

Planning your wealth timely and accurately... (Covid-19 Alert)

We are always exposed to high risk in life, no matter where we are. Various ways and means have been explored and developed to reduce and mitigate as much risks as possible, not only to protect our lives and properties, but also our loved ones. More often than not, we are unaware of those risk not because we take it for granted, but because of two main factors, firstly is because the risks faced everyday are rather “unforeseeable” in nature and secondly, there may be lack of information or education on the existence of such risks and their implications, thereby causing a lot of hesitation and reluctance for most people to embark on possible solutions for those risks, which eventually causing them, when confronted by any of those risks, to do last minute planning which would in most circumstances fail and proved futile.

Having said the above, whilst it is true that the considerations to put up a sound succession strategy for non-Muslims are rather ‘straight forward’, the same cannot be said of a plan involving Muslims. Being bound by the **Forced Heirship Rule**, a Divine Law prescribed upon them, is one of the major reasons to start succession planning early. Without proper planning in hand, other personal matters would come into play and be entangled in the middle of the whole estate or legacy. The issues are more pronounced because succession and inheritance is subject to such **Forced Heirship Rule** and would involve members from within and outside the family which eventually means that the rights of those who are entitled to inherit cannot simply be disregarded. Being Divine in nature, it is their obligation to ensure that a succession plan being put in place complies and does not contravene the prescribed principles.

The application of the **Forced Heirship Rule** plays an important role to encourage Muslim business owners to plan in advance. Whether they realize it or not, such Rule plays an important role to stimulate not only business owners but also ordinary individuals to plan even before they engage on something. Business owners might not be aware of the implications of such **Forced Heirship Rule** if no proper planning is in place, however, it is an obligation on our part to highlight it and other related matters in advising most of our clients prior to their business succession planning.

To ensure that implementation of the planning runs smoothly without any intricacies, various aspects need to be addressed together with the issues at hand. Having a personal estate planning would obviously be the best supplement to a business succession planning, in fact, they must co-exist side by side and operates in parallel. Numerous instruments can be put in place to ensure that the combination of both provides the best result for business owners.

The process of selecting suitable executors and successors is often challenging. It places a unique and heavy personal responsibilities not only on the business owners, but also their successors-to-be. Both have to be wary that intense challenges are bound to emerge and thus provide some indirect force upon them to put in place some form of planning in order to ensure that business runs smoothly without too many hassles and disruptions.

Common shortcomings of the will-writing services in the market place

Most service provider focus on the importance of just having a Will. A Will is only one of the many instruments one need. It is only the first tool to estate planning.

A practitioner must be able to provide a wholesome advisory service from all aspects affecting his client. The Will must be written not as a stand alone instrument but must co-exist within the client's wealth preservation and estate planning needs.

Therefore a practitioner like us must be able to advice the client of the various other practical aspects in the administration of the estate which may include financial, legal and emotional needs of the legal heirs. Unlike non-Muslims, writing a Muslim's Will require more than just taking instructions and write the Will. The client, in particular, must understand that a Muslim's Will is read and construed subject to the various rules of Islamic law of inheritance and appreciate the wisdom behind these laws. The process of executing the Will and administering the estate is also subject to the various laws of the country and governing authorities. The service provider must be able to identify underlying practical issue like:

- (i) interpreting the wishes and intention of the client within the framework permissible by law; and
- (ii) the expectation of the legal heirs once the contents of the Will is read vis-a-vis their expectation accorded to them under the rule of faraid; and
- (iii) the powers granted to the Executor and his responsibility pending distribution of the estate to the legal heirs / beneficiaries.

In essence, the client's concern when drafting a Muslim's Will must include the client's heirs and also the executor. Wills-writing should not be the end of the journey. It is part of a larger and complex estate planning process.

Now, in lieu of the covid situation faced by our world right now, the practitioner/ service provider have to be mindful of the official advice of self-isolation and social distancing, which are particularly important for elderly and ill persons.

Attestation by two witnesses present at the same time, while maintaining personal separation, is a particular difficulty, especially if the testator is in isolation and unable to ask independent witnesses into the room. However, witnessing a will from the next room or through a window might be challenged as not being formally in the testator's presence, although some very old case law suggest it may be sufficient to have two witnesses who are in line of sight though not in the same room. Practitioners are in a difficult position as it may not be possible to comply with the government's guidance to reduce social contact while also arranging for wills to be validly signed.

In practice this may mean sending wills to clients and asking them to make arrangements for suitable witnesses to visit them while maintaining distance so far as possible. However, it will be for each practitioner to make a decision on the merits of the particular case and the relative risks to both the client and the practitioner.

A partial solution may lie in technologies such as Skype, WhatsApp, Facetime, Zoom or email, although there is not yet any official confirmation that e-signatures or video-witnessing will be accepted by the authorities. **Let's hope that this new normal leads us to good opportunity to explore and that this pandemic jolt people real good to plan their wealth timely and accurately.**

As for us in Rahayu Partnership, we neither fail nor stop sending messages to our clients and counterparts to remind them that although we are physically apart, we are here still here, figuring out this new normal so we can continue to serve our clients to the best of their interest.

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