

# Estate Planning in Ghana

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- **Estate** “means all property, movable and immovable” of a person (*Administration Of Estates Act, 1961, Act 63*)
- In general terms, an individual's estate is the **total of all their assets**, less all their **liabilities**.
- Estate planning is one of the most important steps a person can take to make sure that his final wishes are honoured and his loved ones are provided for in his absence.



# Objectives of Estate Planning



- Prevent protracted litigation over estate;
- Protect your business (assets or shares)
- Protect your assets
- Peace for your family
- Accurate Picture of Your Financial Position
- Distribute your property to beneficiaries
- Wealth/financial maximisation
- Instruction on payment of debt
- Estate duty at 3% (tax) on total Wealth

# How do you start?



- Making a WILL
- Setting up a trust
- Giving out gifts during one's lifetime
- Creating a Power of Attorney

# Creation of a WILL

- Testamentary capacity applies (18 years, sound mind, etc);
- A person can only give what he owns (properties, chattels etc)
- Properties subject to mortgage/contingencies?
- There is no particular format for wills.
- A will should be done anytime before death
- A Will can be used:
  - ❖ ***To devise or bequeath property to person;***
  - ❖ ***To appoint person to manage estate;***
  - ❖ ***To avoid dispute;***
  - ❖ ***To make appointments.***
- A will may be done by a lawyer or by self provided it complies with law.

## FORMALITIES FOR A WILL

- **Writing:** A WILL must be in writing, signed and witnessed by two.
- **Signature:** The will must be signed by the testator or by some other person at his discretion. The signature of the testator must be written animo testandi.  
"Signature" includes the making of a mark and of a thumb print. (*Interpretation Act, 2009, Act 792*)

- **Witnesses: The WILL must be witnessed by at least two persons.**

The signature of the testator shall be acknowledged by him in the presence of two or more witnesses present at the same time.

- ❖ A gift to a witness is void unless the will is executed without his attestation and without that of any other such person.

**Attestation:** The witnesses are required to attest and sign the will in the presence of the testator, but no form of attestation is necessary.

# Creation of a WILL (Con't)

- A copy of a WILL must be deposited in the High Court for safe custody (S. 11 of WA 1971, Act 360. Failure to deposit does not invalidate the WILL
- Section 47 of Land Act, 2020, Act 1036 applies to transfer of property. Exclusion lies with written agreement.
- A spouse can use *Article 22 of the 1992 constitution* to make a case for reasonable provision.

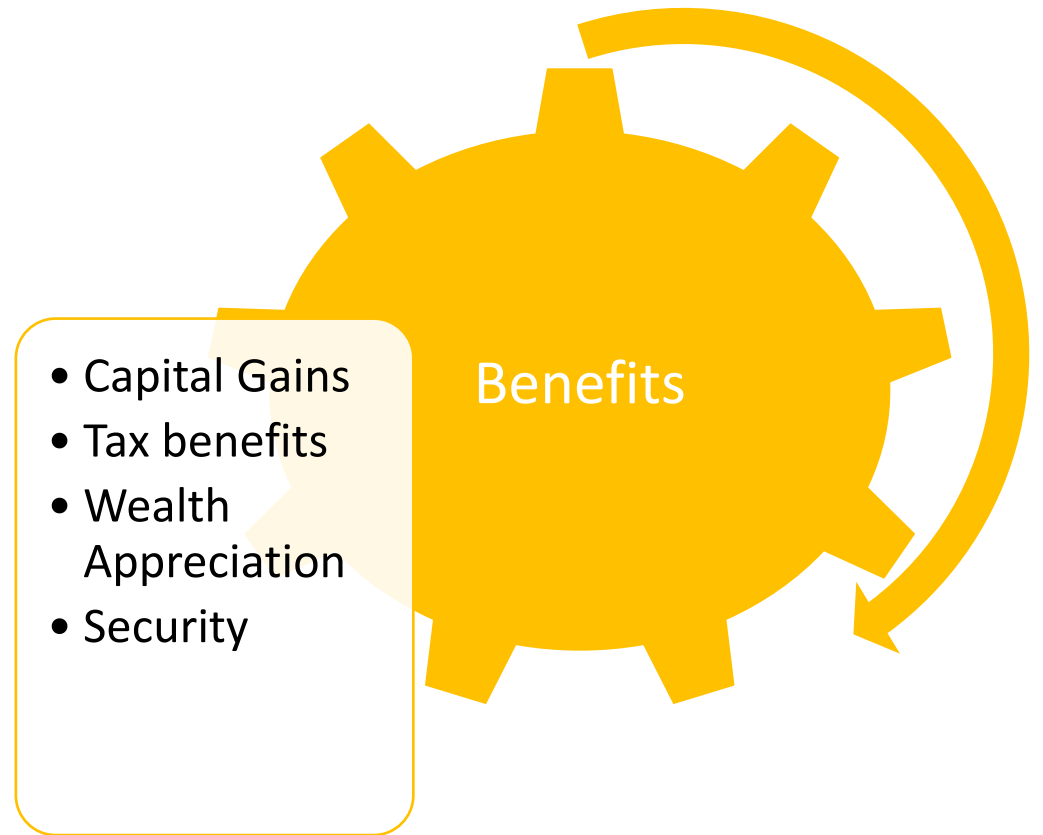
*“A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.” –Art. 22*

**Section 13 of WA 1971, Act 360** allows testator’s father, mother, spouse or children under 18 years to apply to the Court for an order of reasonable provision out of the estate of the deceased.

**Effect of Section 38 of the Matrimonial Causes Act 1971, Act 367.** If the marriage was terminated or annulled under the Act (Matrimonial Causes Act), then the gift is invalidated unless a *contrary intention* has been expressed under the will.

# Domestic Options

- Unit Trust
- Mutual Funds
- Real Estate Investment Trust (REIT)
- Life Insurance
- Pensions (self employed, Employees) & Tier 3 (voluntary schemes)
- Treasury bills
- Listed shares on GSE/Alternative markets
- Properties/Lands



Asset Diversification?

Licensed investment product?

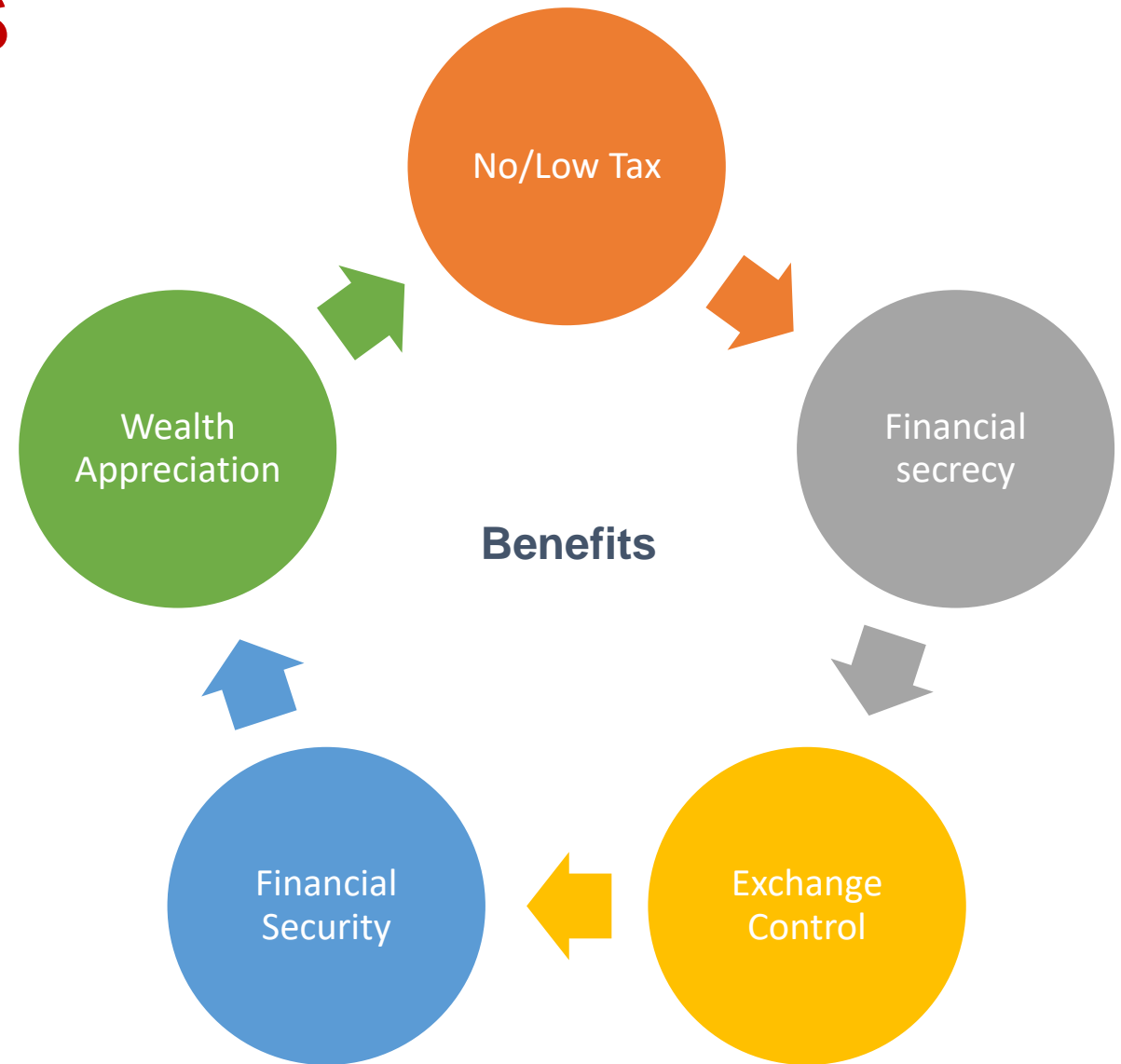
Who are the managers/Board of the Company?

Integrity test?

Security of investment?

# International options

- Trust (using international financial centres)
- Stocks on Listing Exchanges (LSE, NSE)





## Drawbacks To Not Having A Will

- A deceased person's estate could end up in the hands of people who he does not want to benefit from his estate.
- Properties belonging to the deceased person may be sold.
- Children of the deceased person may unintentionally be disinherited.
- The surviving spouse of the deceased may not inherit fairly.
- Intestacy Succession law will apply

## Challenges Of Intestacy

The law of intestacy only relates to self-acquired property and not to any lineage property

It does not include cohabiting partners who are not married according to Ghana's marriage laws.

Cultural and social influence

There are complicated formulas for the division of the estate among various relatives

# Expatriates (Foreigners) with Properties in Ghana



- Foreigners who have properties in Ghana to make a will in Ghana as their properties will be subject to the Ghanaian jurisdiction.
- Where a foreigner does not have a Ghanaian will, but has a foreign Will, it be admitted to probate in the jurisdiction in which it was made and this will must also be proved and admitted to probate in Ghana before the estate to which it applies can be administered.
- The will of a foreigner is usually upheld by Ghanaian law if the formalities of execution comply with either the laws of Ghana or with the national law of the country where the will was made.
- Where the foreigner dies intestate, the High Court has jurisdiction to make decisions about his properties located in Ghana.
- Ghanaian intestacy laws apply automatically to a foreigner who dies intestate.

## Amponsah & other v Budu [1989-90] 2 GLR 291-314

- The deceased person was a member of the patrilineal Guan community and had self-acquired property.
- The deceased had 3 daughters and died intestate.
- The Plaintiffs were the children of the daughters of the deceased.
- Plaintiffs' argument: On the death of the deceased, his self-acquired property devolved upon his daughters and on the daughters' death, the properties devolved on to them.
- Held: The children of the deceased's daughters were outside the patrilineal family of the deceased. Thus, upon the death of the deceased's daughters, the property reverted to the family.

## In Re Anim Addo (Decd) 1989-90 GLRD 34

- The widow of the testator brought a motion under section 13 (1) of the WA, 1971, Act 360 in the High Court, Accra
- She prayed the court for an order for financial provision to be made for **herself** and for her **infant son aged eight**.
- Preliminary objection by Counsel for executors
- Held: Application was properly brought and granted.

# Managing Estate Risk



- ❖ Make a Will now (if you do not have one)
- ❖ Keep Asset Tracker to know the entire of your assets
- ❖ Register all your lands (to bring certainty of title)
- ❖ Carefully select who becomes your executor
- ❖ Residual clause in a Will is critical