ASIA ESTATE PLANNING ASSOCIATION

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Divorce planning for the grandparent

DIVORCE – MEANS TO AN END

A decades old marriage looking to split may seem strange. After many years together, the couple would have made peace with their situation and opt to live out the rest of their days without rocking the proverbial boat. So, what gives? The topic usually revolves around money. Here are two angles we see when handling such divorce cases.

The first scenario we observe is when they have *differing views on what to do with the fortune* they have amassed over the years.

Grandparent A1 might think that they have provided all they could for their children and opt to gift their assets to a party outside of the family. This could be their church, or even a chosen charity. Upon hearing this arrangement in the will, Grandparent A2 may disagree and feel like some of the money should be kept within the family. Unable to change the Grandparent A1's mind to amend the allocation of assets in their will, Grandparent A2 opts for divorce to take back some of the matrimonial assets and regain control over the gifting of said assets.

A grandparent may also want to skip gifting their children money for a different reason.

Grandparent B1 thinks their child is not financially mature to manage the family wealth because of certain reasons. However, Grandparent B1 understands that his grandchildren still need to be provided for. Grandparent B1 may set up a structure to benefit the grandchildren, without the parent getting involved. On the other hand, Grandparent B2 might feel that the money should go to their child first before their grandchild. Again, if no amicable solution to the gifting exists, the grandparents may settle for divorce to formally split their joint asset pool and gift as they individually see fit.

Despite the differing opinions on wealth distribution, grandparents who divorce for this reason are typically still amicable towards the other. Post divorce, these couples may still live together under one roof, care for their children and grandchildren the same way. To them, divorce is just a means to end their quarrel on how to manage their asset distribution.

THE INHERITANCE

Beyond money

With their rich life experience, grandparents are primed to pass on their experience and wisdom:

Emotional maturity and relationship skills – sharing life stories from before allow grandchildren to glean important life lessons without the risk of emotional scars

Character development – supplementing parents' influence, grandparents are the perfect helpers to fortify values especially when the parents are not around

Physical skills – work and life experience probably revealed to them interesting techniques in going about their craft or more efficient ways to accomplish mundane tasks

The grandparents' challenge is to turn these life lessons into age-appropriate material for the grandchildren to absorb. Bonus points if the stories are told in their lingo ;)

GRANDPARENT'S LAST STAND

Divorce as a last-ditch attempt to shield the family

The second scenario surrounding money and divorce would be *bankruptcy*. To help safeguard the family from a financial fallout, a couple may consolidate their wealth under one party while the other takes the fall from financial liabilities.

As a couple with rich life experience, they would have amassed a large fortune, larger still if the source of toil and wealth came from a business. As business owners, business liabilities could threaten to wipe out the fortune built by blood, sweat and tears.

20 years ago, our experience saw more general partnership than limited partnership business structures. This meant that any one of the partners has unlimited personal liability for any and all debts and obligations of the company. This also means that these business owners are likely to be grandparents by now.

One of the ways a business liability could affect a family is if a party uses a business-related property as a collateral for a loan. If said party is unable to repay their loan punctually, the lender could legally demand the remaining partners to redeem the loan. If a party acts as guarantor, they would place the entire estate and all their family's interests at the mercy of the financial institution.

A seemingly possible solution would be for both parties to agree to the terms of divorce relating to property. While family members are not required to undertake another member's debts due to bankruptcy, any joint holdings would still be subjected to creditors' claims. Simultaneously, if a party agrees to their spouse's 'demands' to own all the property and assets, then the financial institution would find it difficult to claw back the amounts owed to them by the bankrupt party. While divorce could work in theory, manoeuvres executed in the absence of good faith may empower the court to take back the properties for the creditors.

Thus, to preserve the peace at home, a grandparent may thus choose divorce to minimise the fallout and negative impact on their family's everyday life.

Regardless of the reason behind the potential divorce, remember that estate planning is more than the consideration of physical property. The emotional well-being and harmonious relationships are equally important as well. Divorce is delicate and solutions vary with circumstance. If you find similarity between yourself and any of the scenarios listed here, do consult your lawyer and estate planner for prompt advice.

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