



德勤马来西亚中国服务部

合理规划财富继承，避免挥霍无度发生

介绍

近年来，中国高净值人士的数量发生了创纪录的增长。而高净值人士需要对财富继承筹划给予特别关注。这是因为他们可能在离世后为其继承人留下巨额财富，如果未能有效规划财富的继承，继承人财富管理经验的匮乏可能间接导致对财富挥霍无度的发生。

根据中国的继承法对于法定继承的规定，当某人去世时，其遗产将会平均分配给其配偶，子女和父母，即第一顺序继承人。而其兄弟姐妹，祖父母和外祖父母则属于第二顺序继承人。

如果某人不希望按继承法法定顺序来分配其遗产，则需要立下遗嘱以安排遗嘱继承或遗赠给继承人或受遗赠人。理论上，该遗嘱将应用于遗嘱人全球范围内的财产。然而，某些国家可能对特定类型财产的分配，如不动产处置设有限制。

鉴于遗产管理潜在延迟可能带来的不便，成立生前信托并纳入特定财产可能是更为妥当的做法。生前信托是一种法律安排，在这种安排下，委托人将财产及资产所有权转让给受托人，而受托人则为了一个或多个受益人的利益而管理财产。

对于描述信托的一个经典例子莫过于大家耳熟能详的《三国演义》，作为蜀国统治者的刘备也许可以被称为中国历史上的信托鼻祖，因为他（委托人）把整个江山都托付于他的谋士诸葛亮（受托人）以便于后者帮助和支持其儿子刘禅（受益人）继承王位。此外，刘备也委任了另一位谋士李严（保护人）来确保权利的制衡。

通过设立生前信托，家族财富可以在一定时期内得到保护和传承。同时，也可以由专业的管理人在年幼子女获得管理财富的能力之前的过渡时期代替其管理财富。

在信托安排下，受托人有义务为了受益人的最佳利益而行事。信托的委托人可以通过名为信托契约的法律文件要求受托人利用信托资金和/或收入支付信托受益人的生活，教育和医疗费用。对于那些设定了长期目标的信托，受托人管理信托资产甚至可长达 80 年，足以跨越几代人。

由于受托人是基于持有指示而在整个信托期间持有资产，除非信托契约允许，受益人不可以迫使信托人出售其信托财产。委托人可以委任一位或多位其信任的人士成为信托的保护人。信托保护人的职能是监管信托的运作以及在受托人做出重要决定时给予适当咨询意见，例如出售信托资产或对于触犯信托契约的受益人停止支付款项。

结论

因此，基于资产保护的目，高净值人士可以考虑分配一部分的个人财产以设立生前信托。此信托的构建可以避免遗产债权人的权利主张（但不包括欺诈性的财产转移情形），从而保护受益人的福利及权益。如果信托的设立充分考虑了委托人家族的实际情况和发态势，其将有很大机会将财富保存几代人之久，从而获得持久的财富传承。

综上所述，将大量财富留给继承人本是无可厚非的，但失败的财富规划将会对家族财富带来负面影响，甚至最终导致家族财富的耗尽。而经验丰富的私人财富管理顾问能够协助您量身定制财富继承计划从而解决这一问题。

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Deloitte Malaysia Chinese Services Group Publication

Avoid the occurrence of spendthrift heirs through early wealth succession planning

Introduction

China recorded a substantial growth of High Net Worth Individuals (HNWIs) in recent years. However, when there is massive wealth to leave behind for their heirs upon their demise, failure to plan wealth succession effectively may indirectly create a generation of spendthrift heirs who do not know how to manage their inheritance. As such, these HNWIs will need to be extra careful when planning their wealth succession.

According to the laws of succession in China, upon a person's demise, his estate will be distributed equally among his spouse, children and parents who come first in the order of succession. Siblings, paternal grandparents and maternal grandparents are known as the second level of successors.

If one does not want his estate to be distributed in accordance with the default succession order as defined in the inheritance laws, then the individual would need to write a Will to bequeath his assets to the beneficiaries of his choice. Theoretically, the Will applies to his/her assets worldwide. However, some countries may have certain restrictions imposed on certain types of assets such as immovable assets.

In view of the inconvenience caused by the potential delays of estate administration, it would be highly advisable to establish a living trust and settle some of the assets into it. A living trust is a legal arrangement in which a person known as the settlor transfers the title of property and assets to

another person known as the trustee where it is held for the benefit of one or more persons known as beneficiaries.

One classic example commonly used to describe a trust is from the famous novel, Romance of the Three Kingdoms. As the ruler of the Shu Kingdom, Liu Bei probably created one of the first trusts in Chinese history. He (settlor) entrusted the entire kingdom to his advisor Zhuge Liang (trustee) for him to administer and to support his son Liu Chan (beneficiary) as the successor of the throne. On top of that, he also appointed another advisor Li Yan (protector) to assist him to ensure there is check and balance.

A living trust can be created and structured to protect and preserve the family wealth over a period of time. It can be created for the purpose of a transition period under the care of professional management when their children (who are still minors) are incapable of managing the inheritance until they are ready.

The trustee is obligated under the trust to act in the best interest of the beneficiaries. The settlor of the trust, through a legal document known as the trust deed, may instruct the trustee to pay maintenance, education and medical expenses of his beneficiaries from the trust capital and/or income. For those with long-term objectives, the assets may be held by the trustee for a period of 80 years, which is long enough to span multiple generations.

Because the assets are held by the trustee with instructions to hold throughout the trust period, beneficiaries cannot compel the trustee to sell the trust assets unless this is allowable in the trust deed. The settlor may appoint one or more persons whom he trusts to act as protectors of the trust. Protectors take on a supervisory role and are often consulted by the trustee when making important decisions such as the sale of trust assets or suspending payments to beneficiaries who breach the provisions of the trust deed.

Conclusion

For asset protection purposes, it may be advisable to carve out a portion of one's assets and settle it into a living trust. The trust can be structured to prevent claims of estate creditors, with the exception of fraudulent transfers, in order to protect the welfare and interest of the beneficiaries. When a trust is created with due consideration of the settlor's family position and dynamics, chances are the wealth can be preserved over multiple generations, thus leaving a lasting legacy.

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