Piecing Together the Succession Puzzle
ABOUT KHAITAN & CO

Established: 1911 in Kolkata by Late Debi Prasad Khaitan, a member of the Constituent Assembly which framed the Constitution of India

Offices: Kolkata (Calcutta), New Delhi, Mumbai (Bombay) and Bengaluru (Bangalore)

Professionals: 500+ fee earners including partners and directors

Rankings:
- Ranked as Band 1 Law firm for Private Wealth Law - India by Chambers and Partners High Net Worth (HNW) guide 2016
- Ranked as a Tier 1 Indian Law Firm for M&A by IFLR 1000 (2016)
- Ranked #2 by RSG-India Report in the Top 40 Indian Law Firms (2015)
- Ranked as a Band 1 Indian Law Firm for Corporate / M&A and Private Equity by Chambers & Partners (2015)

THE KHAITAN ADVANTAGE | SUCCESSION & ESTATE PLANNING

- **Our expertise:** Wealth of experience in drafting family constitutions, settlements, holding structures, taxation, wills and other testamentary instruments, obtaining probates, approvals, filings and court related dispute resolution.

- **The 100 year advantage:** Witnessing during its centennial existence, first-hand, the success and expansion of small promoter groups through several generations.

- **Business acumen:** In-depth understanding of corporate matters and a client’s business strategy to help structure personal holding.

- **Best practices:** Experience in all areas of the field, including dispute resolution and mediation, to help provide insights on avoiding and amicably settling disputes among family members.

- **Research & Analysis:** Thorough research and analysis and the ability to study application of foreign laws and their interaction with Indian laws.

- **Project management:** Close relations with reputed foreign firms, administrators and advisors to provide suitable, global succession planning solutions.

- **Globally recognised:** Members, who frequently speak at and participate in numerous succession, estate planning and private client conferences, world over to share and analyse emerging trends.
WHY SHOULD YOU PLAN?
To mitigate your worries!
- Supporting family needs
- Managing global assets and segregating family and business assets
- Adapting to legal and social dynamics: strategies to deal with changing laws and provide insulation from matrimonial disharmony and business claims
- Avoiding conflict

WHEN SHOULD YOU PLAN?
Today! It’s never too early to be ready
- Before the advent of circumstances that put your assets at risk
- Time for the ‘Next gen’, selecting and training a successor

HOW SHOULD YOU PLAN?
Because one size does not fit all...
- Consider: family dynamics and business vision
- Common tools to plan succession:
  - Family offices
  - Family constitutions, family agreements or settlements
  - Investment funds and holding structures
  - Wills, trusts, foundations or lifetime gifts
  - Insurance products
Effective planning is required in order to ensure that your legacy is seamlessly passed down to the next generation.

A will is not the only form of succession planning. Permutations and combinations of various instruments can be successfully used to achieve the desired succession.

The Government of India may consider re-introducing estate duty, or “inheritance tax”.

The amendment to Section 6 of the Hindu Succession Act, 1956 has made married and unmarried daughters coparceners of Hindu Undivided Families (HUF) and affects all families that own their assets through an HUF.

Parts of India have community property rules and forced heirship rules.

If your children are in the UK or US, inheritance of your properties in India will attract UK or US inheritance taxes which could be as high as 30-50%.

A will requires to be probated in a court of law, which is often contested and can be a long drawn process. The concept of a ‘digital’ will for digital assets is increasingly gaining popularity.

Assets can be transferred easily without the need for a Will or probate through nominations, joint accounts, living trusts and other innovative strategies.

If your family and business assets and wealth are not segregated, your personal family assets could be prone to bankruptcy claims faced by the business.

Family trusts cannot exist in perpetuity.

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DID YOU KNOW?

- It requires a great deal of boldness and a great deal of caution to make a great fortune, and when you have got it, it requires ten times as much skill to keep it.

- Ralph Waldo Emerson
LEGAL

- **Corporate compliances**: Appointing or failing to appoint a nominee can alter or impact rights of a legal heir. Necessary and appropriate filings must be undertaken to plan for such situations.

- **Succession**: Intestate succession in India is governed by personal laws of each community.

- **Investment strategies**: Your investment strategies determine the legal regime applicable to your assets. For instance, whilst purchasing a property in the UK, you have to consider local stamp duties, municipal land taxes, etc.

- **Regulatory approvals**: Some succession plans envisage approaching regulators for approvals or require filings to transfer properties (movable/immovable). For instance, settlement of promoter holding shares in an onshore trust structure may require SEBI approval.

- **Non-resident family members**:
  - Exchange control regulations dictate the flow of funds or properties to close relatives that are non-residents.
  - Offshore assets inherited by a resident may be subject to Indian exchange control regulations.

- **HUF**: Creating and partitioning of an HUF attracts a volley of legal issues such as stamp duty on transfer of HUF properties, shares of each coparcener, rights of maternal grandchildren, etc.

- **Liberalised Remittance Scheme**: Use of LRS for making gifts to relatives abroad or settling offshore trusts?

TAX

- **Gift**: Income-tax is levied on the recipient of cash or kind beyond a certain threshold, when given to a person who is not ‘relative’, as defined under law.

- **Trusts**: Taxation of trusts in India depends on their categorisation, viz discretionary vs determinate, revocable vs irrevocable. Taxation of distributions received by beneficiaries of a trust are subject to differential treatment, depending upon their location.

- **Wealth-tax**: Wealth-tax is payable by a resident at 1% of the taxable value of net wealth, wherever situated.

- **Wills**: Under a testamentary disposition, inheritance of properties is not a taxable event.

- **Migration from India**: In certain cases of migration to other countries (eg US or UK), where dual tax regimes are at play, applicable estate and other tax treaties govern taxation of assets and income.

- **Migration to and from US**: ‘Expatriation (Exit) Tax’, look-back rules upon surrendering Green Card, pre-immigration rules governing creation of trusts for less than adequate consideration may have unexpected implications.

- **Reporting of foreign assets**: Disclosure of interests in offshore trusts by resident individuals in their tax returns?
WHAT OTHERS HAVE TO SAY

CITYWEALTH LEADERS LIST 2013-MOST HIGHLY RESPECTED ADVISORS IN PRIVATE WEALTH MANAGEMENT

Citywealth has recommended members of Khaitan & Co’s Trusts, Estate & Private Client Practice as ‘Leading Lawyers – Asia Pacific’.

IFLR 1000 2016

Khaitan & Co always gives us sound advice,” a long-time client says. “This is a firm that can be counted on for all matters from the start of the deal till its completion. The firm has an excellent team of lawyers who think outside the box.”

CHAMBERS AND PARTNERS ASIA PACIFIC 2016

This team is one of the most impressive I have worked with. They really try to understand the background of a transaction in order to realise the client’s intentions as far as possible. Their responses are always prompt so we know when we will hear back from them. ‘Combine excellent advice with a modest, pleasant attitude.

LEGAL 500 ASIA PACIFIC 2016

The team at Khaitan & Co acts for issuers and underwriters on the full range of equity and debt transactions, and has been involved in some of the largest and most challenging deals in the country.

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