

Helping you look after your family's needs for  
family succession, protection and financial benefit  
in an ever changing world.



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# International Estate Planning

## 1. Reasons for carrying out IEP:

- 1.1 The client will wish to provide for **family succession** to his/her wealth.
- 1.2 The client will wish to provide for **on-going control** of businesses and companies.
- 1.3 The client may well have assets in many jurisdictions.
  - i) The law of the client's domicile at the time when the client passes away will govern his/her Wills, except that real estate devolves in accordance with the law of where it is situated.
  - ii) If the client has only one Will, Probate of this Will will have to be obtained in the jurisdiction of his/her domicile first and then this Probated Will will have to be taken to all the other jurisdictions for Probate to be granted there.
  - iii) It is possible to have a Main Will and other Wills limited to the disposal of assets in specified jurisdictions. That will save time but the cost and time will still be considerable.
  - iv) If assets are transferred to a Trust or Foundation by the client during his/her lifetime, family succession and protection is provided and the assets no longer form part of the client's estate and all the time and costs of **Wills and Probate are avoided**.
- 1.4 The client may wish **to protect his/her assets** from claims by creditors, from foreign successions laws and from claims in marital disputes.
- 1.5 The client may wish to **legally minimise taxation** going forward.
- 1.6 If the client is tax resident outside Australia, there is considerable opportunity to benefit relatives, who are or will become Australian tax resident, by creating a foreign Trust for their benefit.
- 1.7 It is also possible to arrange for one or more of the Australian tax resident relatives of the client to control and manage companies concerned without causing Australian tax consequences for the foreign Trust structure. We have designed a special structure for this purpose.



## 2. Factors to Consider:

(paras 2.1 and 2.2 assume that the Client is Chinese tax resident)

- 2.1 China has controlled foreign company legislation which means that, if a Chinese tax resident controls a foreign company, the Chinese tax resident pays Chinese Income Tax on the profits of that company.
- 2.2 China has draft Estate Tax and Gifts Tax legislation which it has not yet introduced into law. Therefore, transfer of ownership of the issued shares of a foreign company now by a Chinese resident may well save considerable Chinese tax later.
- 2.3 If the settlor (the person who creates the foreign trust) is not or does not become Australian tax resident, there will not be Australian tax payable with respect to the foreign trust.
- 2.4 It is essential that the trust cannot be in any way controlled by an Australian tax resident.
- 2.5 Distributions from the foreign trust to an Australian tax resident Beneficiary will be taxable on the Beneficiary. If there is a delay in distributing income to the Beneficiary by the Trustee, then interest on that income will also be subject to tax.
- 2.6 If the foreign Settlor of the foreign trust later becomes Australian tax resident, the value of the assets in the trust will be rebased for Australian tax purposes and at that stage the foreign trust would need to be replaced by an Australian resident trust.

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## 3. Proposed structure to achieve IEP:

- 3.1 The factors mentioned show how important forward planning is for the purposes of achieving IEP.
- 3.2 We have structures designed to achieve all aspects of reasons for IEP set out above.
- 3.3 To assist the client in deciding on actions for IEP, we can provide a **Preliminary Memorandum of Advice** for a very reasonable fee which will provide a plan for achieving what the client needs and wants to achieve IEP.
- 3.4 If the client proceeds with the actions necessary to achieve the plan, then the fee paid for the Preliminary Memorandum of Advice will be deducted from the overall fees payable for achieving the plan.



### Mark Lea, Founder

Mark is a distinguished lawyer with more than 50 years of experience in **International Estate Planning** advising international families, teaching and advising governments on and drafting legislation.

Mark is also a consultant to **PBL Law Group** in Australia.

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