Singapore instruments

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The will and the grant

A Singapore will must be in writing, signed by the testator at the foot or end and witnessed by two or more witnesses present at the same time, under the Wills Act 1838.[1] Singapore has no forced heirship for non-Muslims, so a testator may dispose of digital assets freely, subject to the court's power under the Inheritance (Family Provision) Act 1966 to order maintenance for a dependant who is left without reasonable provision.[2] On intestacy, the Intestate Succession Act 1967 divides the estate between the spouse and the children in fixed shares.[3]

The executor obtains a grant of probate from the Family Justice Courts, or letters of administration on intestacy, and administers the estate under the Probate and Administration Act 1934.[4] Singapore has no estate duty since 15 February 2008, so the executor files no inheritance tax return, although the schedule of assets filed for the grant must list the digital assets at their value at death.[5] The Singapore courts have been receptive to applications for directions concerning digital assets. An executor who cannot locate or access tokens can seek the court's guidance on the distribution of what is found.

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The lasting power of attorney and the trust

Incapacity is addressed through a lasting power of attorney under the Mental Capacity Act 2008, registered with the Office of the Public Guardian, under which the donee may make decisions about the donor's property and affairs.[6] The standard form confers general authority over property and affairs, which includes digital assets, but a donor with significant holdings should use the long form and state the authority to deal with keys, custodians and exchanges expressly, because custodians read the instrument literally.

The trust is the Singapore instrument that does what the Swiss will cannot: it holds the assets through generations under a trustee who already has the keys, so that death changes nothing at the level of custody. A settlor who transfers tokens to a Singapore trust during life, with a licensed trustee or a private trust company as trustee and a licensed custodian holding the tokens, has solved three problems in one step. These are the key problem, the forced-heirship problem in any civil-law jurisdiction that respects the trust and the probate problem. The settlor can retain influence through a letter of wishes and a protector, but should retain no power that would make the trust a sham or, for a Swiss-resident settlor, attributable under the Swiss Circular No. 30 rules of Chapter VII. Part J, Chapter II, discusses the certainty-of-subject-matter problem for tokens held in omnibus wallets, which a trustee must avoid by requiring segregated custody.

Singapore perspective

A Singapore-resident client who wants their digital assets to pass to the next generation without a probate process, without the heirs ever handling keys and without exposure to forced heirship in a civil-law home country should settle a trust during life. The trustee holds the tokens with a licensed custodian in segregated accounts. The client remains a discretionary beneficiary with a letter of wishes. The children become beneficiaries on the client's death without any transfer of assets. The arrangement costs S$ 30,000 to S$ 80,000 a year with a licensed trustee, less with a private trust company. It must be settled before any beneficiary takes up Swiss residence if Swiss attribution is to be avoided.

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Notes

1. Wills Act 1838 (2020 Rev. Ed.), s. 6(1) ("No will shall be valid unless it is in writing and executed in the manner mentioned in subsection (2)") and s. 6(2) (signature and two witnesses); s. 4 (wills by persons under 21 void). ↩
2. Inheritance (Family Provision) Act 1966 (2020 Rev. Ed.), s. 3. For Muslims, the Administration of Muslim Law Act 1966, ss. 111 and 112, applies faraid. ↩
3. Intestate Succession Act 1967 (2020 Rev. Ed.), s. 7 (rules of distribution: spouse one half and children one half where both survive). ↩
4. Probate and Administration Act 1934 (2020 Rev. Ed.), ss. 8 ff. (grants) and Part IV (powers and duties of personal representatives); Family Justice Rules 2014. ↩
5. Estate Duty Act 1929 (2020 Rev. Ed.), s. 2A (no estate duty on deaths on or after 15 February 2008). ↩
6. Mental Capacity Act 2008 (2020 Rev. Ed.), ss. 11 to 13 (lasting powers of attorney: creation, registration, scope); Mental Capacity Regulations 2010 (prescribed forms). ↩

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