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Advocates & Solicitors
Syarie Counsel
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LEGAL INSIGHT
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Understanding Estate Planning for Business Owner

By: Syafiqah Binti Abdul Razak
Partner

Estate planning is the **process of arranging for the management and disposal of a person's estate during their life and after death. For business owners, it's crucial to ensure that both personal and business assets are protected and transferred smoothly according to their wishes.**

Proper estate planning can help ensure that your business continues to operate successfully after you are no longer able to manage it. By creating a comprehensive estate plan, you can protect your family's financial future and ensure that your business legacy is preserved for future generations.

Estate planning involves advanced decision-making on the distribution of assets to the next of kin or intended person(s) or charitable organization(s).

What are the key components for estate planning?

1.Wills

Referring to **Wills Act 1959,** will **means a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death** and includes a testament, a codicil and an appointment by will or by writing in the nature of a will in exercise of a power and also a disposition by will or testament of the guardianship, custody and tuition of any child.

Partners

Atiqah Binti Abdul Razak
Partner
atiqah@legalasa.com

Syafiqah Binti Abdul Razak
Partner
syafiqah@legalasa.com

Areas of Practice

Corporate & Commercial
Real Estate, Property& Finance
Litigation & Dispute Resolution
Probate & Estate Administration
Shariah
Taxation Law
Legal Advisory

Contact Us:

No.559-A,Jalan Samudera Utara 1,
Taman Samudera,
68100 Batu Caves, Selangor

03-6178 6831/014-923 8785

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✉ **atiqah@legalasa.com**

Syafiqah Binti Abdul Razak
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✉ **syafiqah@legalasa.com**

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This will is not applicable for those who profess the religion of Islam. As there is another concept for Muslim Will.

Wills is a legal document outlining how assets will be distributed after death. For business owners, it's important to specify what happens to the business.

A will is a legal document that outlines how a person's assets will be distributed after their death. It allows the person (known as the testator) to specify their wishes regarding the distribution of their estate, which includes property, money, and other assets.

What makes will valid?

a)Be at least 18 years old;
b)Be of sound mind;
c)Have your will in writing;
d)Have signed your will;
e)Have your signing witnessed by at least 2 witnesses who will then sign in your presence and in the presence of each other.

2. Trusts

A trust is a legal arrangement where one party (the settlor) transfers property to another party (the trustee) to manage and hold for the benefit of a third party (the beneficiaries).

The Trustee Act is the main **legislation governing the administration of trusts in Malaysia.** It outlines the duties, powers, and responsibilities of trustees and provides guidelines for trust management.

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Benefits of setting up a Trust in Malaysia

a. Trusts offer a legal framework for the preservation and protection of assets. Assets are held apart from personal or company assets when they are transferred to a trust, minimizing their exposure to risks or claims.

b. Trusts are useful tools for estate planning because they let people arrange how their assets will be distributed and how they will support their loved ones when they pass away.

c. Because the ownership and management of assets stay within the trust framework, trusts offer a certain level of privacy and confidentiality.

d. Trusts can make the management and transfer of a family-owned business or fortune from one generation to the next easier. Trusts guarantee the continuity and preservation of family wealth or business activities

3. Hibah

Hibah is one of the important instruments used in Islamic wealth management. Hibah occurs when an individual confers a valuable asset on another, during his lifetime without any return. The practice of giving the hibah is encouraged among the Muslims as it promotes the concept of maqasid of Shari'ah in terms of the protection of wealth as well as strengthening the relationship with one another.

The elements of hibah need to be fulfilled in order to ensure the validity of hibah.

There are **four (4) pillars of Hibah**
1. Donor
2. Donee
3. Gift
4. Offer and acceptance (Sighah: Ijab & Qabul)

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In Malaysia, the Hibah instrument is normally used by Muslims in planning asset distribution to the intended beneficiaries.

4. Business Succession Planning
Business succession planning is a strategic process that ensures the smooth transition of leadership and ownership in a business.

Why is it important to have business succession planning?

a) Ensures that the business continues to operate smoothly even after the departure of the owner of the business.;

b) Helps maintain the value of the business by ensuring a well-planned transition.

c) Provides a clear legal and financial framework for the transfer of ownership and assets.

5.0 Power of Attorney

Power of Attorney is a **legal document** that **allows a person (referred to as the Donor) to appoint another person (known as the Donee), which authorizes the Donee to act on behalf of the Donor in any dealings of physical or non-physical assets such as land, property, shares or intellectual property.**

Power of Attorney is also commonly used by the elderly or business owner to give out specific power or authority to his/her younger next of kin to act on their behalf to ease up any dealings relating to his/her assets.

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Conclusion

Estate planning for business owners is a crucial process that involves careful consideration and strategic planning. By addressing key components like wills, trusts, succession planning, and hibah you can ensure your legacy is protected and your business continues to thrive.

Disclaimer: *This newsletters contains general information only. It does not constitute legal advice nor an expression of legal opinion. For further information or inquiries kindly contact syafiqah@legalasa.com or +60149238785.*

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