

Wills and Estate Planning – Thailand

** Note: the following is intended only to provide the reader with an overview of the issues that need to be considered when looking at wills and estate planning in Thailand; it is not intended to be a comprehensive guide, nor is it intended to constitute legal advice. In the event that you are contemplating writing a will (or putting your affairs in order) in Thailand, it is strongly recommended that you seek the advice of a reputable lawyer in Thailand.*

The following is a brief article about a topic many of us avoid thinking about until it's too late - our death. However, as my dear old Mother used to say, "there are two things certain in life William, taxes and death. Avoid paying the first to make sure you have something to leave when you face the second." No truer words spoken, and you can never set about putting your affairs in order young enough - especially with the way we drive and live our lives here in Thailand! So, what are the issues we need to be thinking about?

Inheritance tax - and the problems its causes

Without doubt, one of the greatest aspects of living and having assets and families in Thailand is that our beneficiaries are not (currently) subject to inheritance tax. The downside here, the Thai legal system is very simple when it comes to estate planning - there are no complex estate trust mechanisms in place. Indeed, in part because there is no inheritance tax, the Thai legal system doesn't even recognise the legal concept of a trust - nor does it recognise the concept of a "beneficial" owner in equity. Simply put, Thai law only recognises legal owners of property. One caveat here would be that Thai law does recognise the concept of a legal "guardian", which could be seen as a very embolic form of trust relationship.

Types of probate

In short, Thai law recognises two types of probate - intestate and will.

Section 1620 of the Civil and Commercial Code

"Where a person dies without having made a will, or if having made a will, his will has no effect, the whole of his estate shall be distributed among his statutory heirs according to law.

Where a person dies having made a will which disposes of or has effect for a part only of his estate, the part which has not been disposed of or is not affected by the will shall be distributed among his statutory heirs according to law."

- the intestate probate

Section 1646 of the CCC

"Any person may, in contemplation of death, make a declaration of intention by will concerning dispositions as to his property or other matters which shall take effect according to law after his death."

- the will probate.

How to make a will in Thailand

In order to constitute a binding and lawful will under Thai law, you will needs to be made in compliance with Title III: Wills; Chapter II: Forms of Will, of the CCC. In short, bullet-point form, this means you will needs to be:

- * made by someone over the age of 15 (Section 1703);
- * may be made in writing, dated at the time of making the will and signed by you and at least 2 witnesses (Section 1656)
- * may be made by an holograph document (Section 1657)

* may be made by public document (Section 1658)

* may be made by a secret document (Section 1660); *provided that* the document: is (a) signed by you; (b) be a closed document with your signature across the place of closure; (c) the closed document must be closed in front of the Kromakarn Amphoe ("KA") with at least 2 witnesses, with a declaration that it is your last will and testament; (d) the document must be signed by the KA and you and the witnesses and the KA must note on the cover of the document that it is your last will and testament declaration along with the date it was submitted

* may be made orally, *if* exceptional circumstances such as imminent danger of death, during an epidemic or war, the person is prevented from making a will in any of the above prescribed forms (Section 1663), but such oral will will only be valid for a period of 1 month if you do not die within that time frame subsequent of making it (Section 1664)

- it should be noted that a witness to a will cannot also be a beneficiary thereunder (Section 1653).

Thai nationals living overseas

Insofar as they wish to devolve assets held in Thailand, Thai nationals overseas may execute their will in the form prescribed by the law of the country in which they reside or under Thai law; but when made in accordance with Thai law, the role of the KA is taken by the Thai embassy or consult or any competent authority for authenticating a record of public statement.

Foreign assets / Thai assets

The division of foreign assets versus Thai assets is an interesting one. On the one hand, there is nothing stopping you including Thai assets in a foreign will, nor foreign assets in a Thai will. Practically speaking however, and especially so if you live in a country that has inheritance tax, estate planning will put you in direct conflict with Thai law and will, thus, likely nullify your wishes if you wish to probate such assets here.

For this reason, good practice guidelines are such that you separate your assets into those assets you have in Thailand and those you have elsewhere, with wills drawn up on how to devolve these assets in the best manner possible pursuant to the local rules where the assets are held.

Intestate

In a worst case scenario, you die without having left a will, what happens? The answer is that your estate is split up according to the provisions of the CCC - in particular Book VI: Succession; Title II: Statutory Right of Inheritance. In fairness, in trying to be equitable to all, the provisos here are a mess, but essentially you have 6 classes of heir, with varying importance, as follows:

1. direct descendants (also known as "issue", and "children")
2. parents
3. brothers and sisters of "full" blood
4. brothers and sisters of "half" blood
5. grandparent
6. uncles and aunts

Now, immediately you should be noticing one startling exception to the list of 6 - your loved one (i.e. husband/wife)! The fact is, your spouse is a statutory heir, but as class 7! In other words, if any member of class 1-6 is surviving, spouse only gets a proportionate share:

1. at the same % share as each surviving child
2. 50%
3. 50%

4. 75%
5. 75%
6. 75%

ONLY if NO class 1-6 heir exists, will the spouse get 100% of the estate- so those of you with assets in your wife's names, without a will, better start putting pen to paper as you read this. **YOU HAVE BEEN WARNED**

What happens if I die owing money?

If you owe money on your death, your creditors can make a claim against your estate, but only for an amount equal to the property value being transferred/devolved. In other words, if you have nought when you die, and your estate has nought when you die, your creditors have nought when you die! Then again, so do your dependents/beneficiaries (if any).

The concept of a "living will" in Thailand

The concept of living wills is interesting in Thailand. The fact is, the CCC has no specific provisions relating to living wills. Wills only become effective - as a declaration of intent - on your death. Thus they're useless here.

As a contractual document, it is extremely likely that a living will would not be enforced in Thailand on the grounds that it would be "against public morals". Unfortunately, Thai law has no definition of what constitutes "Thai morals" and the Thai courts have never defined it, just calling it "Thai morals".

So, if you want to write a living will in Thailand - feel free to do so, nothing stopping you from doing so, but do so in the knowledge that, as with most things here, your wishes will likely be completely ignored and there will not be a damn thing you can do about it!

Finally

In the words of one Dr. Spock, I do hope you all "*live long and prosper*". However, make sure you see a good lawyer in Thailand a long the way and get your affairs in order. After all, if you are surviving spouse, it could mean the difference between be out on your arse and having a roof over you head!

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