

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE FORMAL VALIDITY OF
WILLS OF PERSONS DYING ABROAD; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

**THE FORMAL VALIDITY OF WILLS (PERSONS DYING ABROAD)
BILL, 2018**

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to provide for the testamentary disposition of the property (both chattels and land) of persons who die while abroad. The legislation will replace the private international rules that currently govern this area of succession. As such, a will to which the legislation applies will be treated as properly executed (or formally valid) if, among other things, its execution is in conformity with the law of the Islands or the law in force -

- (a) in the territory in which the will was executed;
- (b) in the territory in which the testator was domiciled or habitually resident at the time of the will's execution or at the time of the testator's death; or
- (c) the state of which the testator was a national at the time of the will's execution or at the time of the testator's death.

A will that disposes of land shall be treated as being properly executed where its execution was in accordance with the law in force in the territory or state where the land is located.

Clause 1 provides for the short title and commencement.

Clause 2 provides for the definitions of terms used in the legislation.

Clause 3 provides that the Law applies to a will that is executed by a person who dies after the commencement of this Law and while that person is domiciled outside of the Islands.

Clause 4 sets out the general rule regarding the formal validity of wills of persons dying abroad. The rule states that an applicable will shall be considered as properly executed if its execution conformed to the law of the Islands or the law of -

- (a) the territory where the will was executed;
- (b) the territory where the testator was domiciled at the time of the execution of the will or at the time of the testator's death; or
- (c) the state of which the testator was a national at the time of the execution of the will or at the time of the testator's death.

Clause 5 makes provision for additional rules applicable to wills of persons dying abroad. The following, among others, are treated as properly executed -

- (a) a will executed on board a vessel where the execution conformed with the internal law of the territory that the vessel is most closely connected with, having regard to its registration; and
- (b) a will that disposes of immovable property outside of the Islands and that conforms to the internal law in force in the territory where the property is situated.

Clause 6 provides for the construction of relevant wills where a requirement of the law of another territory or state requires that special formalities are to be observed by testators. Any such special formalities are to be treated, notwithstanding any law to the contrary in that other territory or state, as a formal requirement.

Clause 7 provides that any rule of the common law governing the formal validity of wills of persons dying abroad is abolished.

**THE FORMAL VALIDITY OF WILLS (PERSONS DYING ABROAD)
BILL, 2018**

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Interpretation
3. Application
4. General rule re formal validity of wills of persons dying abroad
5. Additional rules
6. Construction
7. Abolition of common law rules

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**A BILL FOR A LAW TO PROVIDE FOR THE FORMAL VALIDITY OF
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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Formal Validity of Wills (Persons Dying Abroad) Law, 2018. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet.

2. In this Law - Interpretation

“internal law”, in relation to any territory or state, means the law which would apply in a case where no question of the law in force in any other territory or state arose;

“state” means a territory or group of territories having its own law of nationality and includes the Islands;

“testator” means a person who makes a will;

“vessel” includes aircraft; and

“will” includes any testamentary instrument or act.

- Application
3. This Law applies to a will that is executed by a person who dies -
- (a) after the commencement of this Law; and
 - (b) while domiciled outside of the Islands.
- General rule re formal validity of wills of persons dying abroad
4. (1) Subject to subsection (2), a will to which this Law applies shall be treated as properly executed if its execution conformed to -
- (a) the internal law of the Islands; or
 - (b) the internal law in force -
 - (i) in the territory where it was executed;
 - (ii) in the territory where, at the time of its execution or at the testator's death, the testator was domiciled or had his or her habitual residence; or
 - (iii) in the state of which, at either of the times in subparagraphs (i) or (ii), the testator was a national.
- (2) To the extent that a will purports to dispose of immovable property or any interest in land in the Islands, it shall be treated as properly executed only if executed in accordance with section 4(1)(a).
- Additional rules
5. (1) Without prejudice to section 4, the following shall be treated as properly executed -
- (a) a will that is executed on board a vessel of any description, if the execution of the will conformed to the internal law in force in the territory to which the vessel, having regard to its registration (if any) and other relevant circumstances, may be taken to have been most closely connected with;
 - (b) a will so far as it disposes of immovable property outside the Islands, if its execution conformed to the internal law in force in the territory where the property was situated;
 - (c) a will so far as it revokes a will which under this Law would be treated as properly executed or revokes a provision which under this Law would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated; and
 - (d) a will, so far as it exercises a power of appointment, whose execution conformed to the law governing the essential validity of the power.
- (2) A will, so far as it exercises a power of appointment, shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

6. Where a law in force outside the Islands is to be applied in relation to a will, any provision of that law that requires that special formalities are to be observed by a testator fitting a particular description or witnesses to the execution of the will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only. Construction

7. Any rule of the common law governing the formal validity of wills of persons dying abroad is abolished. Abolition of common
law rules

Passed by the Legislative Assembly on the day of , 2018.

Speaker.

Clerk of the Legislative Assembly.