



Fiduciary Insights

WHEN YOUR WEALTH CROSSES BORDERS, YOUR WILL MUST TOO

As more South Africans build wealth internationally through offshore investments, foreign property and global business interests, estate planning becomes increasingly complex.

The challenge is not simply owning assets in multiple countries. It is ensuring those assets pass to the right people, in the right way, and without unnecessary delays or costs.

A SMALL CLAUSE CAN HAVE BIG CONSEQUENCES

Consider a client with investments in South Africa and a property in the United Kingdom. To ensure compliance with local requirements and minimise delays in administering each estate, they have separate wills for each jurisdiction.

Years later, the client updates their South African will. Included is a standard clause revoking all previous wills. Unintentionally, the UK will is revoked as well.

When the client passes away, the South African assets are administered in accordance with the provisions of the will, but the UK property no longer falls under a valid will and becomes subject to intestate succession rules. The result may be delays, additional costs and an outcome that differs from the client's wishes.



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WHY CROSS-BORDER ESTATE PLANNING MATTERS

Every country has its own rules governing assets within its borders.

As a result:

- A South African will may not be recognised everywhere.
- Different succession rules may apply to foreign assets.
- Estate administration in one country can delay assets being released in another.

What appears straightforward can quickly become complicated when multiple legal systems are involved.

IS ONE WILL ENOUGH?

Many clients assume a single will can effectively deal with all their assets worldwide. In some circumstances this may be appropriate, but it is not always the most efficient solution.

Broadly speaking, there are two approaches.

1. A Single Worldwide Will

A worldwide will can provide simplicity and centralisation. However, it may create delays if foreign authorities require additional legal processes before recognising

the document. It may also fail to address specific legal requirements in certain jurisdictions.

2. Separate Wills for Different Jurisdictions

Where significant assets are held in multiple jurisdictions, separate wills can often streamline administration by allowing different estates to be dealt with simultaneously.

The key is ensuring that the wills are carefully coordinated. Poorly drafted documents can inadvertently revoke or contradict one another, creating precisely the problems they were intended to solve.

There is no universal solution. The most appropriate structure depends on the type of assets involved, where they are located and the legal requirements of each jurisdiction.

THE REVOCATION TRAP

Most wills contain a clause revoking all previous wills. In a domestic estate plan, this is standard practice.

In a cross-border estate plan, however, this seemingly harmless provision can have unintended consequences. A new will drafted in one country can accidentally invalidate an existing will in another.

It is one of the most common pitfalls in international estate planning and one of the easiest to overlook.

NOT EVERY COUNTRY GIVES YOU COMPLETE FREEDOM

South Africans are generally familiar with the principle of freedom of testation, the ability to decide how assets should be distributed on death.

Many jurisdictions take a different approach.

In certain countries, particularly those operating under civil law systems, legislation may require that a portion of an estate passes to specific family members, regardless of the deceased's wishes.

This means a carefully drafted South African estate plan may not automatically achieve the same outcome for assets held elsewhere.

Understanding these differences is essential when planning across jurisdictions.

WHAT CAN GO WRONG?

Where estate planning is not aligned across countries, the consequences can include:

- Delays in administering the estate
- Increased legal and administrative costs
- Assets being distributed contrary to the client's intentions
- Disputes between beneficiaries

Unfortunately, these issues are often only discovered after death, when they can no longer be corrected.

THE VALUE OF A REGULAR REVIEW

For clients with offshore assets, a regular review of their wills and estate plan is essential.

Questions worth considering include:

- What assets do you hold outside South Africa?
- In which countries are those assets located?
- Do you have one will or multiple wills?
- Are your wills aligned and valid in each jurisdiction?

A simple review can often identify potential issues before they become costly problems.

At Private Clients by Old Mutual, we work with advisers and their clients to identify potential cross-border estate planning risks and help ensure that their estate structures work as intended.

THE BOTTOM LINE

Holding assets offshore does not create risk on its own. The risk arises when estate planning fails to keep pace with an increasingly global world.

With the right advice and coordination, cross-border estate planning can help ensure your wishes are carried out efficiently and effectively across every jurisdiction where you hold wealth.

Private Clients
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