PERSONAL FINANCE
01 Jan 2014, p.30

WHERE THERE'S A WILL

Don't assume that a will drawn up in South Africa is adequate to deal with your estate in a foreign country, writes **Oliver Charles Phipps**.

IF YOU OWN FOREIGN (OFFSHORE) ASSETS, you may be asking whether you need to have more than one will. The issue arises because the provisions of a will made in one jurisdiction may not necessarily be recognised in another where your offshore assets are located. Also, even when you can use one will, there may be practical advantages in having more than one.

For example, a South African will would not be effective for dealing with a property on the island of Jersey, unless the formalities of that jurisdiction had been observed, which include reading the will out loud and having it witnessed by a notary public.

Another example involves civil law jurisdictions, such as most of the European Union states (excluding the United Kingdom, Ireland and Cyprus) and Switzerland, which have statutory rights of forced heirship – in other words, certain family members are entitled to inherit, regardless of the stipulations of a will. Therefore, depending on the foreign jurisdiction in which assets are located, a South African will might not remove the effect of local statutory rights.

Those specific issues aside, why is an offshore will necessary if the executor has the authority provided by South African letters of executorship? The answer is that most asset-holders registered outside of South Africa will not recognise letters of executorship and will ask for a local probate (court authority) or notarial declaration (depending on the jurisdiction) before they will allow an executor to administer the asset.

Broadly speaking, the options for dealing with offshore assets are:

- A single will that governs the worldwide estate;
- A will limited to the jurisdiction where the offshore asset is located; or
- A will that deals with worldwide assets outside the country of domicile (permanent residence).

The starting point for analysing how a will or wills should be structured is to consider what formalities will have to be followed in the foreign jurisdiction to facilitate the succession. The following examples illustrate the considerations.

■ **One worldwide will.** In this scenario, you are domiciled in South Africa and your only offshore asset is a bank account registered in, say, England. The will draftsman should consider what formalities will be required before the bank account can be administered in England.

Each bank in England has its own threshold at which funds may be released without the need for an English court authority – on average, about £10 000. If funds exceed the relevant threshold, an English court authority will be required. In these circumstances, there is a fast-track procedure called "resealing", whereby the English court formally recognises and gives effect to the South African letters of executorship.

So, in this case, the person drafting your will might decide that one worldwide will is sufficient. The only drawback would be that the South African administration and the English administration could not be conducted simultaneously. Before the letters of executorship could be resealed, court-sealed and certified letters of executorship would have to be obtained, which might take many months.

However, the draftsman might decide that the slight delay in administering the English account was not worth the trouble of preparing two wills.

■ **A domicile will and a will outside of the jurisdiction.** If you are domiciled in South Africa, but own, say, unit trusts in Jersey, a bank account in the Isle of Man and stocks and shares in England, consider the following: assets are located in four jurisdictions, but preparing four wills could be quite a