

Call in for a Coffee – Tax News

Introduction

Welcome to RSM's latest edition of "Call in for a Coffee". This article focuses on the importance of having a Will, how to ensure its contents are legal, as well as distribution of your assets, property and investments. We hope you will find the information valuable and look forward to your feedback.

Having a valid Will...

Having a valid Will is one of the most responsible things you can do for your family and loved ones. Without it, those you love and care about could well suffer both financially and emotionally.

Nobody likes the daunting task of making out a Will as it means thinking about the fact that you will die one day. There are no exceptions to the rule, so it is better to get it done, and go on to something more exciting.

What happens if you don't make a Will?

Thailand's Civil and Commercial Code prescribes that where on the death of a person there is no statutory heir or legatee or creation of a foundation under a Will, the estate devolves to the State.

Does a Will have to be in writing?

In order to be legal and enforceable, a Will must be made in writing. It must be dated at the time of the making of the Will and signed by the testator before at least two witnesses, who shall and there sign their names certifying the signature of the testator.

In addition to a lawyer making out a Will, a Will can also be a holograph document, whereby the testator writes the whole content of the document by hand, then dates and signs it, again in the presence of two witnesses.

When under exceptional circumstances, such as imminent danger of death or during an epidemic or war, a person is prevented from making a written Will, he may make an oral Will. In such exceptional circumstances, a testator must declare his intentions regarding the dispositions of his Will before at least two witnesses present at the same time.

Such witnesses must then, without delay, appear before the Nai Amphur and state before him the dispositions, which the testator has declared to them orally, as well as the date, place and the exceptional circumstances under which the Will was made.

Preparing your Will details

Before you actually make out your Will, you should firstly write down certain information. This not only makes it easier for a lawyer to draft your Will, but it also eventually enables the administrator of your Will to do his or her job.

Your properties and assets

Write down the descriptions, addresses and the locations of the documents of legal title for:

- Property you own
- Other large assets that you own, including furniture, jewellery, vehicles, heirlooms, etc.
- Your savings accounts and investments
- Your superannuation and provident fund investment accounts and your insurance policies, which have a surrender value payable upon death
- Any other property, assets, investments or interests, which you may have.

Your liabilities

Although your liabilities are not listed in your Will, it is sensible to write down your liabilities also. These include mortgages or other real estate loans, bank or financial institution loans, personal or private loans, credit cards and any other monies owed to private individuals.

Personal details

You should note down your personal details such as your full name, date and place of birth, religion, spouse's name, date and place of marriage, children's names and addresses, passport issue details and number, and tax ID number.

Contact details

So that appropriate contact can be made with your relatives and friends as well as others, you should note down the names, addresses and telephone numbers of people such as your next of kin, other people to be notified of your death, the administrator of your Will, your lawyer, and the person with your Power of Attorney.

Personal messages

If it is your wish to write personal messages for individuals or a general message, then you should do so and leave such messages with your Will. These messages can be left open or

they can be placed in sealed envelopes, addressed and marked as "To be opened only after my death".

Personal requirements

You should also note down your specific instructions about your funeral preferences. This relieves the family members or others from making the decision. There is provision in the Will document itself to indicate your preferred arrangements if you so desire. Also, the donation of body organs is a gesture of great significance. This can be a sensitive issue, the feeling of family and loved ones need to be considered, and it would be wise to make your intentions known in your Will document.

Administrator of your Will

Decide who you want to be the administrator of your Will. This can be one or more persons but whoever is chosen must be over the age of 18 years. Be sure that the person(s) you appoint as administrator is willing to take on the responsibility. Also ensure that the person(s) selected is not likely to predecease you. Unlike the situation with the witnesses to your Will (refer to point 11 below), the administrator(s) can be a beneficiary under your Will, and in fact, it is quite common for this to be the case. If you wish to nominate person(s), you must do so by using their name(s) and not by simply nominating "my accountant" or "my lawyer". Be sure to tell your administrator(s) where your Will is to be stored. If it is left in a safety deposit box, you may care to consider having your administrator(s) as joint holder(s) with yourself of the safety deposit box.

Beneficiaries under your Will

Decide on the beneficiaries who will receive your property. The accurate identification and location of beneficiaries is important, so you should utilise all of the following means to describe them: their full name, gender, relationship to you, date and place of birth, occupation, and current address.

Shares to beneficiaries

In a Will, there are four ways you can leave property or money to your beneficiaries. A Legacy is a gift of money to a certain person, group of people or organisation. A Bequest is a gift of a specific item or items to a certain person, group of people or organisation. A Devise is a gift of land and buildings and anything else permanently attached to land. The Residuary is the remainder of your estate after the above mentioned gifts. Decide what share of your property each beneficiary will

receive. You may decide to allocate specific items, sums of money or parts of your assets to one or more of the beneficiaries. Be sure however, that the shares or proportions that you allocate, add up to no more than the total of your estate.

Guardians

If you have minor children or if it is likely that you will have minor children in the future, decide who you want to be their guardian and write down their name(s) and address.

Witnesses

There must be at least two witnesses to your signing your Will. A witness must not be a beneficiary under your Will and a spouse of a beneficiary must not be a witness. In addition, a translator or interpreter (and his or her spouse) must also not be a witness. The witnesses must watch you sign your Will and must also watch each other sign. The witnesses are merely witnessing your signature on the Will and they do not need to know its contents. Witnessing of your Will is very important so arrange in advance who will act as witnesses and be sure that they are available at the same time.

If you wish to have a lawyer assist with the preparation of your Will and the witnessing of it, we invite you to contact our Senior Legal Manager, Khun Pardorn Suchiva, on the details below.

Steven Herring CA
Corporate Tax Consultant

RSM Thailand

RSM Thailand is a member office of RSM International, a leading worldwide professional services firm. The RSM Thailand service line leaders are:

Gareth.Hughes@rsmnw.com Corporate Advisory
Mark.Butters@rsmnw.com Accounting & Tax Compliance
Mike.Holloway@rsmnw.com Recruitment
Pardorn.Suchiva@rsmnw.com Corporate Legal
Prawit.Wipusirikup@rsmnw.com Audit & Assurance
Steven.Herring@rsmnw.com Taxation Consulting
Surachai.Damnoenwong@rsmnw.com Audit & Assurance

Contact Details

RSM Nelson Wheeler (Thailand) Limited

26th Floor, Sathorn City Tower,

175 South Sathorn Road,

Bangkok 10120, Thailand

Telephone: 66 (0) 2670-9002-6

Facsimile: 66 (0) 2670-9027-8

Website: www.rsmnelsonwheeler.co.th

Email Address: askus.bangkok@rsmnw.com