s 1.
2. Trust Law, s 2.

trust which will become operative if it is included in the settlor's last will

A 'trust created by deed (Hekdesh)' is a written document, executed by the settlor before a notary. It is, therefore, considered as a valid trust under the Succession Law and thus does not raise the same problem that is mentioned in section 8 of the Succession Law referred to above.

To date, the creation and existence of *inter vivos* trusts private trusts/foundations is not publicly registered or recorded and the documents remain within an Israeli notary's files.

Foundations or trusts established under the laws of foreign jurisdictions are recognized in Israel in public by the Israel Tax Authority.

Testamentary trust/foundation

A testamentary trust/foundation is created by a testator in a last will and testament and receives legal validity pursuant to the granting of a probate court order by the Inheritance Registrar.[3]

A last will and testament is valid under the Succession Law if it is done in one of the forms mentioned below:

1. Handwritten—A valid handwritten will requires a document that is written in its entirety in the hand writing of the testator, is dated and signed.
2. Witnessed—A valid will in the presence of witnesses requires a written document signed by the testator in the presence of two witnesses who are competent adults and are not beneficiaries under the will.
3. Authority—The testator may orally declare a will before an authority, as defined below, or submit his wishes in writing to the authority. Where an oral declaration is granted, the authority records a written document evidencing the oral declaration by the testator and officially confirms it.
   The term 'authority' includes:
   (i) a district court judge;
   (ii) a Registrar judge (Inheritance Registrar of Inheritance or court Registrar);
   (iii) a religious court judge (Dayan); and
   (iv) an Israeli notary.
4. Deathbed will—A deathbed will is valid 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 who record the testator's wishes in writing, including the date and a description of the circumstances of the deathbed will. The recorded written document is deposited with the Inheritance Registrar of Inheritance. The will is valid for a period of up to one month from the date thereof.

Notwithstanding the various forms of a will, as mentioned above, a will is legally valid to govern the transfer and distribution of estate assets pursuant to the issuance of a probate court order. Israel does not recognize foreign probate court orders, and a foreign will needs to be processed in Israel through probate proceeding .This may cause complications for non-residents, who require probate of a will in more than one jurisdiction.

Israel does not recognize foreign probate court orders, and a foreign will needs to be processed through probate proceeding in Israel. This may cause complications for non-residents, who require probate of a will in more than one jurisdiction

The probate procedure in Israel is an extensive administrative process involving a number of governmental agencies, including the Registrar of Inheritances, the Administrator General (sometimes referred to as the Public Trustee), and the Family Court. The filings require original documentation, such as, the original will, the death certificate, identification documents, and a legal opinion duly authenticated either by apostille or by an Israeli Consulate. The office of the Administrator General is a governmental agency of the Ministry of Justice which may intervene in probate proceedings in areas within its responsibility, such as locating and managing unclaimed estates, managing bequests to the state or forfeited assets, representing the Ministry of Justice in inheritance/probate proceedings, supervising of guardians and executors, cases of individuals with diminished capacity, performing public trustee functions and similar responsibilities.

The probate procedure in Israel is an extensive administrative process involving a number of governmental agencies, including the Registrar of Inheritances, the Administrator General (sometimes referred to as the Public Trustee), and the Family Court

The time frame for the issuance of a probate order by the Family Court is eight to 18 months depending on the complexity of the estate, whether the Administrator General intervenes in the proceedings, whether any objections are filed, and various other procedural issues.

A further complication in probate proceedings involves the submission of the original last will and testament in the Israeli filing procedure. In many probate matters involving non-residents the original last will and testament is filed with the relevant court in the jurisdiction of residence of the deceased and is therefore unavailable for submission to the Registrar in Israel. A procedure separate from the probate procedure permits an application to be made to the Registrar to approve the submission of a copy of the last will and testament in support of the probate application rather than the original. This application requires the submission of an affidavit detailing the reasons for the failure to submit the original will in Israel together with a court certified copy of the original will (authenticated by apostille).

The Succession Law, which, as mentioned above, governs inheritance issues in Israel and grants jurisdiction to Israeli courts on matters involving Israeli residents or deceased non-residents owning assets in Israel, stipulates as a general principle that the distribution of an estate of a non-resident is subject to the laws of the jurisdiction in which the decedent resided at the time of death.

The court relies on the legal opinion (as already mentioned above) provided by a lawyer in the decedent's country of residence in accordance to the laws of such jurisdiction.

From the above presentation of the succession procedure it becomes evident that the creation of a Hekdesh carries advantages over a testamentary trust, in particular where non-residents are concerned. The administrative complications of probate proceedings can be avoided, provided that when an *inter vivos* trust is created the trustee receives control of the trust assets at the time of the settlement of the trust and the formalities of the execution of the Hekdesh deed are followed. If this basic condition is implemented, assets held by an *inter vivos* trust do not form part of the settlor's estate and do not require probate proceedings for inter-generational transfers. It should be noted that it is recommended practice that the assets transferred to the trustee shall be kept and managed by an underlying company administrated by the trustee. This arrangement creates a more secure structure which in fact resembles the management of a foundation.

In the following section, the taxation of trusts in Israel shall be examined to complete the picture on administration of trusts in Israel.

Taxation of trusts/foundations

The following tax rules refer to trusts and foundations regardless of the jurisdictions of their creation.

The Taxation of Trusts legislation, effective as of 1 January 2006, amended by the Arrangements Law, effective mainly as of 1 January 2014 distinguishes between five trust categories:

- the Israeli residents trust;
- the foreign resident trust;
- the Israeli resident beneficiary trust;

3. Probate orders for estates of non-residents are issued by the Family Court.

- the foreign beneficiary trust; and
- the testamentary trust.

The specific features of these types of trusts are outlined below.

The Israeli residents trust

The Israeli residents trust is a trust settled by a resident of Israel for the benefit of Israeli resident beneficiaries. A trust where all settlors are deceased and where there is an Israeli resident beneficiary is also an Israeli resident trust. This trust is subject to reporting obligations and tax payments on its worldwide income at the rates applicable to individuals with a view to 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 recognized Israeli charities. The trust must not 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 trust may be managed by an Israeli trustee with no effect on the taxation thereof.

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.

Two additional criteria must be met for the trust to be classified as an Israeli resident beneficiary trust. First, the settlor and the beneficiaries must belong to the immediate family circle, ie the settlor is a spouse, parent, grandparent, child, or grandchild of the beneficiary ('Family Trust'). A broader family relationship (ie 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 favour. Secondly, that the settlor is still alive.

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

The Israeli resident beneficiary trust/family trust is subject to tax as follows:

i. Distributions to Israeli resident beneficiaries will be taxed at the rate of 30 per cent of the distribution amount unless the trustee provides evidence of the income and capital portions of the distribution. Where the distribution is comprised solely of capital and not of income, it is not taxable.
ii. 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 per cent 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 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:

i. it does not fall within the definition of an Israeli residents trust;
ii. it is irrevocable;
iii. all of the beneficiaries are identified and are foreign residents; and
iv. 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 outside of Israel, 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. The appointment of an Israeli trustee has no relevance for taxation purposes.

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 resident trust, if it has at least one Israeli resident beneficiary or as a foreign beneficiary trust, if there are no Israeli resident beneficiaries, as the case may be.

The exempt trust

If all the parties to a trust—the settlor and the beneficiaries—are not resident in Israel and the trust has no assets or income in Israel, this trust is not taxed in Israel. It is interesting to note, that this rule will apply even if the trustee of such trust is resident in Israel.

Conclusion

Testamentary trusts/foundations are valid under the Succession Law pursuant to the issuance of a court probate order although the procedure is administratively burdensome and complex. The establishment of *inter vivos* trusts or foundations as part of estate planning resolves administrative complications of probate proceedings, always provided, however, that the trustee of the *inter vivos* trust receives control of the trust assets at the time of the settlement of the trust and the formalities of creating a Hekdesh are followed in the execution of the Hekdesh deed. If this basic condition is implemented, assets held by an *inter vivos* trust/foundation do not form part of the settlor's estate and do not require probate proceedings for inter-generational transfers.

The establishment of inter vivos trusts or foundations as part of estate planning resolves administrative complications of probate proceedings, always provided, however, that the trustee of the inter vivos trust receives control of the trust assets at the time of the settlement of the trust

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ARTICLES
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TRUSTS AND ESTATE PLANNING IN ISRAEL

Dr. Alon Kaplan | Meytal Liberman

Israel has long been a "home" for many international families who have found a "sense of belonging," as well as business opportunities, in the country. It is well known as the "Start-up Nation", as it attracts large companies such as Intel, Google, Apple and Facebook. These sentiments and business opportunities make Israel a preferable investment jurisdiction, mainly in the areas of private equity, high-tech, technology and real estate.

International families in the modern era of globalization and 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.

Private trusts were utilized by zionist organizations and Jewish families who immigrated to Israel from Europe, the United States, Canada and South Africa, as these were jurisdictions in which individuals and professionals were familiar with the trust regime.

Trusts under Israeli Law

Trusts remain a legitimate planning option for various international families and cross-border issues in Israel. Israel's Trust Law (1979) governs the creation of a trust similar to common law trusts, which are increasingly popular among non-residents.

The first trust law was legislated in 1923 by the British Mandate (1922-1948) relating to public charities and was based on the common law trust. Private trusts were utilized by zionist organizations and Jewish families who immigrated to Israel from Europe, the United States, 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 the areas of inheritance, gifts and trusts.

The Trust Law featured several innovations that created interesting practical possibilities: it permitted the creation of trusts without the settlor transferring official legal title of the assets to the trustee; and it set no limit for the duration of trusts and it permitted non-charitable purpose trusts.

Israeli practitioners sometimes chose to create trusts for their clients under foreign trust regimes, with such trusts being recognized in Israel.

Trusts governed by the Trust Law may be settled by contract or by deed. Those settled by contract are governed by an agreement that does not require a formal written document (although proving the terms of the trust may be difficult where there is no written agreement). Contractual trusts do not permit generational transfer of assets upon the settlor's demise, as they do not satisfy the certain provisions of the Succession Law.

Trusts created by deed, defined as "*hekdesh*" under the Trust Law, require a deed signed before an Israeli notary. The trust is established upon the trustee obtaining control of the trust assets. The trust, upon settlement and management in accordance with the legal requirements, removes the assets from the settlor's estate, and therefore, probate or inheritance proceedings are not required upon the settlor's demise.

Testamentary trusts may be settled within an individual's last will and testament. Such trusts must be in writing, executed in accordance with the legal formalities required by the Succession Law, and are valid upon the issuance of a probate court order by an Israeli court.

A valid last will and testament can be made in one of the following forms: a handwritten will; a will signed in the presence of witnesses; a will in the presence of an authority, while the definition of "authority" includes a court judge and a notary. In certain circumstances, a deathbed will is also recognized as a manner to create a valid last will and testament.

Under Section 8(b) of the Succession Law, "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 null and void, unless such gift was included within a valid will." Therefore, it is recommended to create an *inter-vivos* trust and transfer control over the assets to the trustee during the lifetime of the settlor.

The Use of Real Estate Trust for Investments and Holding of Property in Israel

Real Estate Trusts (RET) have been used in Israel for many years and for various purposes, including legitimate tax planning, asset protection and commercial transactions. 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 and the Trust Law, provide the legal structure for such an RET. These laws allow the registration of the trustee as the legal owner of the real estate while the beneficiary of the real estate is considered as the real owner, similar to a beneficiary of a bare trust in the common law.

A valid last will and testament can be made in one of the following forms: a handwritten will; a will signed in the presence of witnesses; a will in the presence of an authority, while the definition of "authority" includes a court judge and a notary. In certain circumstances, a deathbed will is also recognized as a manner to create a valid last will and testament.

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 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.

The real estate market in Israel is in great demand by both Israeli and foreign investors. Some investors choose to hold properties they purchase in the name of a trustee. 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 in Israel.

Conclusion

Immigration to Israel over the years has brought with it a diverse population from various countries in the world that requires the special services of trusts, estates and succession planning. These services require expert advice relating to international taxation aspects.

Recent developments in the field of Anti-Money Laundering, including exchange of information, FATCA and CRS, require professionals to pay special attention to details when providing such services.

The matters discussed in this article present a bird's eye view of the issues that should be considered when engaging in trusts, estates and succession planning in Israel. It is recommended to broaden one's knowledge more about the subject through professional literature, such as *Trusts in Prime Jurisdictions* and *Trusts and Estate Planning in Israel*. It is also highly recommended to consult with experts in the field.

In the past 10 years, there has been a positive development in the use of trusts under Israeli law, by both Israeli residents and foreign residents.

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

Dr. Alon Kaplan | Meytal Liberman

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INTRODUCTION

Trusts in Israel are governed by the Trust Law.[1] In addition, other laws contribute to the enhancement of the various uses of trusts, such as the Agency Law,[2] and the Real Property Taxation Law.[3] This framework is augmented by court cases and rulings of the Israeli Tax Authority.

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.4

"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."

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.[5]

TAXATION OF REAL ESTATE IN ISRAEL

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 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 own 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.

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.

REAL ESTATE TRUSTS IN ISRAEL

The real estate trust 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 a RET.

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 Ordinance6 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

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.

"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 a RET."

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.

1 Trust Law, 5739-1979, 33 LSI 41 (1966-1967) (Isr.).
2 Agency Law, 5725-1965, 19 LSI 231 (1964-1965) (Isr.).
3 Real Property Taxation Law (Capital Gains and Purchase), 5723-1963, 17 LSI 193 (1963) (Isr.).
4 Ron Shaham, Christian and Jewish "Waqf" in Palestine during the Late Ottoman Period, 54(3) Bulletin of the School of Oriental and African Studies, University of London, 460-472 (1991).
5 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), available at http://www.kkl.org.il/files/HEBREW_FILES/machon-mediniut-karkait/karka-41/karka-41-1996-10.pdf.
6 Income Tax Ordinance [New Version], 5721-1961, 6 LSI [N.V.] 120 (1961) (Isr.)
7 Trusts and Taxes, available at https://www.gov.uk/trusts-taxes/types-of-trust.
8 Family Case (TA) 19831-04-10 R. G. v. M. P. (July 7, 2013) Nevo Legal Database (by subscription) (Isr.).
9 CA 5955/09 Amster (Receiver) v. Tauber Tov (July 19, 2011), Nevo Legal Database (by subscription) (Isr.).
10 Such a reference is possible under a procedure named "caveat" under Section 4 of the Trust Law, and Land Law, 5729-1969, 23 LSI 293, §127 (1968-1969) (Isr.).

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TAX EXEMPTION FOR A REAL ESTATE TRUST

A pre-ruling published in 2012 by the Israeli Tax Authority11 dealt with the transfer of real estate properties into a private trust. In this case, an elderly person created a trust in his favor and in favor 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 a RET.

"This structure may be found particularly useful and efficient for American families that decide to invest in real estate in Israel or have a second home there. "

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 a 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

The real estate market in Israel is in great demand by both Israeli and foreign investors, and some investors choose to hold properties they purchase in the name of a trustee. This structure may be found particularly useful and efficient for American families that decide to invest in real estate in Israel or have a second home there.

However, if any of your client's are considering using this structure to purchase real estate in Israel, it should be noted, that there are some issues of trust, inheritance and tax laws which require proper consultations and clarifications. Therefore expert advice is recommended.

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11 Tax Ruling no. 3324/12, The Establishment of a Hekdesh – Tax Ruling in Agreement, available at https://www.misim.gov.il/tmmisuyweb/frmShowLinkedAbs.aspx?num=20120030 (Hebrew).

ESTABLISHING A FOREIGN-OWNED BUSINESS IN ISRAEL

Dr. Alon Kaplan | Meytal Liberman

Israel' strong and growing economy, bolstered in particular by a robust high technology sector, attracts many foreign companies to establish a formal presence in the country. Large infrastructure projects have attracted major engineering firms, and a significant number of foreign-controlled corporations. This article examines the general legal requirements of establishing a business in Israel.

I. Options for Activities

Three options are generally available to foreign entities wishing to do business in Israel:

(1) opening a branch in Israel; **(2)** incorporating a subsidiary company in Israel; and **(3)** establishing a partnership in Israel within the framework of a company.

1. Opening a branch in Israel

If the foreign business operates in its country of origin as a company, it may open a branch in Israel that will operate under the same name as the foreign company. There may be tax reasons to choose this option.

Generally, any action of this nature requires formal company registration with the Registrar of Companies. Israeli law recognizes the term "Foreign Company", and in accordance with Common Law tradition, which forms the basis of Israeli Companies Law, the foreign company can be registered in Israel and is then, for all intents and purposes, deemed an Israeli company.

2. Incorporating a subsidiary in Israel

There are times when tax and other considerations will lead towards incorporation of a subsidiary company in Israel. For example, in certain cases, a double taxation treaty between Israel and the foreign company's home country will grant tax benefits.

There are additional practical reasons for creating a subsidiary in Israel: Where the foreign company wishes to enter into a joint venture agreement with an Israeli partner under a corporate structure, or to separate the obligations of the Israeli business from the assets of the foreign business.

The following are some important aspects relating to the incorporation of a company in Israel:

2.1 Company name

Registration of a company is done through a lawyer, or an accountant assisted by a lawyer, at the Registrar of Companies, a unit of the Ministry of Justice.

Registration grants the company protection of its name under Israeli Companies Law. It can be prudent to register a trademark with the Registrar of Trademarks in order to further protect the name.

2.2 Registering a new company

Unlike Continental Europe, companies are not registered with a notary as Israel's Companies Law is based on the English Companies Act, 1929.

A lawyer will prepare the company's Articles of Association, the document that describes the company's objectives and its internal management and administrative procedures, principally those regarding its shareholders and board of directors. The lawyer will also submit to the Registrar of Companies details regarding the registered address of the company, the directors and shareholders.

The registration process can take a few days if no special problems arise regarding the company's name or its registration documents, whereas if the application is made online, the process can be completed within 24 hours.

Following registration, a Certificate of Registration will be forwarded to the company's lawyer.

2.3 Disclosure of information on companies

The Registrar of Companies maintains a public record showing basic information on companies, such as a company's name, the address of its registered office, and its outstanding annual fees. An extract, available upon payment of a standard fee, contains more extensive information about the company, including names of shareholders and directors, liens or charges against the company's assets, indications of special resolutions that may alter the Articles of Association, and indications of decisions of voluntary liquidation of the company.

2.6 Appointments

2.6.1 Appointment of Directors and officers

Under Israeli Companies Law, a company is managed by a board of directors consisting of one or more directors, as decided by the incorporating entity. In most cases, the Articles of Association will contain a clause determining the number of directors who may comprise the board of directors. A legal entity, such as a company, may serve on the board as a director.

There is no mandatory provision in the law for the board of directors to have an Israeli director. A foreign person may serve as a director, even if not resident in the country.

The board has the power to appoint a number of officers who will run the day-to-day business of the company. These officers may be titled CEO, manager, managing director, Chairman of the Board, etc., but in practice, it is not the title that is important, but the nature of the work and the authority granted to the officer by the resolutions of the board.

Private companies in Israel need not have a company secretary, though some companies do appoint an officer with such title.

2.6.2 Appointing an auditor (CPA)

By law, a company must appoint an auditor who will review the company's books. The auditor (a "Certified Public Accountant") is appointed at a shareholders' meeting and is responsible for the preparation of the company's annual audited financial statements, which must be filed with the Israel Tax Authority. Private companies need not file their financial statements with the Registrar of Companies, provided the required provisions are included in their Articles of Association.

2.6.3 Appointing a lawyer

There is no requirement for the appointment of a lawyer. In order to prepare legal documents, however, it will be necessary for the company to use the services of a lawyer, who may also be required on occasion for other aspects of the company's business.

II. Commencing Business

1. Preliminary legal and commercial requirements

Whether the foreign company chooses to operate as a foreign company with a branch in Israel, or to incorporate as a subsidiary in Israel, there are a number of legal and commercial requirements that must be undertaken in order to commence business activities. There are generally six main requirements:

- Registering the company with the Israel Tax Authority.
- Registering the company with the Customs and VAT Authority.
- Opening an employer file with the National Insurance Institute.
- Opening a bank account.

2. Technical Matters

After registering the company, it is necessary to take the following technical/organizational steps:

2.1 Corporate letterhead

There is no requirement that a company provide certain information on the company letterhead. The law requires that the company's full name appear on its stationery and it is usual to provide a street or POB address, although this is not essential. It is not customary to stipulate the company's bankers on the letterhead.

2.2 Company sign

The law requires a sign in front of the registered office of the company. When the registered office of the company is at the office of a lawyer or accountant, the company's sign is often added to the already existing list of signs placed at the door of the professional's office. The tax authorities also require the company to place a clear sign bearing the company's name on the mailbox at the company's place of business.

2.3 Bookkeeping and auditing of accounts

Immediately on commencement of the company's business activities, it is necessary to manage the accounts according to law. An auditor or certified public accountant must be appointed, whose job is to audit the accounts and to prepare a yearly balance sheet. The company's shareholders at a general meeting appoint an auditor who ensures that the company's accounts are properly managed.

III. Conclusion

After almost 70 years of statehood, Israel is today a modern and dynamic industrial and commercial country brimming with potential. The foreign company that, prior to investing, avails itself of the many opportunities and uses the appropriate local resources, including professionals such as lawyers, accountants, economists, land appraisers and engineers, can make a very successful entry into the Israeli business world.

Starting and operating a business in Israel is a regulated procedure with legal and tax consequences. Additional issues of Intellectual property, trademark registrations and similar considerations may require special attention. Advice of professionals is required and recommended.

The full version of the article is available at our website

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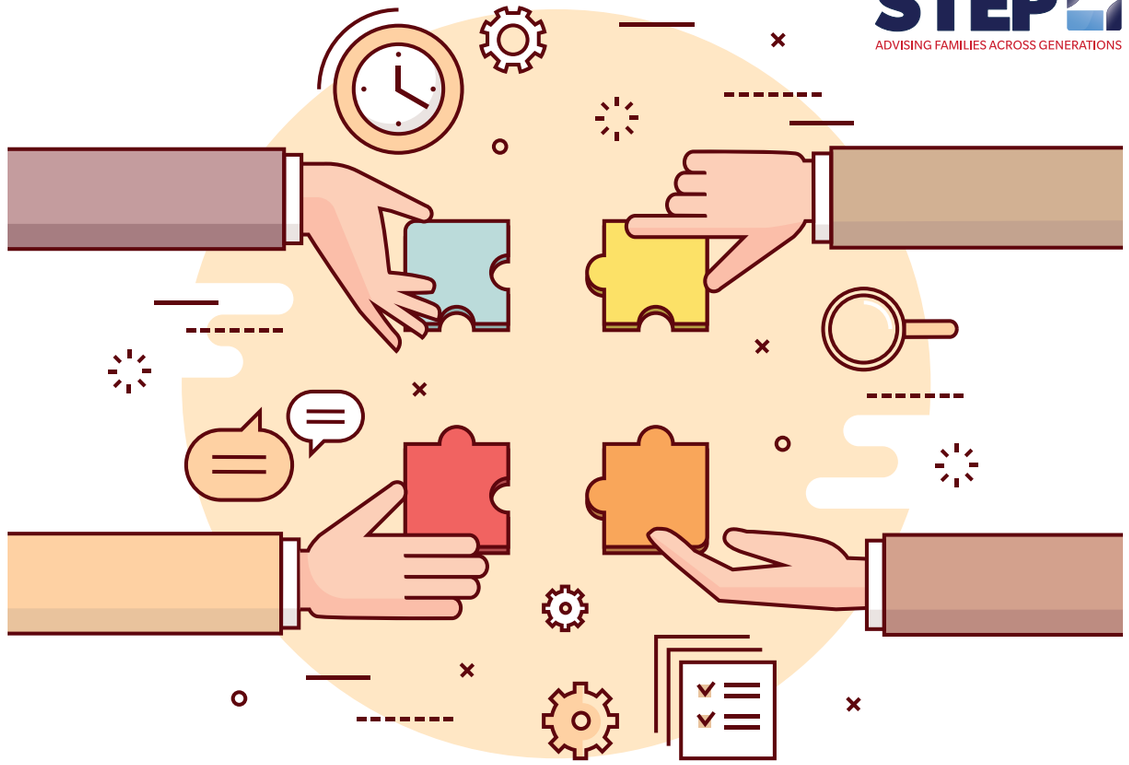

SUCCESSION IN ISRAEL

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 the 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 as 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 that 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 on 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*, 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)

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CASE STUDIES FROM ISRAEL: FAMILY WEALTH TRANSFERS

Dr. Alon Kaplan | Meytal Liberman

1. 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 that[2]:

- 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.

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/.

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 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.

2. 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

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.

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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 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]

9 *Id.*
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.

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]

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

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.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).

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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]

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.

3. 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.

4. The legal environment for high net worth individuals and family businesses

4.1 The 'family constitution' and 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 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

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), 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.

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).

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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 in his lifetime.

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 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 the other members of the family.

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).
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).

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 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

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).
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).

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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:

- 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.

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)..

50 *Id* at § 2.

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.

5. 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 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.

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).

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.

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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.

6. 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 constitution as an important document, as evident from Ofra Strauss's words. However, we believe that such a constitution is not 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.

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.

Getting The Deal Through

ISRAEL - PRIVATE BANKING AND WEALTH MANAGEMENT

Dr. Alon Kaplan | Meytal Liberman | Lyat Eyal

PRIVATE BANKING AND WEALTH MANAGEMENT

1. What are the main sources of law and regulation relevant for private banking?

The following are the main sources of law and regulation relevant for private banking in Israel:

- the Securities Law 1968; (supervision on portfolio managers);
- the Banking Ordinance 1941; (the Banking Supervision Department and its directives, Banking confidentiality);
- the Banking Law (Service to Customers) 1981;
- the Banking Law (Licensing) 1981;
- the Trust Law 1979;
- the Agency Law, 1965;
- the Tort Ordinance [New Version] 1968; (professional liability, professional negligence).
- the Protection of Privacy Law 1981;
- the Bar Association Law 1961;
- the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Law 1995 (the Investment Advising Law);
- the Prohibition on Money Laundering Law 2000;
- the Bank of Israel Law 2010;
- the Payment Systems Law 2008;
- the Contracts Law (General Part) 1973;
- the Standard Form Contracts Law 1982; and
- the Prohibition of Money Laundering (The Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order, 5775-20142.

2. What are the main government, regulatory or self-regulatory bodies relevant for private banking and wealth management?

The main bodies are:

- the Israeli Securities Authority (ISA);
- the Banking Supervision Department; (BSD)
- the Israel Money Laundering and Terror Financing Prohibition Authority;
- the Accountants Council;
- the Israel Bar Association (IBA); and
- the Bank of Israel.

3. How are private wealth services commonly provided in your jurisdiction?

Each of the large banks has an extensive private banking department. There are also highly experienced asset management and advisory companies. Multi-family offices are usually managed for the benefit of specific high net worth families, in most cases by accountants. There are also investment opportunities via insurance companies, which provide provident funds. The private wealth services can also be provided by licensed portfolio managers.

4. What is the definition of private banking or similar business in your jurisdiction?

There is no one specific definition. The term 'private banking' is commonly interpreted as referring to

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the scope of financial services provided to high net worth individuals. In some banks, there is a threshold amount (a minimum amount of between US$500,000 and US$1 million) that must be held in an account to qualify for private banking services.

5. What are the main licensing requirements?

Under the Investment Advising Law, the legal requirement to be licensed applies both to individuals and entities engaged in providing investment advice, in marketing investments or in portfolio management. Individual investment advisers can either be self-employed or employees of a licensed advisory firm or a (commercial) banking corporation. Portfolio managers are entitled to work solely as employees of licensed portfolio management firms.

Licensing of individuals

An individual wishing to engage in a licensed investment profession must meet the following criteria:

- be at least 18 years of age;
- be a citizen or resident of Israel;
- has not been convicted of a crime (among the crimes stipulated in the Investment Advising Law);
- has successfully completed the professional exams administered by the ISA in the following subjects:
- securities law and professional ethics;
- accounting;
- statistics and finance;
- economics;
- securities and financial instrument analysis; and
- portfolio management (for portfolio manager applicants only);
- has completed an internship (six months for investment advisers and marketing agents, nine months for portfolio managers); and
- the applicant must secure professional indemnity insurance for the minimum amount stipulated in the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Application for a Licence, Examinations, Internship and Fees), 1997; the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Equity and Insurance), 1997; and the Update of equity and insurance amounts required of licensees in 2016.

Notwithstanding the conditions mentioned above, in special circumstances the ISA is authorised to grant an exemption from examinations and internships under section 8A of the Securities Law.

The ISA reserves the right to withhold a licence from an individual who meets all the above criteria if circumstances exist that render the applicant unfit to be licensed (fit and proper tests) or if a criminal investigation is conducted against the applicant.

Licensing of corporations

Only entities legally established in Israel are entitled to obtain a licence. An applicant entity must comply with the following requirements:

- it must undertake that it will only employ licensed individuals for the purpose of rendering investment advice, investment marketing or portfolio management services;
- it must undertake that no individual that, to the best of the company's knowledge, has been convicted of one of the crimes stipulated in the law, or whose licence has been either suspended or revoked, will serve as an executive or director in it;
- it must fulfil minimum capital requirements as stipulated in the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Application for a Licence, Examinations, Internship and Fees) 1997; and the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Equity and Insurance) 2000;
- it has secured insurance, a bank guarantee or deposit of the sum stipulated in the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Application for a Licence, Examinations, Internship and Fees) 1997; and the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Equity and Insurance) 2000; and
- an additional requirement is placed on portfolio management firms. These firms are prohibited from engaging in underwriting services and can only engage in investment advice, investment marketing, portfolio management and ancillary activities.

Exceptions from obtaining a licence

The following occupations do not require a licence pursuant to the Investment Advising Law:

- investment advising or investment portfolio management for no more than five clients during the course of a calendar year, by an individual who does not engage in investment advising or investment portfolio management in the framework of a licensed corporation or a banking corporation;
- investment advising or investment marketing which the person provides by virtue of his or her membership in an investment committee or a board of directors of a corporation, and which is provided only to that corporation in the course of carrying out his or her function as a member of the committee or board of directors, whichever is relevant;
- management of a corporation's investment portfolios, by a party doing so as part of carrying out his or her function in that corporation or in a corporation that is affiliated with that corporation;
- investment advising or investment portfolio management for a family member;
- investment advising by a corporation whose main occupation is the appraisal of corporations, provided that it does not engage in other investment advising or in portfolio management;
- investment advising or investment portfolio management by an accountant, attorney or tax adviser, when such activities accompany a service provided to a client within the field of their respective professions;
- investment portfolio management by a party that has been appointed by a court order or by the order of a competent tribunal to act with respect to the assets of another party, in the course of carrying out such duties; and
- investment advising, investment marketing or investment portfolio management, for a qualified client (see question 19).

Licensing of trustees

Trustees are not required to obtain a licence. However, trustees of certain trusts must file tax reports with the Israeli tax authorities.

6. What are the main ongoing conditions of a licence?

Payment of an annual fee in accordance with the Regulation of Investment Advising, Investment Marketing and Investment Portfolio Management Regulations (Application for a Licence, Examinations, Internship and Fees) 1997.

7. What are the most common forms of organisation of a private bank?

A financial corporation must obtain a licence in order to operate as a bank in Israel. Most foreign banks do not obtain such licence and are therefore not permitted to conduct banking activities in Israel. For this reason, foreign banks usually maintain a representative office in Israel. Israeli banks usually maintain an internal private banking department.

8. How long does it take to obtain a licence for a private bank?

Under the Banking (Licensing) Law, 5741-1981, the Governor may, at his discretion and after consulting with the Licensing Committee, issue a banking licence to a company. In issuing licences under this law, the following matters shall be taken into consideration:

- the applicant's plan of action and probability of its fulfilment;

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- the suitability of the holders of means of control, the directors and the managers for their positions;
- the contribution of issuing the licence to competitors in the capital market and, in particular, to competitors in the banking industry and the standard of its service;
- the government's economic policy;
- the public interest; and
- in respect to a foreign bank – reciprocity in banking corporation licensing between Israel and the country in which the applicant has its main business.

Furthermore, a licence shall not be issued unless the applicant's issued and paid-up capital is no less than the sum set out in the First Addendum of the Law, according to which, for an Israeli bank the minimum paid-up capital is 10 million shekels, and for a foreign bank – foreign currency equivalent to 10 million shekels.

9. What are the processes and conditions for closure or withdrawal of licences?

Further to the answer to question 5 and with respect to any entity engaging in investment advice, marketing investments or portfolio management, the Investment Advising Law establishes an independent disciplinary tribunal, whose job is to impose disciplinary sanctions on licensees who have violated the fiduciary duties of trust and care towards their clients. The tribunal is an independent committee appointed by the Minister of Justice, which is authorised to impose sanctions on licensees including warnings, censures, fines or the suspension or revocation of licences.

In addition, an action can be brought before the courts on different grounds, such as the criminal offence of money laundering, or the civil offences of violating fiduciary duties or fraud. Such a process can also result in the withdrawal of a licence.

10. Is wealth management subject to supervision or licensing?

Further to the answer to question 5, the Investment Advising Law provides as follows:

- 'investment advising' – providing advice to others regarding the advisability of an investment, holding, purchase or sale of securities or financial assets; for this purpose, the word 'advising' shall refer to either direct or indirect advising, including through publications, circulars, opinions, mail, facsimile transmission or by any other means, excluding publication by the state or by a corporation carrying out a statutory function, in the framework of its function; and
- 'investment portfolio management' – executing transactions at the portfolio manager's discretion, for the accounts of others.

Although the Investment Advising Law distinguishes between investment advising (non-discretionary) and investment portfolio management (discretionary), both activities require that a licence be obtained.

11. What are the main licensing requirements for wealth management?

See question 5.

12 What are the main ongoing conditions of a wealth management licence?

See question 6.

Anti-Money Laundering and Financial Crime Prevention

13. What are the main anti-money laundering and financial crime prevention requirements for private banking in your jurisdiction?

The Directive titled 'Supervisor of Banks: Proper Conduct of Banking Business (6/15) [13] page 411-1, Prevention of Money Laundering and Terrorism Financing, and Customer Identification' imposes identification of the client obligations (KYC) on banks in Israel. The Directive requires that each bank adopts a KYC procedure in accordance with the Directive, that an officer in charge of obligations under the Prevention of Money Laundering Law be appointed, that the bank identifies each new client, and monitors high-risk clients and certain transactions.

Furthermore, on 16 March 2015, the Supervisor of Banks issued a circular titled 'Managing risks deriving from customers' cross-border activity'. According to the circular, foreign resident clients of Israeli banks are required to declare their residency for tax purposes, and confirm that their financial assets have been declared to the relevant tax authority. Moreover, they are required to waive confidentiality vis-à-vis the relevant tax authority abroad. Failure to comply with all these requirements may result in the bank's refusal to open the account or blocking of activities in an existing account.

Under a circular of the Supervisor of Banks issued on 26 January 2016, titled 'Managing risks involved in operating a voluntary disclosure program in Israel', the mere fact that the financial assets in the account have been properly declared to the relevant tax authority does not derogate from the bank's obligation to establish that the financial assets do not derive from a predicate offence under the applicable anti-money laundering legislation.

In order to comply with all the above, all banks require evidence with respect to the following:

- the origin of the financial assets;
- confirmation that the financial assets have been properly declared to the relevant tax authorities;
- the nature of the transactions; and
- identification of all entities and persons involved (specifically, the identification of all beneficial owners).

Tax offences are predicate offences under the prohibition on money laundering Law- 2000 as detailed in question 16.

14. What is the definition of a politically exposed person (PEP) in local law? Are there increased due diligence requirements for establishing a private banking relationship for a PEP?

The Prohibition of Money Laundering (the Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order, 5775-2014 imposes KYC obligation on attorneys and accountants when providing certain services, described as business services. The Order defines a 'foreign politically exposed person' as:

> *a foreign resident holding a senior public position abroad, including a relative of a resident as aforesaid or a corporation under his control or a business partner of one of them; in this context, 'senior public position' – including a head of state, president of a state, mayor, judge, member of parliament, government minister or a senior army or police officer, or anyone actually holding such office as aforesaid even if his official title is different.*

The Order further states that a client considered a 'foreign politically exposed person' is an indication of a high risk for money laundering or terrorist financing, and therefore requires broader KYC inspection.

The Israel Money Laundering and Terror Financing Prohibition Authority published a circular titled 'The Prevention of Money Laundering which Originates in Corruption and in Bribery of Foreign Politically Exposed Persons, and the procedure to Identify Irregular Activity Relating to them'. The circular provides guidelines for conducting increased due diligence processes for such clients.

15. What is the minimum identification documentation required for account opening? Describe the customary level of due diligence and information required to establish a private banking relationship in your jurisdiction.

A due diligence process, which includes identity, utility bills, source of funds for which the business service is being performed and confirmation that the funds were declared in the country of residence of the client, which may include professional confirmations (including evidence of tax compliance),documentary evidence of the specific financial transaction (eg, real estate contracts, gifts deeds, etc).

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16. Are tax offences predicate offences for money laundering? What is the definition and scope of the main predicate offences?

The Prohibition on Money Laundering Law, 2000 was recently amended to include certain tax offences as predicate offences. The First Addendum of the Law lists the predicate offences. The Addendum also includes the following:

- Under subsection (17b) an offence in accordance with section 220 of the Income Tax Ordinance is a tax offence if it fulfils one of the following:
- the income resulting from the tax offence is in an amount higher than 2.5 million shekels in a period of four years, or in an amount higher than 1 million shekels in a period of a year;
- the tax offence or an offence in accordance with sections 3 or 4 which originated in the tax offence was committed with sophistication, and the income from the tax offence is in an amount higher than 625,000 shekels;
- the tax offence or an offence in accordance with sections 3 or 4 which originated from the tax offence was in relation to a criminal organisation or a terror organisation as defined in (17a) herein; and
- an offence in accordance with sections 3 or 4 which originated from the tax offence and was committed by someone other than the taxpayer.
- Subsections (17a) and (17c) are similar to subsection (17b) above. Subsection (17a) relates to offences under the value added tax and subsection (17c) relates to offences under the Taxation of Real Property law. In both cases, the offence is considered as a predicate offence provided it was committed with respect to a certain minimum amount, or if it was committed with sophistication, or with relation to a criminal or terror organisation, or with the assistance of a third party.

This amendment is now effective since October 2016.

17. What is the minimum compliance verification required from financial intermediaries in connection to tax compliance of their clients?

Attorneys and accountants are subject to KYC obligations under the Prohibition of Money Laundering (the Business Service Providers Requirements Regarding Identification, Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism) Order 2014.

Under the said Order, any attorney or accountant who is requested by a client to provide a business service as listed in the Order is required to obtain a declaration from the client, where the nature of the business service, the identity of the persons and entities involved and the source of the funds are detailed. Should the attorney or accountant suspect that the business service may be considered money laundering in accordance with red flags published as guidance, he or she must conduct further investigation into the matter, and if the suspicion persists, he or she must refrain from executing the client's wishes.

In order to facilitate the evaluation process of the attorney or accountant, it lists indications (red flags mentioned above) of a high risk disposition, which require further examination, and may result in refusal of the attorney or accountant to provide the requested service.

The business service provider is obligated to maintain records in accordance with the Order. There is no disclosure requirement, but the records of business service providers may be subject to inspection by the IBA or the Accountants Council, as the case may be. Failure to comply with the requirements of the Order may result in an ethical violation.

Financial intermediaries (any third party dealing with the financial assets, other than attorneys or accountants) are required to obtain evidence that the client is tax compliant and that the origin of the funds is not derived from money laundering activities.

The Supervisor of the Designated Non Financial Business and Profession Supervisor (DNFBP) may review these records of attorneys and accountants.

18. What is the liability for failing to comply with money laundering or financial crime rules?

This is a serious criminal offence. Under the Prohibition of Money Laundering Law, a money laundering offence may be punishable by up to 10 years' imprisonment, or by a penalty of up to 4.52 million shekels. In addition, monies may be subject to seizure by the state in an amount determined to have been subject to the anti-money laundering legislation.

Client segmentation and protection

19. Does your jurisdiction's legal and regulatory framework distinguish between types of client for private banking purposes?

According to the Investment Advising Law, an entity engaging in investment advice, in marketing investments or in portfolio management is exempt from obtaining a licence if the client is a qualified client (QC).

A QC is among those defined below:

- a joint investment trust fund or a fund manager;
- a management company or provident fund as defined in the Provident Funds Control Law;
- an insurer;
- a banking corporation or an auxiliary corporation as defined in the Banking Law (Licensing), other than a joint services company;
- a licensee;
- a stock exchange member;
- an underwriter qualified under the Securities Law;
- a corporation, other than a corporation that was incorporated for the purpose of receiving services, with equity exceeding 50 million shekels; in this paragraph, the term 'equity' – includes the definition given to that term by foreign accounting rules, international accounting standards, and accepted accounting principles in the United States;
- an individual for whom one of the following conditions is met and who has given his or her consent in advance to being considered a QC for the purpose of this law:
- the total value of the cash, deposits, financial assets and securities owned by the individual exceeds 12 million shekels;
- the individual has expertise and skills in the capital market field or has been employed for at least one year in a professional position which requires capital market expertise; or
- the individual has executed at least 30 transactions, on average, in each quarter during the four quarters preceding his or her consent; for this purpose, the term 'transaction' will not include a transaction executed by a portfolio manager for an individual who has entered into a portfolio management agreement with the manager;
- a corporation that is wholly owned by investors who are among those listed above; or
- a corporation that was incorporated outside Israel, whose activity has characteristics similar to those of a corporation listed above.

20. What are the consequences of client segmentation?

A provider of financial services is exempt from obtaining a licence if providing services to a QC as mention in question 19.

21. Is there consumer protection or similar legislation in your jurisdiction relevant to private banking?

There is no legislative protection; however, past experience has indicated that the Israeli government and the Bank of Israel will attempt to avoid a bank's collapse that may result in an overall financial crisis. In certain cases of bankruptcy of a bank in the past, the Bank of Israel assumed the obligations of the bank and paid the clients the value of their bank deposits.

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Exchange controls and withdrawals

22. Describe any exchange controls or restrictions on the movement of funds.

There are no longer any exchange control regulations. These were abolished with respect to individuals in 1998, and with respect to financial institutions in 2003.

23. Are there restrictions on cash withdrawals imposed by law or regulation? Do banks customarily impose restrictions on account withdrawals?

There are no restrictions on cash withdrawals; however, there are reporting requirements under anti-money laundering legislation. Accordingly, the Prohibition on Money Laundering (Obligations of Identification, Reporting and Keeping Records of Bank Corporations to Prevent Money Laundering and Terrorism Financing) Order, 2001 lists the circumstances under which a banking corporation is obligated to report to the Israel Money Laundering and Terror Financing Prohibition Authority. Such obligation arises with respect to a deposit, withdrawal or exchange of cash, whether in shekels or in other currency, in an amount equivalent to 50,000 shekels at least.

In addition, the Prohibition on Money Laundering (Modes and Times for Transmitting Reports to the Data Base by Banking Corporations and the Entities Specified in the Third Schedule to the Law) Regulations, 2002 define the procedure of submitting such reports.

Certain exemptions apply under the above-mentioned legislation where the transaction is conducted by an exempt entity, such as a public institution, a bank corporation, the Postal Bank, or a member of the stock exchange.

The Bill for the Reduction of Use in Cash, published in 2015, prohibits cash transactions in the amount over 10,000 shekels. The bill has not yet been approved and is currently not in force.

24. Are there any restrictions on other withdrawals from an account in your jurisdiction?

As mentioned in question 23, there are no restrictions, although anti-money laundering legislation applies, and further to the reporting obligations mentioned in question 23, reporting obligations also apply in the following cases:

- the issuance of a bank draft, whether in shekels or in other currency, in an amount equivalent to 200,000 shekels or higher;
- the purchase or sale of traveller's cheques or bearer bills of a financial institution abroad in an amount equivalent to 200,000 shekels or higher; if the financial institution is located in a territory listed in the Order, the bank corporation is obliged to report such transaction if it is in an amount equivalent to 5,000 shekels or higher. Territories that are included in the Order, as mentioned in question 24, are, inter alia, territories that the FATF has published guidelines with respect thereto concerning their conformity to the FATF's recommendation in the matter of prohibition of money laundering and terror financing; and
- the wiring of funds from Israel to another territory or vice versa in an amount equivalent to 1 million shekels or higher. If the foreign financial institution is located in one of the territories listed in the Order, the bank corporation is obliged to report the transaction if it is in an amount equivalent to 5,000 shekels or higher.

In addition to the said reports, a bank corporation is obliged to file a report on any irregular activity of the service recipient. For example, a transfer of 1 million shekels to a bank account of a student, whose net monthly income is 2,000 shekels.

Cross-border services

25. What is the general framework dealing with cross-border private banking services into your jurisdiction?

As mentioned in questions 23 and 24, there may be reporting obligations on the bank corporation with respect to a cross-border transaction.

Furthermore, as mentioned in question 13, a bank corporation is obliged to identify the persons involved and the nature of the transaction, and to establish that the funds do not derive from a predicate offence, including a tax offence. As also mentioned in question 13, foreign residents who wish to open an account with an Israeli bank must waive their right to confidentiality and declare that their financial assets have been declared to the relevant tax authority in the country of their residence.

Israeli residents are subject to tax and reporting obligations on worldwide income, therefore each deposit in overseas banks or any income has to be declared to tax authorities in Israel.

26. Are there any licensing requirements for cross-border private banking services into your jurisdiction?

There are no specific requirements for cross-border private banking services. However, if such services include investment advice, marketing investments or portfolio management, a licence must be obtained, as detailed in question 5.

Anti-money laundering legislation also applies, and the requirements detailed in questions 13 and 23 to 25 are to be met.

27. What forms of cross-border services are regulated and how?

There are no specific regulations for cross-border private services. General anti-money laundering legislation, as mentioned in questions 13, 23 and 24, applies.

28. May employees of foreign private banking institutions travel to meet clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

Any investment advice, marketing of investments or portfolio management requires a licence as mentioned in question 5. Employees of foreign private banking institutions may travel to meet clients in Israel for purposes other than those requiring a licence. Such employee should ensure that the banking relationship does not contradict anti-money laundering and tax legislation. In addition, they should be aware that their activity may reach a point where the foreign bank is deemed to be 'doing business' in Israel, which may have adverse tax and regulatory consequences.

29. May foreign private banking institutions send documents to clients and prospective clients in your jurisdiction? Are there any licensing or registration requirements?

See question 28.

Tax disclosure and reporting

30. What are the main requirements on individual taxpayers in your jurisdiction to disclose or establish tax-compliant status of private banking accounts to the authorities in your jurisdiction? Does the requirement differ for domestic and foreign private banking accounts?

As said in question 25, Israeli residents are subject to tax and reporting obligations on worldwide income.

The controller of the bank of Israel may require information from the head controllers of the banks in a subsidiary or branches of the banks.

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31 Are there any reporting requirements imposed on the private banks or financial intermediaries in your jurisdiction in respect to their domestic and international clients?

The reporting requirements imposed on bank corporations are detailed in questions 13, 23 and 24.

The applicable reporting obligations vary with respect to financial intermediaries, in accordance with the specific financial intermediary. One example is of attorneys and accountants. When such are concerned, a specific procedure applies whereby there is no obligation to report to the Israel Money Laundering and Terror Financing Prohibition Authority, yet other reporting and information retention obligations are imposed. The procedure is explained above question 17.

Similarly, the legislator has outlined specific reporting procedures with respect to other service providers, such as members of a stock exchange, portfolio managers, insurance agents, dealers in precious stones and the Postal Bank. A portfolio manager, for example, is obliged to report any transfer of securities or other financial assets from abroad to its client's managed account if it is in an amount equivalent to 200,000 shekels or higher.

32. Is client consent required to permit reporting by the private bank or financial intermediary? Can such consent be revoked? What is the consequence of consent not being given or being revoked?

Anti-money laundering legislation does not require that the consent of the client be obtained in order to file relevant reports. However, it should be noted that the consent of foreign residents is required by banks in Israel in order to exchange information with the relevant tax authority abroad, as detailed in question 13. Exchange of information is not usually carried out by the private bank or financial intermediary, but rather these entities file reports to the Israeli Tax Authority, which in turn exchange this information with other tax authorities under applicable treaties, agreements and legislation.

One such treaty is the Convention on Mutual Administrative Assistance in Tax Matters. Israel joined this convention, which allows exchange of information for tax purposes, in 24 November 2015, yet it has not ratified it.

In addition, Israel entered into an agreement with the United States for the implementation of the Foreign Account Tax Compliance Act (FATCA). The agreement is in force, yet the Ministry of Finance is currently in the process of drafting a bill to facilitate its implementation.

In order to implement such treaties, the Income Tax Ordinance was amended in 2015 and 2016 to contain specific provisions allowing such exchange of information.

In October 2014, Israel declared that it would act to implement the Common Reporting Standard (CRS) and allow for exchange of information in accordance thereof by the end of 2018.

Structures

33. What is the most common legal structure for holding private assets in your jurisdiction? Describe the benefits, risks and costs of the most common structures.

The Trust Law, 1979 provides for the creation of an Israeli private trust (known under the law as 'Hekdesh'). Such trust is not considered a legal entity, therefore an underlying company is usually established in order to hold the trust assets. An Israeli trust is created upon the signing of the trust deed by the settlor before a notary. The trust deed is not required to be deposited or registered other than at the private office of the notary, hence it is confidential. Such trust can be used to limit the requirement for inheritance procedures, which are administratively complex. Such trust may also be used for asset protection purposes or to care for a family member with special needs or for intergenerational wealth transfers. The creation of an Israeli trust with the assistance of an attorney or accountant is subject to the anti-money laundering obligations imposed on attorneys and accountants, which are detailed in question 17.

Although the Trust Law does not provide for the establishment of a foundation, a foundation established under foreign legislation (of Liechtenstein, Panama, etc) is nonetheless viewed as a trust for tax purposes under the Israeli Income Tax Ordinance.

34. What is the customary level of know-your-customer (KYC) and other information required to establish a private banking relationship with a structure?

As mentioned in questions 13 and 15, a bank corporation is required to obtain evidence concerning the following, regardless of whether the client is an individual or an entity (including an entity that is a part of a more complex structure):

- identification of all entities and persons involved, (specifically, all beneficial owners);
- the origin of the funds. It must be established that they do not derive from a predicate offence; and
- confirmation of tax status. It must be established that the person or structure is tax compliant where it is resident for tax purposes.

35. What is the definition of controlling person in your jurisdiction?

The Securities Law, 1968 defines 'control' as 'the ability to direct the activity of a body corporate, exclusive of that ability derived only from holding the position of Director or some other post in the body corporate, and the presumption is that a person has control in a body corporate if he has half or more of a certain means of control in the body corporate.'

36. Are there any regulatory or tax obstacles to the use of structures to hold private assets?

Withholding tax regulations, anti-money laundering legislation and KYC requirements may present obstacles when establishing and maintaining banking relationships.

Contract provisions

37. Describe the various types of private banking contract and their main features.

There is no specific standard contract that relates to private banking in all banks, but rather each bank has its own designated contract. The banking contract is subject to the provisions of the Contracts Law (General Part) 1973 and other legislation concerning contracts. As such, it can be varied by the parties, but it is unusual. The governing law in any banking contract in Israel is the Israeli law, as dictated by all banks.

38. What is the liability standard provided for by law? Can it be varied by contract and what is the customary negotiated liability standard in your jurisdiction?

In order to hold the bank liable, the court should be convinced that the bank has violated an obligation imposed on it under applicable legislation such as the Tort Ordinance, case law, directives of the Supervisor of Banks and internal procedures of the bank. Not all lawful causes to file a claim against a bank are provided for in the legislation. Accordingly, a violation of a bank's duty of care, fiduciary duty or confidentiality duty has been recognised as a lawful cause by the court. In general, the Israeli court takes into consideration the balance of powers between the bank and the client, and recognises the importance of banks to the Israeli economy, and therefore tends to impose a higher standard of obligations on the banks.

The liability of the bank is determined in accordance with the applicable legislation and case law. Israeli case law provides that any clause in the banking contract that releases the bank from liability may be considered as a depriving condition in a standard contract under the Standard Form Contracts Law 1982, and therefore can be disregarded.

39. Are any mandatory provisions imposed by law or regulation in private banking contracts? Are there any mandatory requirements for any disclosure, notice, form or content of any of the private banking contract documentation?

There are no special requirements concerning private banking contracts as opposed to other banking contracts. However, with respect to foreign clients,

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banks are obliged to comply with the relevant directive as mentioned in question 13. In addition, banks are obliged to obtain certain information under FATCA and CRS regulations and the instructions of the Supervisor on the Banks.

40. What is the applicable limitation period for claims under a private banking contract? Can the limitation period be varied contractually? How can the limitation period be tolled or waived?

Under the Statute of Limitation Law 1958, the period within which a claim in respect of which an action has not been brought will be proscribed (hereinafter 'the period of prescription') is seven years in the case of a claim relating to a banking contract.

The law also provides that the period of prescription begins on the day on which the cause of action occurred, and case law shows that difficulty in determining that day may result in adverse consequences. For example, the court accepted a bank's claim against a client whose account was in debt for more than seven years as it considered the day the bank first demanded the repayment of the debt as the day on which the cause of action occurred.

Confidentiality

41. Describe the private banking confidentiality obligations.

Section 15a of the Banking Ordinance 1941 further provides:

- a person shall not divulge any information delivered to him or her or present any document submitted to him or her under this Ordinance or under the Banking (Licensing) Law; however, it shall be lawful to divulge information if the governor deems it necessary to do so for the purpose of a criminal indictment, or if the information or document was received from a banking corporation and it consents to its disclosure;
- for the purposes of the disclosure of documents and information received under this Ordinance or under the Banking (Licensing) Law to a court, the Bank of Israel or the supervisor and his or her employees shall have the status of the state and its employees; and
- a person who violates this section or section 6(5) shall be liable to one year's imprisonment or to a fine of 10,000 shekels.

However, the court (Civil Appeal 174/88 Hilda Guzlan v Company de Participation 42(1) PD 963 [1988](Isr.), Permission for Civil Appeal 1917/92 Jacob Scholar v Nitza Jerby 47(5) PD 764 [1993](Isr.)) has interpreted this section such that it does not refer to the relationship between the bank and the client, but rather to the information a bank provides to the Bank of Israel or to the Banking Supervision Department.

Nonetheless, in the past the Supreme Court (Permission for Civil Appeal 1917/92 Jacob Scholar v Nitza Jerby 47(5) PD 764 [1993](Isr.)) held that a bank was under a confidentiality obligation with respect to the affairs of its client.

In the time since these judgments, the confidentiality obligation banks are subject to has been drastically reduced. Under anti-money laundering legislation, banks are now required to report information concerning their clients to other authorities, such as the Israel Money Laundering and Terror Financing Prohibition Authority. Furthermore, banks are required to conduct a thorough due diligence procedure (see questions 15, 23, 24 and 34), and may even refuse a client, unless he or she releases the bank from its confidentiality obligation (see question 13). The recent amendment to the Prohibition on Money Laundering Law, which provides that certain tax offences are considered as predicate offences (see question 16), has further diminished this obligation.

In addition, it is expected that CRS and FATCA regulation will change dramatically the confidentiality of the banks.

42. What information and documents are within the scope of confidentiality?

As mentioned in question 41, the obligation would generally apply to all the documents and information exchanged between the bank and the client.

43. What are the exceptions and limitations to the duty of confidentiality?

The confidentiality obligation imposed on banks is relative, and therefore may be reduced when it is proper to do so. Such is the case when maintaining the confidentiality obligation may cause damage to the bank, or when it contradicts applicable reporting duties under anti-money laundering legislation.

In addition, there is one specific exception referring to foreign residents, as mentioned in question 13.

44. What is the liability for breach of confidentiality?

A claim under the Contract Law on the ground of breach of contract or the Torts Ordinance on the ground of breach of duty of care and negligence.

Disputes

45. What are the local competent authorities for dispute resolution in the private banking industry?

If a client wishes to complain against a licensed person providing investment advice, marketing investments or portfolio management, he or she may file a claim with the tribunal of the Banking Supervision Department, as mentioned in question 9. Furthmore, the ISA was recently authorised to impose civil fines on licensees violating certain provisions of the Law. The ISA is also authorised to suspend or revoke

licences in administrative proceedings of licensees who have failed to maintain threshold licensing requirements. This category includes persons served with criminal indictments. The Civil Fine Committee established under the Prohibition on Money Laundering Law and chaired by the ISA Chairman is empowered to impose civil fines for violations of this law.

In addition to the tribunals of the ISA, there are the tribunals of the Banking Supervision Department mentioned in question 46.

A lawsuit may also be filed with the competent court in any matter. Certain matters are considered criminal; for example, violations of restrictions on holding and proprietary securities trading as well as engaging in investment advice without a licence constitute criminal violations of the Securities Law, and therefore must be brought before the court in accordance with the proper criminal procedure.

46. Are private banking disputes subject to disclosure to the local regulator? Can a client lodge a complaint with the local regulator? How are complaints investigated?

A complaint about a bank or credit card company may be submitted to the Public Enquiries Unit of the Banking Supervision Department. The Public Enquiries Unit was established under section 16 of the Banking (Service to the Customer) Law 1981, which empowers the Supervisor of Banks to investigate enquiries from the public related to their dealings with banking corporations – banks and credit card companies. The Unit is an objective and neutral authorised entity comprised of lawyers, economists and accountants, who are very familiar with the banking sector and provide services for the general public.

The Unit thoroughly investigates all enquiries and complaints submitted to it based on legal criteria. If the complaint is found to be justified, the bank or credit card company must correct the deficiency, and it has the authority to enforce that.

While banks and credit card companies are required to fulfil the Unit's decisions, the one who petitioned (that is, the client) is not bound by those decisions.

There is no requirement to pay a fee or to be represented by an attorney in order to file a complaint. A complaint may be filed by mail, fax or online, on the Bank of Israel's website. A complaint should include the following information:

- full name, address and telephone number;
- name of bank or credit card company that is the subject of the complaint;
- a description of the events – as detailed as possible (include names, dates, and documentation); and
- any additional information that can clarify the issue.

If the results of the investigation are not satisfactory, the client may submit the claim to court.

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THE TALES OF A FAMILY BUSINESS IN ISRAEL

Dr. Alon Kaplan | Meytal Liberman

18 July 2018

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.

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

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 צריך, 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

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TRUSTS IN PRIME JURISDICTIONS

FOURTH EDITION

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

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As globalisation continues, 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 have previously been used in a limited capacity. In parallel, the concept of the foundation has been adopted by a number of common law jurisdictions that until recently have relied exclusively on the trust.

The fourth edition of 'Trusts in Prime Jurisdictions' features fully updated chapters plus new chapters on Quebec, Hong Kong, Singapore, Israel, what it means to be a fiduciary, Islamic (waqf) trusts, and trusts in relation to divorce, among others. The new edition, produced in association with STEP, provides a solid grounding in the use of trusts in a wide range of important jurisdictions. It also examines related topics, including trust taxation, anti-money-laundering laws, the OECD initiative and the notion that countries are entitled to collect taxes beyond their borders.

Featuring chapters by leading professionals and recognised academics, many of whom are STEP members, the fourth edition of 'Trusts in Prime Jurisdictions' is an important handbook 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

STEP ADVISING FAMILIES ACROSS GENERATIONS

STEPJOURNAL

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.

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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.

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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 צריך, 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 צריך, 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**

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