COLLAS CRILL

Peace of mind: The importance of making a will in the BVI

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The Covid-19 era has brought attention to the unexpected elements of life and has forced us to realise the importance of being prepared for whatever life brings. Life as we know it can change at any particular moment and at any given time.

It is therefore important now more than ever to have a current Will in place. While there are a lot of things we have no control over during our lifetime, what happens to our assets and who will act as guardians of our minor children upon our passing is something that we can control and should make provision for.

What is a Will?

A Will is a written instrument legally executed by which a person makes dispositions of his or her estate to take effect after death which must be executed in accordance with the Wills Act (Cap 81) (the **Wills Act**) in order to be valid within the BVI.

What is the importance of having a Will?

There are a number of reasons why an individual should make a valid Will during their lifetime. These include, but are not limited to the following:

1. We do not know what the future holds, save our mortality. In order to avoid any added stress to mourning loved ones, you can ease the process by stipulating your desires in a valid Willbefore you die.
2. The decision of how your estate will be distributed and who will take care of your minor children will be directed by you. If you die without a Will (**intestate**) the law will determine how your estate will be distributed and who will assume responsibility for your minor children. Wouldn't you prefer the peace of mind of knowing that your minor children will be left with a family member you trust?
3. You can decide who will manage your affairs upon your passing. You can appoint someone that you trust to pay off your bills and notify the necessary business establishments of your passing.
4. You can have the option of making gifts and charitable donations. The legislation does not make provisions for friends and charities. This means therefore that friends who have become family over the years will not be able to receive anything from the estate unless it has been expressly stated in a Will. The same principle applies to charitable donations.
5. You can change your mind as many times as you want during your lifetime. If your life circumstances change, eg you have more children, divorce or remarry, you can always alter the Will.

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What happens if you don't have a Will?

If an individual who is domiciled in the British Virgin Islands dies without a valid Will, the rules of intestacy will govern how their estate will be divided and who will take care of their minor children (if applicable).

The Intestates Estates Act (Cap 24) states that an intestate's estate will be distributed in the following order of priority:

The surviving spouse takes:

- the personal chattels;
- $240 or a sum equal to 10% of the net value of the estate, whichever is greater, with 5% a-year interest until payment; and
- half of the residue on trust for life (if issue) or the whole on trust for life (if none).

In case of issue but no spouse, the residue is held on statutory trusts for the surviving issue.

In case of surviving parents but none of the above, the residue is held on trust for the surviving parent(s).

If none of the above applies, the residue is held on statutory trust for the following in descending order:

- brothers and sisters;
- grandparent or grandparents equally; and
- uncles and aunts.

If none of the above applies, the residue is held absolutely for:

- the spouse (ie, absolutely rather than a trust for life); and
- the Crown.

What are the formal requirements to make a Will?

The Wills Act stipulates that no Will is valid unless it is:

- in writing;
- signed at the foot, or end, thereof by the testator, or by some other person in his or her presence and by his or her direction; with
- such signature being made, or acknowledged, by the testator in the presence of two, or more, witnesses present at the same time, and such witnesses attest and subscribe the Will in the presence of the testator, but no form of attestation is necessary.

Our laws do not prescribe the substantive contents of a Will. You have full freedom to make whatever directions you desire in relation to your assets and the care of your children.

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Conclusion

Making a Will gives you the comfort that your loved ones will not face complex legal issues and bear high legal costs on your demise. It allows you to make provisions for your minor children and enables you to have a say in how your assets that you've worked hard to acquire will be distributed. Making time to prepare a Will can bring back some control in your life now and for the sake of your loved ones.

If you would like advice on making a Will or want to discuss your current arrangements, we are happy to help. Please contact Aliki Skelton-Lettsome or Karen Kaulesar.

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