

GUIDELINES FOR ETHICAL WEALTH TRANSFER AND INHERITANCE PLANNING

Introduction

His Highness Prince Aga Khan Shia Imami Ismaili International Conciliation and Arbitration Board (ICAB) in collaboration with the Institute of Ismaili Studies (IIS), has produced these Guidelines for Ethical Wealth Transfer and Inheritance Planning (“Guidelines”) to assist Ismaili *murids* to engage in ethical wealth transfer and inheritance planning, recognizing that wealth has an ethical value and purpose. As Mawlana Hazar Imam said in his Irshad Mubarak in Shugnan, Tajikistan on September 25, 1998, “*Wealth and power are not objectives in themselves, but are to be used in the service of others.*”

These Guidelines do not set out rules, but reflect principles and values from the Ismaili tradition, of connectedness and caring, fairness and decency.

The Ismaili ethos is derived from humane principles of natural justice and equity. The terms “natural justice and equity”, as used in this document, mean acting fairly and justly, with generosity and kindness, empathy and compassion, mindful of one’s responsibility to provide equitably and adequately not only for one’s close relatives but also those who might have a reasonable moral expectation to be cared for from the estate, especially the weak and the vulnerable.

The Guidelines are intended as a general aid for reflection to assist the Ismaili *murid* to achieve equitable outcomes. This cannot be accomplished through a ‘one size fits all’ formulation but through the *murid* seeking to internalize ethical principles and to apply them to his or her particular circumstances.

The Guidelines

The Purpose and Scope of the Guidelines

1. The Guidelines recommend that an Ismaili *murid*, seeking to dispose of his or her wealth, whether during his or her lifetime or upon demise, should do so through prudent planning, undertaken in an ethical manner, consistent with the principles of natural justice and equity.

2. The aim is to prevent the pain, misery, stress and discord that can occur at the time of a death in a family, as a result of ill-considered wealth transfers or inheritance planning which makes imprudent, inadequate or unfair provision for those who might have a moral claim on the estate of the *murid*.

The Guidelines are therefore intended to support families to engage in reflection and decision-making, guided by humane and sound moral principles, fair and generous attitudes, honourable and thoughtful behaviour, and processes of respectful and rational dialogue, aimed at achieving fair and humane outcomes for all those having moral claims on the estate, in particular, the vulnerable and the dependent.

Such outcomes are intended both to honour the dignity of all concerned and enhance each person's quality of life.

3. The Guidelines are not intended to offer, nor do they offer, any legal advice. Ismaili *murids* are expected to comply with the laws of their respective countries.

In each case, it is the responsibility of the *murid* engaging in wealth transfers or inheritance planning to ascertain the content of the applicable law(s), to ensure compliance with them, and to seek legal, accounting, and tax advice from competent professionals to address the particular needs and circumstances of the *murid's* situation.

The Governing Lens of Ethics

4. The Guidelines are premised on ethical inheritance planning directed at humane and fair outcomes according to principles of natural justice and equity.

5. Within the Shia Imami Ismaili School of Thought of Islam, ethics are a bridge between faith (*din*) and the world (*dunya*). The Ismaili Imams have promoted an ethos of connectedness and caring, premised on the principle of *Tawhid*, or oneness, which is reflected in the notion of our common humanity and in the principles of natural justice and equity.

Ismaili ethics therefore emphasize values of integrity, human dignity, and a shared commitment to the common good, values which are “in conformity with the Islamic concepts of unity, brotherhood, justice, tolerance and goodwill”¹, promoting the aim of a just society and enhancing the quality of human life.

6. In this understanding, wealth possesses a social and ethical value, imposing on its holder a responsibility to manage, nurture, and dispose of that wealth prudently, in a fair and humane way, promoting social and familial harmony and human dignity. This value needs to be borne in mind in the context of wealth transfer and inheritance planning.

Establishing Ethical Priorities

7. As a general statement, it is ethically incumbent on a *murid* engaging in wealth transfer and inheritance planning to make *equitable* and *adequate* provision from the estate for his or her close relatives (and, in their absence, more remote relatives) and for all others having moral claims on the estate, in particular, the vulnerable and the dependent.

The first step in inheritance planning is therefore to establish the *murid's* ethical priorities. It is prudent to fairly consider the respective moral claims on the estate of *all* potential beneficiaries so as to determine how best to benefit them.

¹ Ismaili Constitution, 13 December 1986, Preamble, Recital E.

- *Acting equitably* will involve balancing priorities among the heirs based on their degree of closeness of relationship to the *murid* (including those having a moral claim on the *murid's* estate) and their respective needs.
- *Making adequate provision* will involve considering the relative needs and circumstances of each of the heirs in light of the size of one's estate.

8. While there is no prescription for what is fair in all cases (each case will have to be determined on its own circumstances based on the *murid's* ethical determination), the bulk of one's estate will normally be used to benefit one's close relatives and financial dependents, with discretionary bequests being made from the balance thereafter, to benefit others, such as remoter relatives or friends and charities.

Selecting the Beneficiaries

9. In selecting the beneficiaries of an estate, the Ismaili practice is to consider the claims of the immediate family in priority to those of the extended family, but always subject to any moral claims which the *murid* may be obliged to consider (for example, that of a financial dependent or someone to whom a binding promise has been made).

10. In Ismaili practice, the first consideration is usually given to ***primary heirs***. This class comprises *the spouse, the children, and the parents*, and those who are vulnerable dependents or financial dependents of the *murid*.

The ***secondary heirs***, whose claims to inherit normally rank below those of the primary heirs, comprise *brothers and sisters, as well as the grandparents*.

The ***tertiary heirs***, whose claims to inherit normally rank below those of the primary and secondary heirs, comprise *uncles and aunts*.

11. Inheritance among the respective classes of heirs listed above is a general guide as to the hierarchy of close relations who would normally have a moral claim as "next-of-kin" on the estate, and the priorities among them. However, the *murid* should always act ethically in disposing of the estate, based on a full consideration of all the particular circumstances.

Acting ethically therefore also includes safeguarding the interests of all those who do not necessarily have a legal claim in certain jurisdictions on the *murid's* estate but who deserve on moral grounds to be considered. This may include orphans, adopted or foster children, stepchildren, and others, particularly those who are vulnerable or dependent.

As a general guide, but subject to the duty of fairness, among the three classes of heirs, a higher class would normally exclude a lower class. The presence of a primary heir will usually exclude other heirs, except those with moral claims upon the estate and except for small bequests.

12. It is recommended that the *murid* duly consider the moral claims and circumstances of the three classes of heirs in order to do justice among them. If, after such due consideration, he or she has determined that the estate, or any portion, should be distributed in a different manner, he or she is free to do so, mindful that one has a responsibility to distribute one's wealth ethically, in ways that minimize pain and discord and that benefit society.

Determining the Shares of Inheritance

13. The Ismaili tradition respects the freedom of each *murid* to dispose of his or her wealth as he or she wishes subject to an ethical responsibility to make the division fairly, following a careful consideration of all relevant factors, including the following:

- the size of the estate,
- the relationships involved and the moral expectations to benefit from the estate,
- any gifts that have been given during one's lifetime,
- balancing the respective needs and moral claims of relatives and financial dependents,
- the principle of equity,
- the contracts (for example, pre-nuptial contracts) or promises made by the *murid*, which create either a legal or moral obligation, and
- compliance with the laws of the land.

14. For the purposes of inheritance, males and females should in all respects be treated equally.

15. It is recommended that the bulk, if not the whole, of one's estate should be used to make equitable and adequate provision for one's close relatives, dependents and moral heirs.

16. In Ismaili practice, if an heir who would have been entitled to a share of the inheritance has predeceased the *murid*, but has left surviving children, then those children will normally receive the share which would have been distributed to their predeceased parent.

17. In cases where the *murid* desires to leave a bequest to an Imamat institution, this should be done after meeting the legitimate needs of close family and financial dependents.

Wealth Transfer Planning

18. Inheritance planning is one mechanism of wealth transfer from one generation to the next. Wealth transfer can also occur during one's lifetime so as to assist members of one's family to develop and make progress at an appropriate time in their lives. The same principles of prudence and of natural justice and equity should be used by families to aid in reflection and decision-making when considering such wealth transfers.

19. It is prudent for each Ismaili *murid* who is of sound mind and not a minor to make a written Will to dispose of his or her assets upon his or her demise. Wills should not be considered a one-time final document. One should revisit one's Will on a regular basis so as to take into account evolving circumstances and factors such as births and deaths, changes in relationships, the size of the estate, gifts made during one's lifetime or altered needs. In reviewing these circumstances, *murids* may wish to communicate with family members, and with the support of appropriate legal, financial, accounting and other advisors, to create legal arrangements appropriate for their jurisdictions to give effect to their wishes.

20. The form and essentials of the validity of a Will, gift or trust instrument are to be governed by the laws of the territory in which the maker of the Will, gift or trust instrument is domiciled. It is recommended that *murids* obtain legal advice to prepare a Will, gift or trust instrument which observes the formalities of applicable law(s).

21. Where, despite the recommendation to have a formal written Will, if, according to prevailing customs in certain territories, an oral Will has been made, it is important that the *murid's* wishes are clearly expressed and witnessed by at least two reliable witnesses. However, an oral Will may not be recognized as legal under applicable law(s), and therefore it is prudent to make a written Will and to update it regularly.

22. Each *murid* making a Will should, with due care, select a person to administer the estate. That person should be someone who will act fairly in the exercise of his or her discretion and who commands the confidence and respect of the *murid* and of the heirs. It is prudent to obtain the consent of the person intended to administer the estate in advance of his or her appointment and, where consent to act has been given, to brief that person of the *murid's* wishes as set out in the Will.

Strategies for Resolving Disputes

23. The *murid* may, if he or she wishes, insert a clause in the Will or trust instrument encouraging the named beneficiaries and other potential heirs to:

- (a) refer to the Ismaili Conciliation and Arbitration Board any disputes that might arise in respect of the Will or trust instrument concerning claims against the estate or among the beneficiaries and other potential heirs; and
- (b) resolve any disputes in an ethical manner that minimizes emotional pain or discord, with a spirit of true kinship, fairness, compromise and generosity, and through processes of respectful dialogue aimed at achieving equitable and honourable outcomes for all.

Administration and Review of these Guidelines

24. If a *murid* wishes to seek clarification about the content of these Guidelines, this may be done through [the Conciliation and Arbitration Boards], whose role will be limited to clarifying the intent of the ethical principles, and will not extend to making decisions for the *murid* nor to providing professional advice.

25. In order to ensure that the Guidelines are responsive to the evolving needs of the Jamat, the International Conciliation and Arbitration Board will conduct a review of these Guidelines once during each term of office and make amendments where necessary.