

Wills in Hong Kong

Do we need one?

Is our existing one valid?

What happens to our children should anything happen to both of us?

These are common questions, subjects that are tossed around at coffee mornings and dinner parties, and often on the flight deck of an aeroplane.

Most responsible parents will have a Will, but the question of domicile comes to the fore if there is a joint death of husband and wife and children are left subject to the provisions of an existing Will. It is true that 'a Will' made in England will be acceptable in Hong Kong, but the Hong Kong probate office will not take the Will through probate if the person who has made it is domiciled somewhere else. They will, however, accept a grant of probate issued in the UK, Sri Lanka, New Zealand Singapore and four of the Australian States (but not the other four). The court in Hong Kong will re-seal the Grant and then it can be used to release the Hong Kong assets.

Domicile in this context is 'domicile of choice', and this has a different definition from 'domicile of origin' or 'domicile of acquisition'. In the absence of any statement to the contrary, or any positive action to change it, the domicile of choice and the domicile of origin (where you were born) are usually the same. The Hong Kong probate office will interpret it that way, and will only accept a re-sealed grant, not the original Will. Incidentally, domicile is not the same as residence or nationality, or anything to do with definitions for income tax or capital gains.

There are very few people who keep their Wills up to date, but it is something that you need to watch as your situation changes. For a young married couple, 10 years will probably mean a huge difference in their lives. Children, property, financial situation will all have changed since the day they made their commitment to each other, and they will need to re-think their Wills at regular intervals. Being reminded to do this is really helpful and stops lapses that might cause trouble. It is even more important to have a Will if there has been no formal marriage, because the law is definitely not on the side of a surviving partner and things can get very complicated and distressing.

Guardianship is another huge issue, and failure to make a formal appointment of a guardian, and a temporary guardian if you are away from your home country, can have dire consequences! Your children are subject to Hong Kong Law whilst they are here, and unless the formal appointment has been made in the Will then the State takes charge of appointing legal guardians. Thinking your mother can come over and simply collect them is a delusion! She cannot. There will be formalities to go through and the children may be taken into care while until the legal aspects are resolved. They will not be given to anybody until the Courts make a decision. The answer is probably to have two Wills if your domicile of origin is not Hong Kong. A Will limited to Hong Kong and another Will for your home country. With careful drafting the Wills work round each other and fit together so that there is no conflict between them.

One common misconception is that you can only have one Will, but that is not so. It is perfectly possible to have two or more Wills, and this applies particularly if you decide to invest in property, or indeed if you and your spouse come from different countries. By having two (or more) Wills you can be sure that a grant will be issued in Hong Kong for the Hong Kong Will, and then everything can be dealt with locally without the wait for resealing a grant. Time is definitely of the essence when children are involved and this will short circuit the system. Most importantly, you have ensured that your children will be looked after by friends until their guardians arrive and the HK social services will have little or no say in what happens to them. You will have done everything you can to help your family deal with a difficult situation without interference from the Government agencies.

This article has covered what we think are the most important items in a Will. Of course there are other issues to worry about, and not everyone has children! If you want to know more, then call Janet Cribb on 3010 0101, Skype: **phoenixwills** or **phoenixwillsA1**.

There is no charge for a phone consultation. We are happy to give time to interested groups, so if you and your friends would like to know more please call us and we can arrange a Q&A session over coffee with your group.

Janet Cribb