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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

## Cayman Islands

### 1. Rules for succession of property

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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

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

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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

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

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

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#### Dying without a will

#### Dying with a will

Application by appropriate persons for letters of administration

Application for probate of the will

Grant of letters of administration given in favour of appointed personal representatives

Grant of probate given in favour of the named executors

Personal representatives gather in assets and distribute them according to succession rules, detailed in the Administration of Estates Act 1925, as amended by the Inheritance and Trustees' Powers Act 2014

Executors gather in assets and distribute them according to the will

#### Dying without a will

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Application by appropriate person for letters of administration

Application for probate of the will

Application must be supported by a bond for twice the value of the Cayman estate

Probate granted in respect of a foreign will may be presented to the Cayman Court for resealing

Personal representatives gather in estate assets. Priority to estate assets determined by Succession Law 2006 (Revision) (with spouse then children taking priority) or laws of deceased's domicile

Executors gather in assets and distribute them according to the will

### 4. Challenges to the will

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#### Invalid execution

A will may be invalid if one or more of the above detailed procedures have not been complied with (i.e. not properly made in writing, signed or attested)

#### Incapacity

Testator must be able to understand the contents and/or effect of the will, have sufficient knowledge of assets and beneficiaries, and not suffer from any conditions that affect decision making abilities

#### Knowledge and approval

Testator must understand that the actual document being signed reflects his testamentary intentions

#### Undue influence

Testator must execute will voluntarily and without coercion

#### Forgery

Very rare and potentially a criminal offence

#### Invalid execution

Will may be invalid if not properly drafted, witnessed or signed according to formalities in statute

#### Incapacity or lack of knowledge and approval

Will may be invalid if there is evidence that the Testator did not have sufficient mental capacity to understand the nature of making a will and its effect

#### Duress and coercion

Duress and coercion may be evident if the Testator has been forced into executing a will which does not reflect his/her true intentions

#### Forgery

Very rare and a potentially criminal offence

### 5. Top tips

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

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