



JUPITER WEALTH

Estate & Succession Planning

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Sometimes individuals question the need for a will, or its effect. For example, when they have joint bank accounts, own their assets through corporate structures, or are subject to forced heirship rules e.g. Sharia succession laws. The legal reality is that as long as you own assets in your personal name, whether this is a joint bank account, or shares in a company, those assets will form part of your estate when you die and will need to be distributed. The significance of having a will is to give those tasked with administering your estate an understanding of how you would like your estate to be handled, once you are no longer there.



It is true that in some instances, someone's wishes can be overruled if contrary to a legal framework. An example of this could be the application of Sharia inheritance rules to a Muslim's assets in a particular country such as Saudi Arabia. However, in most instances, having a will can be a very useful tool to help your loved ones through a time of grief, easing the burden of administering your estate at a difficult time and speeding up the process of distributing the assets to the intended heirs.

So when should a will be used, what things should someone include in a will, and how do you go about having a will drawn up? We will address these questions and more in this short article. Please note that this should be treated as guidance and does not constitute legal advice. We would always recommend that you seek independent legal advice.



When should a will be considered?

When someone owns significant assets in their personal name, a will should be considered. This includes real estate, joint bank accounts, company shares etc. As is often the case, the specifics of each asset are important to look at. For example, in the case of joint bank accounts, in Singapore having a joint account would usually result in the surviving account holder gaining sole ownership, unless a will dictates otherwise. In Switzerland, contrary to what some may think, as a matter of Swiss law, there is no automatic right of survivorship between joint account holders on death: the deceased's share of the account falls into the estate and the survivor is not automatically entitled to have immediate and unfettered access to the account.

When setting up the account, it is possible for joint account holders to select the option for "survivorship" on the account opening forms, however it should be understood that this is solely an *information right* - the survivor is simply entitled to be provided with details about the account following the death of the other account holder. In principle the surviving account holder is entitled to continually access their share of the account following the death of their co-account holder, and only the share of the deceased account holder will be frozen. However, in practice, it is often the case that the bank will freeze the entire account whilst they investigate both the source of funds and succession rights.



Having a will in place will not, in itself, resolve this. What it will do is help speed up the process of legal transfer of the right to distribute the assets to the intended beneficiaries. Courts in the country in which the deceased was most recently resident in will often review the terms of the will and, if these are valid, will grant an inheritance certificate to the executors named in the will. That certificate can be presented to the banks, company and land registry along with instructions on how the asset is to be transferred or ownership registration amended, supported with the necessary Know Your Client (KYC) documents used to identify the beneficiaries.



What should (and should not) be covered in a will?

Tips on what should be considered in a will:

The main aspects of a will for anyone thinking of preparing one include:

Who will be the executors

A spouse or partner is usually considered, along with another family member and/or a professional adviser. There are no strict rules regarding this, other than the fact that an executor would need to be over the age of 18, of sound mind and be willing to act as an executor. In a number of countries there are also requirements that the executor cannot be a bankrupt or have criminal convictions.

Who will act as legal guardians to any children under the age of 18

This is very important, since it dictates who will have legal custody of the minor children in the event that both parents are no longer alive to care for them. Appointing suitable guardians, including family members, ensures that courts are not involved in decisions over the future welfare of the children and they do not have to go into social care.



Asset Listing

The person preparing the will (the testator) should write down a list of all the assets they own, where the assets are located and how these are held, with this list ideally being held alongside a copy of the will – the reason for this is to help executors identify the personal estate of the deceased, value it, and help them to gather it all in for the purposes of distributing it in accordance with the terms of the will. This exercise will also help identify early on any potential obstacles or special requirements that would be needed to be independently advised on.

Specific bequests and family heirlooms

Any assets to be specifically bequeathed must be clearly identified – if the asset is sold or replacement, it should be clarified whether the sale proceeds or replacement is to be bequeathed to the intended beneficiary instead.



Assets held in a trust or foundation

These should not be included in a will since they do not form part of the personal estate of the individual – separate provision would be made in the trust or foundation for the individual and/or their beneficiaries.

The Residual Estate

Typically, a will might see provisions leaving the remainder of the estate (the residue) after making specific bequests and payment of any taxes, funeral expenses etc, to the surviving spouse, in order to sustain them during their lifetimes, and thereafter to the children/grandchildren (or directly to them if the surviving spouse predeceases the testator). The provisions will often stipulate how the children are to receive the remainder, in what proportions if more than 1 child and at what age. This part of the will usually forms the crux of any carefully prepared will.

Where individuals own significant assets, including business assets, the distribution of their estate should be a very well thought through decision, balancing the needs for fairness and equality against preservation of the very asset that created the family wealth e.g. the family business. It is for this reason that many wealthy individuals choose to transfer ownership of important assets into succession planning vehicles such as trusts or foundations as part of their legacy planning. This can be done before death, or after death as part of the will.

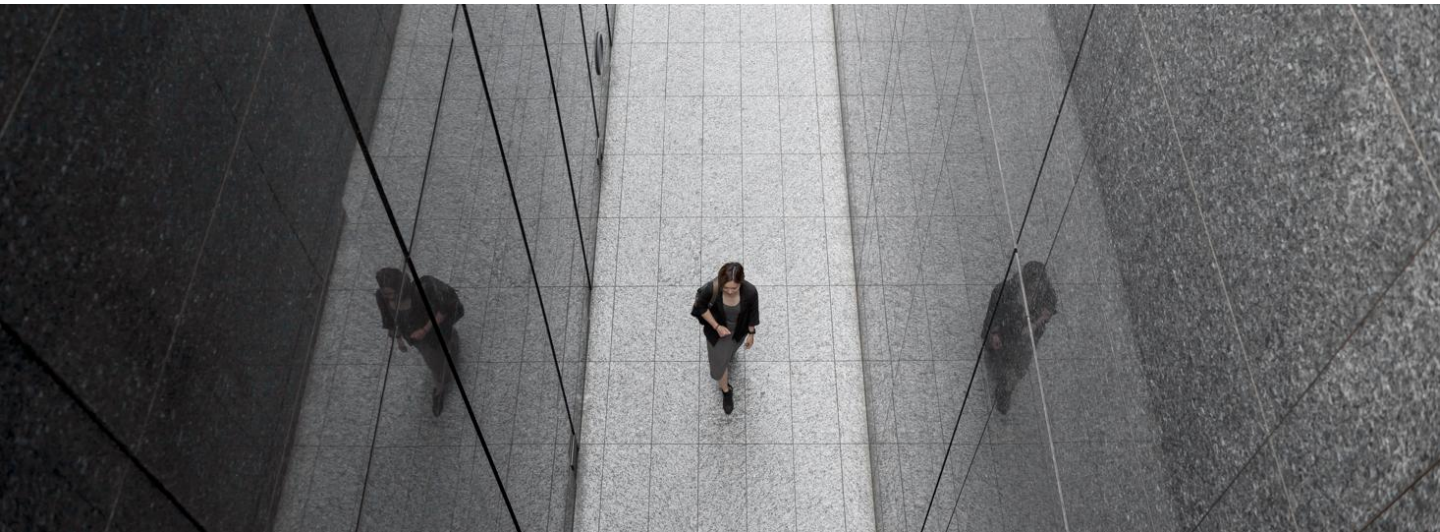


A fallback beneficiary is recommended

This is usually included to cover the (unlikely) event that all other beneficiaries predecease the testator. Often a charity is named, but this could be other family members or friends.

Funeral wishes

The last consideration is the individual's funeral wishes e.g. whether to have a cremation, burial etc.



How many wills should I have and can these be exclusive of each other?

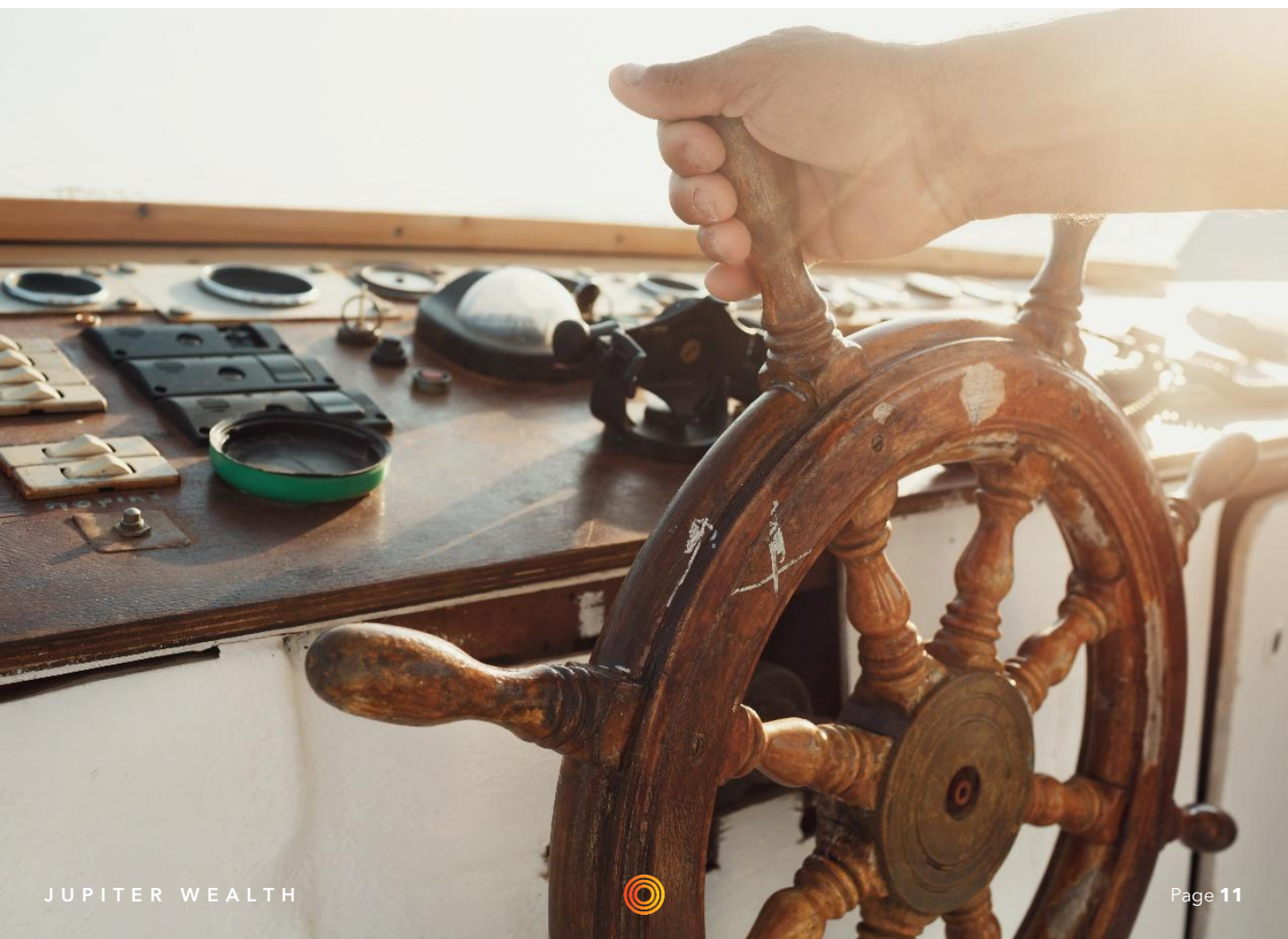
For those individuals who have significant assets in multiple countries, we are often asked if they should prepare separate wills for each country. This can make sense, as it can speed up the process of obtaining legal title for the executors. However, it might not always be acceptable and can add additional costs, especially at the pre-implementation stage. For example, the Swiss courts would not recognise a Swiss will if the only asset owned by the deceased was a Swiss bank account and that individual was not a Swiss national or resident. Instead, they would likely defer to the country most closely connected to that individual for the granting of the inheritance certificate. There is also a risk of missing out an important asset if each country and asset is kept separate and distinct from the other. Having a will with a carefully crafted catch all provision would then make sense.

The answer therefore depends on the specific circumstances of the individual themselves.



Dusting off the existing will

As with most important things in life, these should be regularly reviewed. As one's circumstances change, so should the need for wills. Families evolve, family wealth grows and circumstances change. All of these should necessitate a review of existing wills, if only to make sure they are still appropriate and valid. Changing nationality or passport numbers does not in itself mean a will is rendered invalid or needs to be updated. However, when significant life events occur, these are usually good triggers for a review.



How Jupiter Wealth Advisors can help?

Family disputes often erupt once the head of the family passes, and legal challenges can be made against wills. The success of such challenges largely depends on the care taken and advice given to individuals when they are preparing their wills. Jupiter Wealth Advisors Limited work with a number of professional advisors across different locations and can support individuals in obtaining the most appropriate advice and guidance when thinking about wills, as well as support on reviewing existing wills and arrangements.

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