



## THE NEED TO REGULARLY REVIEW WILLS, TRUSTS, COMPANY CONSTITUTIONAL DOCUMENTS AND SPECIFIC AGREEMENTS

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As one's family, as well as business circumstances and dynamics, are everchanging, the wills, family trust and the company MOI's, shareholders agreements and company constitutional documents and related agreements (e.g. shareholders agreements and "buy/sell" agreements), which were specifically prepared to cover the circumstances as they were at the time when drawn and signed, should be revisited so as to ensure that same are in alignment with the current circumstances (and anticipated future events) of the individual, his/her family, corporate and other business interests.

It behoves the attorney when dealing with commercial matters (shareholders agreements, sale agreements, etc., and the restructuring of companies/businesses) to remind the client that when renewing their annual insurances and investments, that the client should be mindful of the need to revisit his/her last will and testament, trust, "buy/sell" agreement, etc., and, perforce, depending on the nature of the matter with which the attorney is seized, he should be alert to the need to enquire in this regard in order to fully understand the client's personal and business interests in the context of the impact on the client's financial position, tax and estate and estate duty implications.

As experience has shown, whilst the client will meet with his/her auditor, who attends to his/her personal financial returns, and where, possibly, the auditor is not the same person who attends to the company's or businesses' affairs, there is often a disconnect in considering the impact of the increase in value of the assets (shares and loan accounts) since the relevant agreements, wills or trusts were drawn, which necessitates an integrated approach with regard to the client's estate planning, in addition to review of the historic documents.



By way of an example: a “buy/sell” agreement may have been concluded many years ago, and the cover amount of the insurance was considered at that time adequate to provide the survivor with a resource to acquire the first dying shareholder’s equity interest, but the insurance cover has not been increased, from time to time, due either to oversight or possibly due to the person being of advanced age, a substantial increase in the insurance premia due to either age or health, or that the person may no longer be insurable. (It should be noted that clients often confuse “keyman” insurance with reciprocal life cover in terms of a “buy/sell” agreement.)

In dealing with a client, whether an individual who may have a family trust, but not extensive assets via a corporate structure, or a client whose structure is more complex, it is necessary to consider the impact on the estate of such client insofar as the proceeds of life policies on the client’s life, which fall to a beneficiary, but would, nevertheless, be considered as a dutiable asset in the estate of such person (save for the proceeds of a “buy/sell” policy).

The client should be alerted in the course of any of the exercises referred to, to the need to ensure that his/her estate has sufficient liquidity to pay the estate duty, without the need for assets to be realized or possibly a repatriation of assets held offshore.

The message: a person should accordingly ensure, on a regular, if not annual, basis that their attorney, auditor or financial services provider addresses an exercise to, first, determine whether any of the paperwork (will, trust deed, business paperwork, etc.) needs to be revisited, for purposes of either replacement or an amending addendum, secondly, to ensure that the person’s estate will have sufficient liquidity to discharge its liabilities, including estate duty, and, thirdly, to consider any reorganization in the person’s affairs, which would objectively be advisable from a financial and practical perspective.

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