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A close-up photograph of a hand holding a miniature model of a house. The house is white with a grey roof and a red balcony. The hand is positioned at the top, with fingers gently gripping the roofline. The background is a soft, out-of-focus light color.

TRUST; SECTION 49L OF THE INSURANCE ACT & THE ESTATE PLANNING IMPLICATIONS

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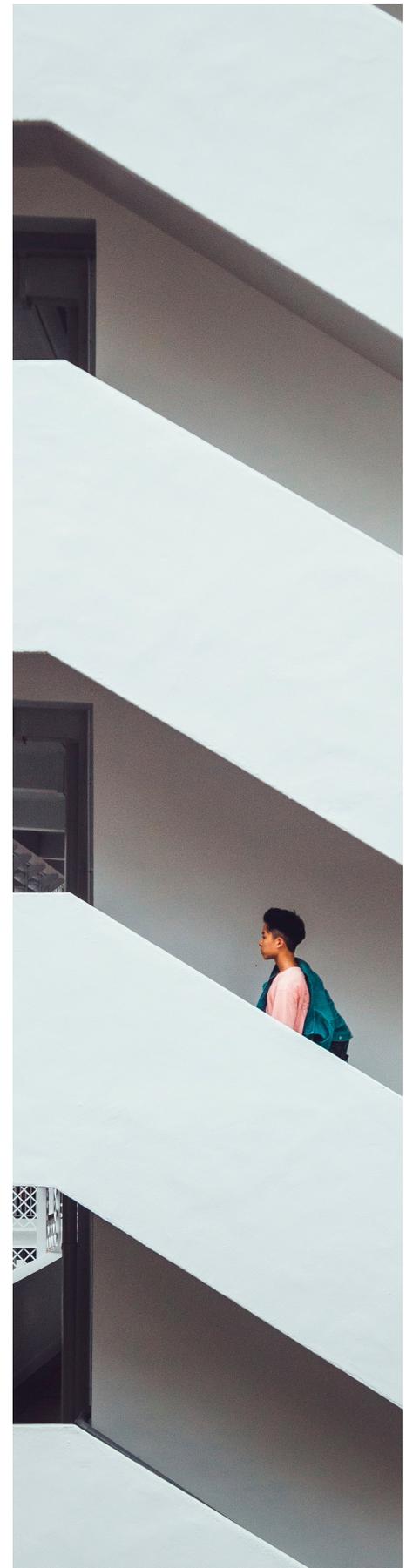
BY ALLEN LIM & ADRIAN PAUL

This article examines the basics of trust with particular focus on Section 49L of the Insurance Act and its estate planning implications for clients in Singapore.

Trust is an arrangement where a trustee holds and manages property or other assets on behalf of one or more beneficiaries. Based upon this fundamental principle, a trust is a force for good and sustainability. It's no wonder that trust as an instrument of estate planning flourished over time.

FROM THE PINNACLE OF GOVERNMENT TO THE ASPIRATIONS OF SOCIETY

Traced as far back as the Roman era, trusts have evolved. It prevailed at Chancery during the medieval period and about five centuries thereafter, instituted under the law of equity in the English Supreme Court. Today, the effects are felt in no small measure at work and in the lives of people around the world. From the pinnacle of government, where relevant statutes are reviewed, and bills passed so new laws are enacted, to the daily needs and aspirations of society in the modern era, it would appear like we've only just begun. The work never ceases. It keeps a constant pace as affluence increases. What force drives this? For at the heart of it, remains that enduring purpose and basic tenet of a trust. To protect and ensure the sustained well-being of all that's close and dear to the person (known as the settler) who transfers the assets into a trust. Yes, the beneficiaries.



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KEY POINTS OF SECTION 49L OF THE INSURANCE ACT

With this at heart and seeing the subject matter vast, we take a look specifically at the role of the trust nomination, under Section 49L of the Insurance Act in relation to its predecessor, Section 73 of the Conveyancing and Law of Property Act, and the Intestate Succession Act. By doing so, it helps shed some light on how this came into being and what those enhancements mean in relation to estate planning in Singapore today.



THE FOLLOWING KEY POINTS OF SECTION 49L OF THE INSURANCE ACT (HEREAFTER CALLED S.49L):

(2) Where the policy owner of a relevant policy who has attained the age of 18 years -

a) nominates as the beneficiary or beneficiaries under the relevant policy his spouse, his children, his spouse and children or any of them;

(b) expresses in the nomination his intention to create a trust of the policy moneys in favour of the nominee or nominees; and

(c) makes the nomination, and indicates each nominee's portion of the policy moneys, in such manner as may be prescribed by the Authority,

(3) The nomination shall create a trust of the policy moneys in favour of the nominee or nominees.

(4) Subject to subsection (5), all policy moneys subject to the trust created under subsection (2) shall not form part of the estate of the policy owner or be subject to his debts.

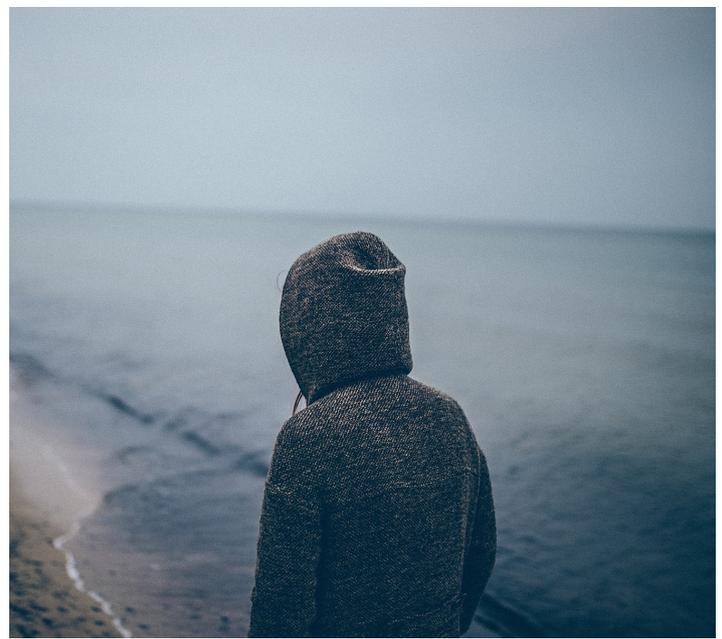
(5) If it is proved that the relevant policy was effected, and the premiums for the relevant policy were paid, with intent to defraud the creditors of the policy owner, the creditors shall be entitled to receive out of the policy moneys a sum equal to the premiums so paid.

A BACKDROP

Prior to 1st September 2009, where a spouse and children or either one of them were named as beneficiaries in an insurance policy, the statute determined a trust under Section 73 of the Conveyancing and Law of Property Act (hereafter called S.73) is created. This instrument ensured the protection of those proceeds from creditors.

Being an implied and irrevocable trust did have, however, some unintended and unpleasant outcomes. This was particularly so in the absence of awareness of it as well as in instances such as a change in marital status like divorce, where the policy owner wished to withdraw the beneficiaries and could not unless this was agreed to by the same.

Since there was no clear paperwork to create such trust, there were situations whereby the client did not realise he had created one in his life policies. The implications of this perhaps couldn't be more clearly illustrated than from the legal determinations made in a case surrounding *Lim Lina v Estate of Quick Cheng Gee* (referenced from legal archives -S'pore Law Watch). It brought into focus the unintentional outcome of S.73 policies, which in this matter, had discording effects on the surviving family.



THE LEGAL CONTENTION

To summarise the key aspects of the case, the considerations were insurance proceeds exceeding three hundred thousand dollars from three life insurance policies, arising from the demise of Mr Quick Cheng Gee. The contention related to questions such as who should be entitled to the proceeds and, if it was partially or in full. The parties to this matter were his widow and elderly mother.

The life insurance proceeds were paid into the estate account of the deceased. His surviving mother thought that she will be entitled to half of the proceeds on the grounds of the Intestate Succession Act. His widow, however, cited she was the beneficiary indicated in those policies.

The case was heard and decided by the judge his surviving widow was the rightful owner. What was the legal position for this decision? The act of naming the spouse as beneficiary by the deceased policy owner had indeed created a statutory trust in her favour and hence, the right to the full proceeds.

MATTERS OF KEY CONCERNS IN ESTATE PLANNING

This case was thought-provoking from an estate planning perspective. Arising out of it are moving moments of pause, and navigating this with much care as some considerations are approached, such as, was it the deceased's intention to exclude his elderly mother out of his life insurance proceeds (which formed the majority of the estate value)? Was this done realising an irrevocable trust was created and were those legal implications understood? In its aftermath, one may never know the answers to these questions. What is known and factual is, she was financially disadvantaged from the outcome of this situation. It is reasonable to conjecture the relationship between the surviving family members concerned may or may not recover or normalise again. In view of it, is this an effect the deceased would have contemplated and, could this have been averted?

A CONSCIOUS, DELIBERATIVE AND THOUGHTFUL DECISION

With this backdrop, we fast forward and move past 1 September 2009, where S.49L comes into force. The immediate effects are tangible, as it takes out any ambiguity by necessitating the completion of a trust nomination form. Unlike the previous, this would very likely be the result of a conscious, deliberative and thoughtful decision on the part of the policy owner, seeing too this is irrevocable unless beneficiaries agreed to a change.



PRECEPT OF A TRUST PRESERVED

Also, another action required is the appointment of one or more trustees. This means the policy owner is no longer a trustee by default, unlike before but determines who takes that role. In this regard, the fundamental precept of a trust is preserved. In what manner? Proceeds aren't accessible to the policy owner, as the way it should be, since the legal ownership is now transferred to appointed trustees in the interest of named recipients. In other words, the beneficial owners.

THE INSURANCE ACT AND THE INTESTATE SUCCESSION ACT

S.49L retains critical aspects, characteristic of its precursor. One such area is the subsection that governs the protection of assets for the benefit of spouse and children. A point to add, that unlike the Intestate Succession Act, the Insurance Act gives legal standing to children of an incomplete family structure, as in the situation of children born out of wedlock as well as step children. This inclusion means that in accordance with the Insurance Act, they can be beneficiaries of a trust nomination today, thus protecting their financial security.

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THE INSURANCE ACT AND THE INTESTATE SUCCESSION ACT

The trust nomination of S.49L clearly demonstrates a serious legislative effort that promotes a considered and informed decision. It also leaves no doubt by defining the distinct roles of each and every identity so that the intent of the trust set up is realised. With the emergence of Singapore as an international trust jurisdiction and in step with diverse societal needs, the Insurance Act, wherein S.49L dwells, is relevant as well as responsive and hence, carries an important and purposeful function of estate planning.

REFERENCES

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A. INSURANCE ACT (CHAPTER 142)

I. SECTION 49L – TRUST NOMINATION

II. 1ST SCHEDULE - DEFINITION OF INSURANCE TERMS

B. CONVEYANCING AND LAW OF PROPERTY ACT (CHAPTER 61)

I. SECTION 73 – MONEYS PAYABLE UNDER POLICY OF ASSURANCE NOT TO FORM PART OF THE ESTATE OF THE INSURED

C. INTESTATE SUCCESSION ACT (CHAPTER 146)

I. SECTION 3 - INTERPRETATION

2. COURT JUDGMENT:

A. LIM LINA V ESTATE OF QUICK CHENG GEE, DECEASED (2011) SGHC267

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