SHOULD I DO A WILL IN ECUADOR?

The short answer is not necessarily. Our legal system establishes guidelines for the distribution of inheritance that are mandatory and can overrule certain provisions of a will if there are any contradictions.

In Ecuador’s legislation children are mandatory heirs. In case a spouse dies, his or her portion will go to the children. If there are no children, the law provides for other family members as mandatory heirs. If no mandatory heirs step forward in due time, then the State will take the property.

If there are heirs, such can follow a quick probate procedure in Ecuador, via a power of attorney if needed, where the notary will certify them as such for all legal purposes (selling of property, etc.).

A will could be used, however, to improve the distribution on behalf of a given child or heir (the law permits certain margins for such improvements), or to exclude a heir, in which case there needs to be a duly processed cause for the exclusion.

If there are no direct heirs, a will or structuring is important as otherwise the State will step in. Under a will and in accordance to Ecuadorian legislation, you may only freely distribute 25% of your estate. The other percentage goes to the mandatory heirs where you have some room (25%) to improve one or some over the others.

Children or mandatory heirs may not come forward at the same time or be available or in conditions to coordinate. There may be important personal reasons to wish for another type of distribution or arrangement. Cases like these must be studied, as structuring for efficiency and soundness would be needed. In cases like these, for example, a possible structuring option may be a trust.

Inheritance taxes are not particularly high in Ecuador. They are paid based on a scale.

GAME CHANGING NEW IMMIGRATION LEGISLATION PROPOSED IN ECUADOR

On July 16 2015 a new legal body was proposed: the Organic Law for Human Mobility. This law, currently being processed by our National Assembly, will create an important shift in our migratory regulations.

Our current migration legislation stems from the 70s and the Government wants to bring it up to date under the current Constitution and its free mobility principles, including that no human being may be considered illegal due to its migratory status, under principles of free human mobility and universal citizenship. This involves Ecuadorian migrants outside and foreign migrants in Ecuador.

Among its declarations, “It respects the will of the people to freely mobilize outside their country of origin to come into, exit or remain in another country and to choose a place of residence”

“No person is to receive any discriminatory treatment due to its migratory condition”

Now, this freedom does not mean that conditions and processes will not apply. This is why it’s important to at all times seek a valid visa.

It also states that “...no person shall incur in a criminal conduct due to its migratory status. Having an irregular migratory condition is not a crime”

It does, however, determine fines (that can be exchanged for community service).

“In what regards human mobility, and in relation to Ecuadorian nationals and foreigners, there shall be harmony, respect for differences, an acknowledgement of diversity, hospitality and welcoming that allow and facilitate the building of communities of peace inside and outside of Ecuador”

The proposed legislation expressly recognizes the contribution of migrant communities, of residents in Ecuador, to our development and progress.

The proposed new law would establish three migratory conditions:

- Temporary: Up to two years and renewable for up to 3 occasions
- Permanent: Between 2 and 5 years, renewable for up to 3 occasions
- Resident: Permanent stay, 10 years from having a valid migratory status in Ecuador

These times shall be applied notwithstanding any exits the foreigner may have for family or vacation purposes as long as they are domiciled in Ecuador. Residents may exit Ecuador without losing their Ecuadorian residence.

This may mean the end of the counterintuitive 90 day limit to leave Ecuador for the first 2 years after a resident visa. I am not too sure as the law is not clear on the subject, may be approved with changes or may be “clarified” when the by-laws come out.