



Wills and the Global Investor

Does one worldwide will suffice?



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It is becoming more common for people to “not keep all their eggs in one basket” and to rather diversify their investments into jurisdictions outside of South Africa. While this is deemed to be financial savvy, it does raise the question about what will happen when you pass away while owning assets offshore. Are the foreign assets covered by a local South African Will? Do you need a Will for each country? Or will one “worldwide Will” do.

The quick answer is that there is no one-size-fits-all solution, and it depends on the country in which the offshore assets are held, says Sarah Love, a fiduciary practitioner at Private Client Trust, a division of Private Client Holdings.

According to Love, the starting point in any multi-jurisdictional estate planning is to first take stock and establish what you are dealing with – gaining a clear understanding of which countries hold which assets and in what form. Also, important to note is that assets held within wrappers and life policies are not governed by the Will but rather the beneficiary nomination.

Many countries either follow the Anglo Saxon or English rules of inheritance while many of the European countries follow civil law. Those rules also found their way to the colonies that the country in question settled. For example, many West African colonies adopted the French Napoleonic code whereas those settled by the English would have adopted the Anglo-Saxon rules. Interestingly in South Africa we have a hybrid of the Roman Dutch law and Anglo Saxon.

In some countries forced heirship is applied. This means that your freedom to dispose of those assets is restricted to a formula depending on who your next-of-kin are and advice should be taken as this may be excluded in certain circumstances.

“In instances where a country’s laws differ from our own here in South Africa, or where immovable property is owned, having a separate Will dealing specifically with the assets held in that country may be the best approach. This is particularly important if you want to avoid lengthy estate administration delays,” says

Love. “Once it is known how each country approaches heirship and Wills, one can draw up an appropriate Will or multiple Wills as required.”

However, Elmién Pols, a fiduciary practitioner at Private Client Trust, cautions that separate offshore Wills must be aligned to the South African Will, otherwise the process can still become incredibly complex and frustrating.

“Absolute care should be taken when drafting multiple Wills so that they do not contradict or revoke each other,” says Pols. “In other words, the Wills should not refer to the same assets otherwise they may unintentionally create ambiguity and attention should be paid to the revocation clause to ensure that you don’t accidentally cancel another jurisdiction’s Will. Also be careful of leaving out any jurisdictions – for example, the Isle of Man is not in the United Kingdom, so your UK Will would not cover assets held there.”

If you are ordinarily a resident in South Africa, your worldwide estate will be liable for Estate Duty. There are limited double taxation agreements in place so one would need to factor this in your estate planning to ensure your assets are held in an efficient manner.

Love advises that if you have assets in multiple jurisdictions, it is crucial to get advice from a fiduciary practitioner, who can give you the counsel you need and pull in the relevant expertise from each country to ensure that there will be no problems with your estate after you pass.

The value of seeking a professional fiduciary practitioner cannot be overlooked as each of the Wills must be properly worded so as not to create any grey areas. It is essential that multiple Wills are thoroughly reviewed to ensure they are not contradictory and align with the rules and regulations of each jurisdiction.

“There is no one-size-fits-all solution and so getting professional advice to guide you through your specific circumstances is crucial,” concludes Love. ■

To have all your fiduciary questions answered please do not hesitate to contact Sarah Love and Elmién Pols at trusts@privateclient.co.za or call 021 671 1220.