

Geoff Kertesz and Catriona Abraham, *Stewarts United Kingdom*

Bernadette Carey and Chris Duncan, *Carey Olsen Cayman Islands*

Estate planning for high net worth clients is increasingly a cross-border exercise: with personal and business interests spanning the globe, close attention must be paid to the rules of succession that apply on the passing of family members. As a British Overseas Territory, the Cayman Islands has a very strong connection to England, and it is common for lawyers to be instructed to assist with the administration of an estate comprising assets located across both jurisdictions. Below, we compare the different laws, procedures, and considerations to be taken into account when assisting with the establishment of a succession plan, drafting wills, and obtaining grants of probate or letters of administration across our borders.

England and Wales

1. Rules for succession of property

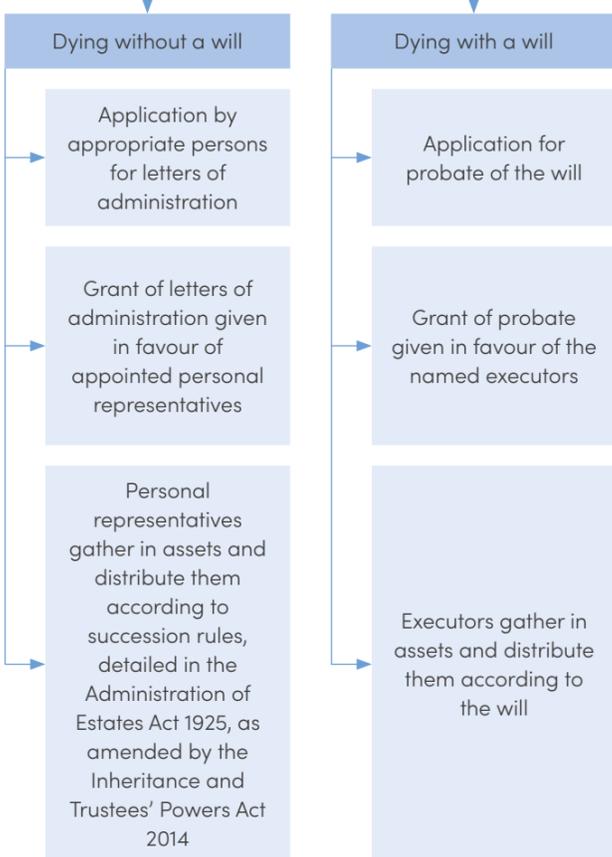
- Above a set threshold, inheritance tax is charged subject to a small number of exemptions (e.g. dispositions to a spouse, charity, and of certain business assets and property)
- Free testamentary disposition of assets subject to potential claims by close relatives or dependants under the Inheritance (Provision for Family and Dependents) Act 1975
- No forced heirship or community property rules

2. Procedures for a valid will

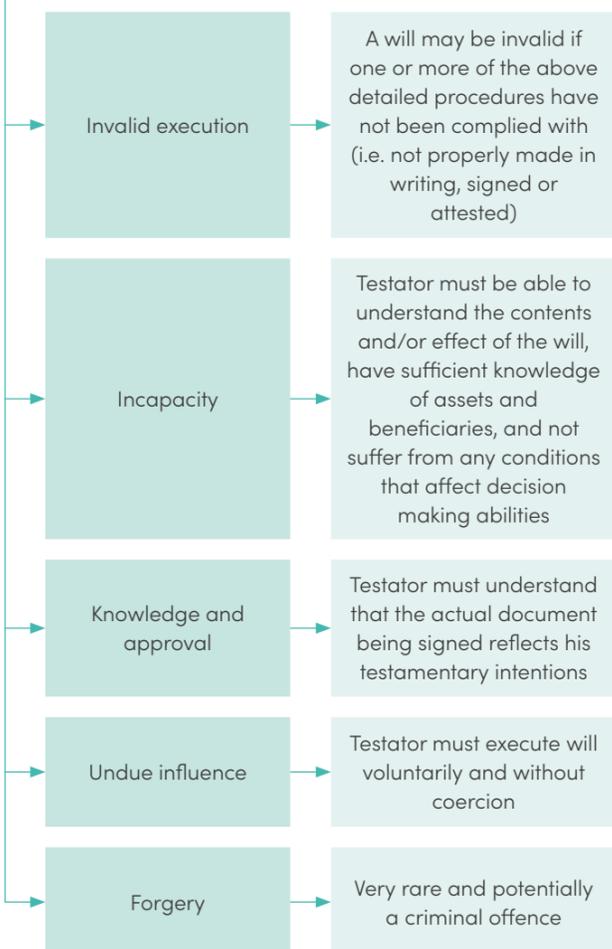
- Testator has reached the age of majority (18) and the will is in writing, subject to very limited exceptions
- Signed by the Testator (or by another person in the Testator's presence and at his direction)
- Signed in the presence of two witnesses, who attest to and who also sign the will

Due to the recent pandemic, the above would be altered to allow wills to be witnessed remotely via video. This change will have retrospective effect to January 2020

3. On death



4. Challenges to the will



5. Top tips

- Inheritance tax will generally be charged on any immovable property situated in the UK
- Be aware of potential claims by disappointed beneficiaries under the Inheritance (Provision for Family and Dependents) Act 1975
- Inheritance tax may be calculated based on the deceased's worldwide assets

Cayman Islands

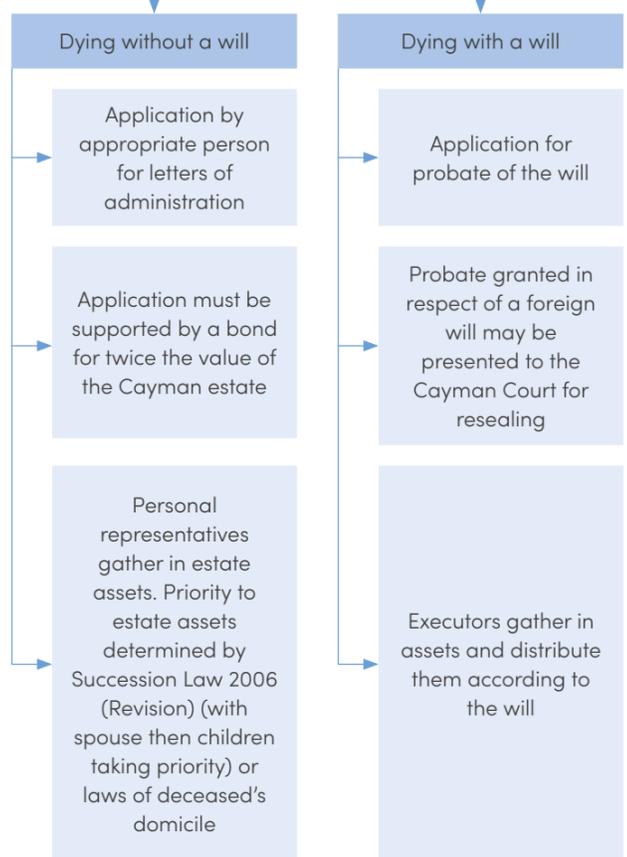
1. Rules for succession of property

- No inheritance tax or estate taxes
- Complete freedom of testamentary disposition
- No forced heirship rules, elective shares, or community property
- If no will, succession to immovable property in Cayman (i.e. a house) is governed by Cayman law, while succession to moveable property in Cayman (i.e. shares) is governed by the laws of the country in which the deceased died domiciled

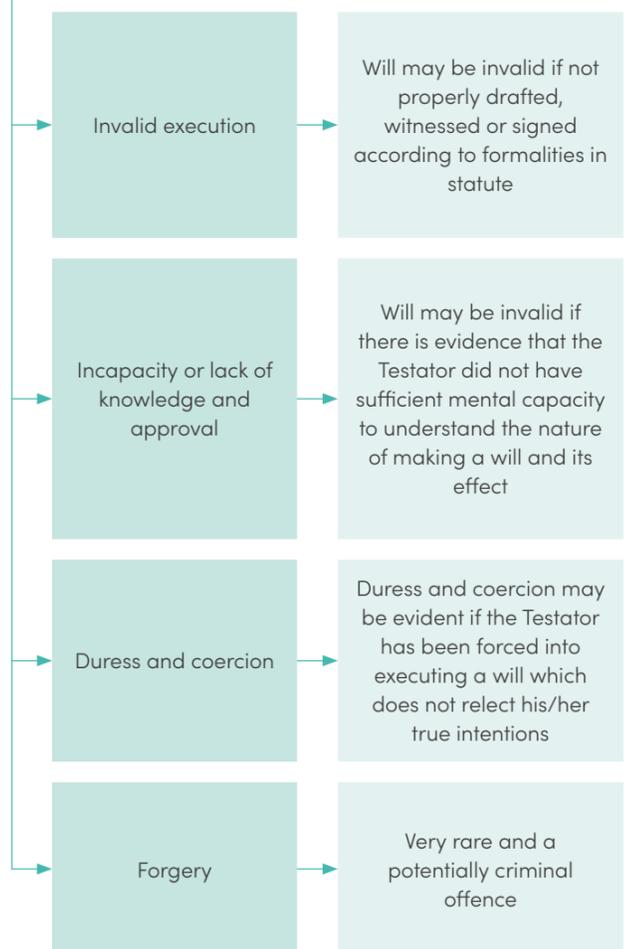
2. Procedures for a valid will

- Testator has reached age of majority (18)
- Testator understands nature of the will and gifts being made reflect Testator's intentions
- Will is in writing and signed by the Testator in the presence of two witnesses at the same time
- Wills governing moveable assets in Cayman and drafted in accordance with Cayman law can be executed outside of Cayman pursuant to the Formal Validity of Wills (Persons Dying Abroad) Law 2018
- The Wills Law (2020 Revision) at this stage does not allow for wills to be created and signed electronically

3. On death



4. Challenges to the will



5. Top tips

- Choose executor wisely, especially if estate assets are located in other jurisdictions
- Pay attention to signing formalities and capacity issues
- Consider executing a separate will for immovable property in a foreign jurisdiction to ease probate burden