

Cayman Islands wills law heralds a more flexible approach

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The rules recognising the legal formality of wills in the Cayman Islands are prescriptive, requiring the will to be executed in writing, signed at the foot of the document by the testator and witnessed by two witnesses who formally attest the will in writing in the presence of the testator.

The Formal Validity of Wills (Persons Dying Abroad) Law, 2018 (2018 Law) came into force on 1 February 2019. It introduces more flexible statutory rules to replace the former private international law rules governing the formal validity of wills of persons dying abroad. The new rules recognise the validity of a will of movable property subject to Cayman Islands law, notwithstanding that the will may have been executed other than in the strict statutory form set out above, if the testator dies domiciled or habitually resident outside the Cayman Islands.

Under the common law, to be valid, a will disposing of movable property must be executed according to the law of the country in which the testator was domiciled at death (*lex domicilii*). The 2018 Law, which is modelled on the UK Wills Act 1963 and the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (the Convention), abolishes this rule. It allows for individuals living outside the Cayman Islands to execute a valid will in respect of movable property as long as it has been drafted in accordance with Cayman Islands law, even though they died domiciled outside the Cayman Islands.

This is because, in common with art.1 of the Convention, s.4 of the 2018 Law provides that the will of a person dying abroad shall be treated as properly executed if its execution conformed to the laws of the Cayman Islands or alternatively to the laws of:

- the place where the will was executed; or
- the place where the testator was domiciled or habitually resident at the time the will was

executed or the time of the testator's death; or

- the state of which the testator was a national at the time of execution or on death.

The law does not change the rules in relation to wills dealing with real estate in the Cayman Islands, which remain, as under common law, governed by the *lex situs*, and thus can be validly executed only under Cayman Islands law, regardless of where the will was executed or where the testator was domiciled at the time of death.

Significant impact

International private clients can be confident that if their will is executed in accordance with the provisions of s.4 of the 2018 Law, their will shall be recognised as properly executed and valid in accordance with Cayman Islands law.

This more flexible approach to validity, which accords with internationally accepted standards set by the Convention, will therefore have a significant impact on persons who, for example, own shares in a Cayman Islands company and who, notwithstanding that they are domiciled abroad, wish to dispose of those shares by will. By formally recognising the validity of wills of movable property in broader circumstances than previously permitted under Cayman law, the 2018 Law eliminates uncertainty and ensures that the Cayman court will put into effect the testator's intentions.

Further, albeit that the Cayman Islands does not yet recognise the validity of electronic wills (e-wills), the 2018 Law could potentially be seen as the first step towards such recognition. In circumstances where the e-will purports to dispose of movable property only and is executed according to the laws of the place where the will was executed, or the place where the testator was domiciled or habitually resident at the time the will was executed or at the time of the testator's death, or of the state of which the testator was a national at the time of execution or on death, it would technically conform to s.4 of the 2018 Law.

It is therefore difficult to see how any objection could be taken to recognising the formal validity of e-wills. Therefore, we may one day see e-wills being admitted to probate in the Cayman Islands.

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This more flexible and modernising approach to the validity of wills has the potential to encourage more clients domiciled outside the Cayman Islands to execute Cayman Islands-law wills over their movable property there, confident that the laws of the Cayman Islands will now readily recognise and put into effect their testamentary wishes.

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