Succession

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The framework

A Singapore estate is administered under the Probate and Administration Act 1934. Where there is a will, the executor obtains a grant of probate. Where there is none, a personal representative obtains letters of administration and the estate passes under the rules in s 7 of the Intestate Succession Act 1967, under which a surviving spouse with children takes one half and the children share the other half.[1] Muslim estates are distributed under the faraid rules certified by the Syariah Court.[2] Singapore abolished estate duty for deaths on or after 15 February 2008, so no tax is payable on the devolution of digital assets, whatever their value.[3]

A will must be in writing, signed by the testator and attested by two witnesses present at the same time.[4] The Electronic Transactions Act 2010 excludes wills from its provisions on electronic records and signatures, so a will cannot be made electronically, let alone on a blockchain.[5] A smart contract that transfers tokens to named addresses on the testator's death is therefore not a will. It is a lifetime disposition subject to a condition, whose validity depends on the law of gifts and on whether the testator retained the power to revoke it. Such arrangements can work, but they operate outside the estate and the executor has no control over them.

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Digital assets in the estate

The executor's first task is to identify and collect the assets. For tokens held with a Singapore-licensed custodian or exchange, the executor produces the grant and the platform's deceased-customer procedure applies. Most platforms require the grant, the death certificate, identification of the executor and an indemnity before transferring the balance. The executor has power under the Trustees Act 1967 to retain, sell or transfer the tokens. The general power of investment applies to the administration period.[6] For self-custodied tokens the executor needs the keys. If the deceased left no record of them, the assets are lost in every practical sense, though they remain in the estate for accounting purposes and a Schedule of Assets should list them with a note that access could not be obtained.

The estate planning answer is separation of the will from the access instructions. The will disposes of the digital assets, by specific gift or as part of residue, and gives the executor express powers to deal with them, including power to engage technical advisers and to pay their fees from the estate. The access instructions are kept in a separate document, a letter of wishes or a memorandum, held by the executor or a professional, because a will becomes a public document on probate and must never contain a seed phrase. The memorandum should identify each wallet, its type, where the key material is held and how to assemble it, without itself containing enough to move the assets. For large holdings a multi-signature arrangement works well. The testator holds one key, a professional fiduciary holds another and a third sits in escrow, so that the executor can assemble a quorum after death without any single person having had control during the testator's life.

Checklist

An estate plan for a Singapore-resident holder of digital assets should contain the following. - A will that identifies digital assets as a class, gives them by specific gift or residue, and confers on the executor express powers to access, hold, convert and transfer them and to engage advisers. - A separate, regularly updated inventory of wallets, exchange accounts, custodians and their approximate values, held by the executor or a professional. - Access instructions that allow the executor to

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reconstruct control without any single document being sufficient, with the components held by different persons or in different places. - A lasting power of attorney under the Mental Capacity Act 2008 whose property and affairs powers expressly extend to digital assets, since incapacity is more common than sudden death. - Instructions on what the executor should do in the first weeks: move assets to fresh keys, stop staking positions, cancel exchange API keys. - For holders with Swiss connections, a review of whether Swiss forced heirship applies and whether a Swiss will is needed in addition (see below). - An annual review, because wallets, exchanges and the holder's own arrangements change.

Incapacity

The Mental Capacity Act 2008 allows a person to appoint a donee under a lasting power of attorney to manage property and affairs on loss of capacity.[7] The standard form confers general authority, which extends to digital assets, but the practical problem is the same as on death. A donee without the keys can do nothing. The access arrangements for incapacity should be the same as for death. The donee should be the same person as the executor or should hold the same component of the key material. Where the holder is a Swiss resident, the Swiss advance care directive (Vorsorgeauftrag) under Art. 360 ff. CC performs the same function and should be co-ordinated (Part D, Chapter VIII).

Notes

1. Probate and Administration Act 1934, ss 2 (grant of probate) and 18 (letters of administration). Intestate Succession Act 1967, s 7. ↩
2. Administration of Muslim Law Act 1966, ss 111–112 (distribution of Muslim estates according to Muslim law). ↩
3. Estate Duty Act 1929, s 2A (no estate duty for deaths on or after 15 February 2008). ↩
4. Wills Act 1838, s 6. ↩

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5. Electronic Transactions Act 2010, s 4 and First Schedule, item on the creation or execution of a will. ↩
6. Trustees Act 1967, s 4 (general power of investment), applicable to personal representatives. ↩
7. Mental Capacity Act 2008, ss 11–13 (lasting powers of attorney). ↩

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