

## Making a will in the Cayman Islands

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For any individual who directly own assets in the Cayman Islands, it is important to put a will in place to ensure the assets pass in accordance with their testamentary wishes.

This is particularly recommended for individuals who are not domiciled in the Cayman Islands, as the application of private international laws can otherwise have unexpected consequences at the time of death.

In this briefing, we outline the benefits of having a will in place, the requirements for making a valid will, points to note for non-Cayman domiciled individuals, and answer some frequently asked questions.

### Benefits of having a will to govern assets in the Cayman Islands

There are three key benefits to putting a will in place to cover Cayman assets.

1. There is testamentary freedom in the Cayman Islands, meaning that there are no restrictions on how the Cayman estate can be left on death. In contrast, if an individual dies without leaving a will, then Cayman succession law prescribes that the Cayman intestacy rules would apply in relation to Cayman immovable assets and the law of the deceased's domicile would apply in relation to Cayman movable assets.
2. The testator can appoint executors to administer the Cayman estate and trustees to act in any testamentary trusts. Without a will, the Cayman probate rules impose a strict order on who can apply for a grant.
3. For non-Cayman domiciled individuals who hold foreign assets, having a separate Cayman Islands will to cover Cayman assets (only) will often expedite and simplify the administration of the Cayman estate, as the executors of the Cayman will can apply for probate in the Cayman Islands immediately following death. This avoids the need to wait for a grant of

representation of a foreign will to be obtained elsewhere and avoids the cross-border difficulties of resealing a foreign will in the Cayman Islands. For more information on this, read our briefing [Obtaining a grant of representation in the Cayman Islands](#).

## Requirements for making a will in the Cayman Islands

For a will to be formally valid under the law of the Cayman Islands it must be in writing, made by a person who is at least 18 years old, and executed in accordance with the following requirements:

- the testator (or some other person in his presence and by his direction) signs at the foot or end of the will
- the testator's signature is made or acknowledged in the presence of two or more witnesses who are present at the same time; and
- the witnesses attest and subscribe the will in the presence of the testator

The choice of witnesses is important and should not include anyone who may benefit under the will, or whose spouse or civil partner may benefit under the will, as any such benefit would otherwise be void.

## Key points for non-Cayman domiciled individuals

There were [changes to Cayman law in 2018](#) which broadened the formal validity requirements for wills made by individuals who die domiciled outside the Cayman Islands to the extent that they relate to movable property.

In particular, in addition to recognising a will made in accordance with the requirements set out above, the Cayman Islands will also recognise a will made by an individual who dies domiciled outside the Cayman Islands if its execution conforms to the law of:

- the territory where the will was executed
- the territory where the individual was domiciled or habitually resident at the time the will was executed or the time of the individual's death; or
- the state where the individual was a national at the time the will was executed or at the time of the individual's death

It is important to note that this is only applicable for movable property in the Cayman Islands. To the extent that a will purports to deal with immovable property or any interest in land in the Cayman Islands then it will only be valid if it is made in accordance with the law of the Cayman

Islands (as set out above).

## **Frequently asked questions about wills**

### **What is domicile?**

Domicile can be a complex and fluid concept but, at a high level, the place in which an individual is domiciled is their permanent home. For individuals with connections to more than one place it is advisable to seek advice on domicile.

### **What is the difference between immovable property and movable property?**

For succession law purposes, the distinction is broadly that immovable property is property that is fixed to the ground (such as real estate or land) and movable property is everything else (including bank accounts, shares, investments, and personal items).

### **Do I need to appoint an executor who is based in the Cayman Islands?**

No – anyone can be an executor. Although it will often make the administration easier if at least one of the executors is physically based in the Cayman Islands, we frequently assist foreign executors who are tasked with the administration of an estate in the Cayman Islands.

### **Can you include a trust in a Cayman will?**

Yes – testamentary trusts can provide flexibility and asset protection over assets forming part of an individual's estate and are frequently used for succession planning. Alternatively, trusts settled during lifetime can be used to receive assets on death.

Depending on the circumstances, trusts can also be used to avoid the probate process altogether (although we still recommend having a will in place). For more information on this, read our briefing [Cayman Islands trusts](#) or contact us for further information about this.

### **Are there any taxes in the Cayman Islands on death?**

No - there are no estate duties, inheritance taxes or gift taxes.

### **Can you make a will electronically or remotely?**

No, Cayman law currently precludes the use of electronic signatures or remote witnessing in testamentary instruments and there were no relaxation of the rules in this regard during or following Covid-19.

## Does marriage or civil partnership revoke a will?

Yes - every will made by a person shall be revoked by that person's later marriage or civil partnership.

## How is a will in the Cayman Islands affected by divorce or dissolution?

A will is not affected by divorce or dissolution of civil partnership, so it is essential to make a new will immediately following divorce if there is a resulting change to the individual's testamentary wishes.

## Summary

This briefing should be of interest to anyone who owns assets of any nature or value that are situated in the Cayman Islands. For non-Cayman domiciled individuals, this often includes holdings in Cayman funds, shares in Cayman companies or other investments situated in the Cayman Islands (for succession law purposes). If there is any doubt about whether an asset is situated in the Cayman Islands and if a will should be made, it is always best to check.

For further information, please speak to your usual Ogier contact or a member of our team listed below.

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