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Gibraltar

Natasha Pizzarello LLB LLM
Hassans International Law Firm

SECTION A. BRIEF SURVEY OF THE LOCAL SYSTEM

1. Type of System

- (a) The legal system of Gibraltar is a common law system. **19.01**
- (b) Gibraltar is a British Overseas Territory and the laws of Gibraltar are based on that of England and Wales. **19.02**

2. Wills

- (a) The formalities for the correct execution of wills in Gibraltar can be found under section 9 of the Wills Act 2009¹ (the 'Wills Act'). A will must be made in writing and signed by the testator, or by some other person in their presence and by their direction who sign or acknowledge the signature in the presence of two or more witnesses who are present at the same time who sign or acknowledge the signature in the presence of the testator. No formal attestation clause and date is required on a will for it to be valid, but in order to avoid any difficulties when proving the will legal practitioners include these additional formalities. **19.03**

The Wills Act does not make any distinction between holographic and typewritten wills. **19.04** There is no requirement under Gibraltar Law for a will to be typed out and executed in the presence of a Notary. A will can be handwritten or typed and as long as the execution formalities above are complied with, it will be valid.

Privileged wills are the only type of will under Gibraltar Law where the normal formalities for valid execution do not apply. **19.05** Privileged wills are those made by soldiers being in actual military service or any mariner or seaman being at sea. The testator of a privileged will can be under 18 years of age² and the will can be made as soon as orders are received that the individual will be posted to an operational area.

The concept of a 'death bed will' does not exist under the Wills Act. **19.06** A will for an individual who is about to die can be handwritten and signed in accordance with the normal formalities. If the individual is unable to sign the will themselves, they can direct another person to sign it on their behalf in their presence and in the presence of two witnesses. The attestation clause normally used by practitioners should be adapted to reflect this.

¹ Wills Act 2009.

² Section 11, Wills Act 2009.

- 19.07** A secret will is not possible under Gibraltar Law. When a testator dies, and the will is proved, it becomes a public document that any member of the public can obtain and review.
- 19.08** Mutual wills are wills normally made by spouses, civil partners, or partners. All parties agree that the surviving testator will be bound by the terms of the will and will not revoke or amend the will after the first death. Mutual wills are not usually recommended due to their restrictive nature and they are subject to the section 9 formalities set out above.
- 19.09** (b) (i) A codicil can be used to amend a will rather than having to prepare a new document entirely. The execution of a codicil must follow the formalities set out in paragraph 19.03 in order to be valid. A codicil must be carefully drafted in order to prevent the revocation of the will.
- 19.10** (ii) Marriage automatically revokes a will made prior to the marriage unless the will has been made in contemplation of marriage to a particular person. A general contemplation of marriage clause would not be valid.
- 19.11** (iii) If a testator has made a will and then subsequently the marriage has been dissolved or annulled or the civil partnership has been declared void the will shall not be revoked but it shall take effect as if the former spouse or civil partner had predeceased the testator. Therefore, the appointment of a former spouse or civil partner as an executor shall lapse and substitute executors can prove a will and any specific or residuary gifts shall lapse. If the will has been drafted to state otherwise then the appointment and gifts shall not fail.
- 19.12** (iv) A previously revoked will can be revived by the re-execution of the said will or by way of codicil executed in accordance with the formalities contained in section 9 of the Wills Act. The intention of the testator to revive a revoked will must be demonstrated.
- 19.13** (v) Section 62 of the Civil Partnership Act 2014³ amends all laws relating to wills, administration of estate and family provision so that they apply to civil partnerships in the same manner as they apply to marriage.
- 19.14** (vi) The execution of mutual wills is possible and recognized under Gibraltar law. Whilst both parties remain alive, they can amend and revoke their mutual wills if they are in agreement. Issues arise once one party of a mutual will passes away. The surviving individual is unable to revoke or amend their will in any way. The consequences of the survivor acting in contravention of the mutual will is that the beneficiaries under the amended will take the property as trustees for the originally beneficiaries.
- 19.15** (c) The only instance in which a third party has the authority to determine the identity of a beneficiary is when a discretionary trust has been created under a will or the residuary estate is payable to an already existing discretionary trust. The discretionary trust will need to give the executors and/or trustees of the trust the power to appoint assets to a beneficiary within a named class of beneficiaries in the will.
- 19.16** (d) A trust can be created and funded by a will. For a trust to be created, the will must include all provisions and details necessary, such as beneficiaries, assets to be placed into

³ Civil Partnership Act 2014.

the trust and trustees' powers. In order to fund a trust by a will there has to be a trust already in existence prior to the execution of the will.

- (e) There is no formal requirement to register a will in a central registry in Gibraltar. A will can be registered voluntarily in the Supreme Court Registry. **19.17**

3. Intestacy

- (a) The order of succession in cases of intestacy can be found under section 51 of the Gibraltar Administration of Estate Act 1933:⁴ **19.18**
- (i) Where a person dies intestate leaving a surviving spouse/ civil partner (with or without children) the surviving spouse/ civil partner is entitled to all the personal chattels of the deceased absolutely and the sum of £150,000 free of all costs. If there are no issue, the residuary estate is held on trust for the surviving spouse/ civil partner for their lifetime. **19.19**
- (ii) Where an intestate leaves both a spouse/ civil partner and issue half of the residuary estate is held of trust for the issue until they attain the age of 18. The remaining half is held on trust for the surviving spouse/ civil partner for their lifetime. **19.20**
- (iii) Where an intestate has issue and no spouse/ civil partner the residuary estate is held for the issue in equal shares absolutely until they attain the age of 18 years. If the issue are minors the residuary estate is held on statutory trust by the administrators of the estate for the benefit of the issue. **19.21**
- (iv) Where an intestate leaves no issue but both parents, subject to the interests of the surviving spouse/ civil partner, the residuary estate shall be held in trust for the father and mother in equal shares absolutely. Where there is only one surviving parent, that parent, subject to the interests of the surviving spouse or civil partner, is entitled absolutely to the residuary estate. **19.22**
- (v) Where an intestate leaves no issue or parents, then subject to the interests of the surviving spouse/ civil partner, the residuary estate will be held in trust for the following persons living at the date of death of the intestate in the following order: **19.23**
- Firstly, on statutory trusts for the brothers and sisters of the whole blood of the intestate;
 - Secondly, on statutory trusts for the brothers and sisters of the half-blood of the intestate;
 - Thirdly, for the grandparents of the intestate and if more than one in equal shares;
 - Fourthly, on statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the whole blood of a parent of the intestate);
 - Fifthly, on statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the half-blood of a parent of the intestate);

⁴ Administration of Estates Act 1933.

- Sixthly, for the surviving spouse/ civil partner of the intestate absolutely;
- Lastly, in default to the Crown as *bona vacantia*.

- 19.24** Under section 49 of the Administration of Estates Act an adopted child and a child born out of wedlock are both treated as children of the deceased. Therefore, any reference to issue included under the Act also refers to adopted and illegitimate children.
- 19.25** Under Gibraltar law, moveable and immoveable property are treated in the same manner under an intestacy where the deceased died domiciled in Gibraltar. The Administration of Estates Act does not differentiate between them.

4. Freedom of Testation

- 19.26** (a) There is no concept of forced heirship or compulsory shares in Gibraltar. A testator/ testatrix has testamentary freedom in Gibraltar to leave their estate to who they choose meaning they could disinherit family members.
- 19.27** (b) (i) A contract of inheritance made prior to death is binding on the deceased. The beneficiary of the contract of inheritance can make a claim against the estate for damages.
- 19.28** (ii) The concept of partition (*partage*) does not exist under Gibraltar law.
- 19.29** The concept of anticipation (advance distribution) does not exist under Gibraltar law. If a testator decides to gift assets to a beneficiary during their lifetime prior to their death, the said gift is not automatically set off against that beneficiaries' inheritance under a will unless specifically mentioned in the will. Advanced distribution also does not apply in the instance of an intestacy.
- 19.30** Under Gibraltar law the concept of successor or family settlement (*pactes successoraux ou de famille*) does not exist.
- 19.31** (c) A disappointed heir can bring a claim for financial provision under the Inheritance (Provision for Family and Dependents) Act 1977,⁵ so long as the deceased was domiciled in Gibraltar and they fall into the categories of individuals who can apply for an order for reasonable financial provision. The categories of individuals who can make a claim under the act are as follows:
- i. the spouse or civil partner of the deceased;
 - ii. a former spouse or civil partner of the deceased who has not re-married;
 - iii. a child of the deceased;
 - iv. any person (not being a child of the deceased) who in the case of any marriage or civil partnership to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage or civil partnership;
 - v. any person who immediately before the death of the deceased was being maintained wholly or partly by the deceased.
- 19.32** (d) See paragraph 19.24.

⁵ Inheritance (Provision for Family and Dependents) Act 1977.

5. Maintenance

See paragraph 19.29. **19.33**

6. Community Property between Husband and Wife

- (a) The concept of community of property does not exist under Gibraltar Law. **19.34**
- (b) Not applicable. **19.35**

7. Joint Property

Jointly owned property does not form part of a deceased's estate in Gibraltar. The jointly owned property will pass automatically to the survivor without the need to obtain a grant from the Supreme Court Registry of Gibraltar. **19.36**

8. Gifts (*Inter Vivos*)

- (a) Gifts that are made prior to the death of an individual are not automatically set off against that heir's inheritance under a will or intestacy. However, if a will has been specifically drafted to account for any lifetime gifts made when distributing an estate, then the gift will be set off against the inheritance. **19.37**
- (b) Not applicable. **19.38**

9. Capacity

- (a) Firstly, a testator must be at least 18 years of age in order to execute a will, the marital status of a testator does not have any effect on the minimum age requirement. The only exception to the minimum age requirement is for those individuals who are able to execute privileged wills (See Section 19.2(a).) **19.39**

There is a common law test to assess a testator's mental capacity. The test was set out in *Banks v Goodfellow* (1869–70).⁶ A testator must demonstrate that they understand the nature and effect of the act they are entering into; they understand the extent of the property of which they are disposing of; they comprehend and appreciate the claims to which they ought to give effect to (the category of individuals can be found under the Inheritance (Provisions for Family and Dependents) Act; and that no disorder or delusion of the mind influences and prevents the exercise of their natural faculties. **19.40**

⁶ *Banks v Goodfellow* (1869–70) LR 5 QB 549 at 565.

- 19.41** It is important to note that although a testator may be suffering from a disorder or delusion of the mind it does not automatically mean that they lack the mental capacity to execute a will. As long as the individual can satisfy the common law test at the time of execution the will shall be valid.
- 19.42** (b) The witnesses must also be at least 18 years of age and have mental capacity in order for the will to be valid. There are no specific requirements for a legal professional or Notary to act as the witnesses. However, there are some exceptions which are important to note. A beneficiary or spouse or civil partner of a beneficiary should not act as a witness to a will as their entitlement under the will be invalid. It is best practice to have independent witnesses in order to avoid this issue arising. If there are any issues surrounding the capacity of the testator or there is potential for the estate to become contentious after the testator's death it is important to legal and medical professionals to act as the witnesses to the will.
- 19.43** (c) There are no specific requirements for a beneficiary to have a certain level of capacity in order to inherit under a will. Capacity is important when establishing if a beneficiary is able to give valid receipt for their inheritance. A beneficiary needs to be at least 18 years old in order to accept their inheritance unless the will states otherwise. Prior to the beneficiary attaining full age the executors or administrators of the estate will hold the inheritance on trust. This also applies to unborn children who have been named as a beneficiary of a will.
- 19.44** A beneficiary that lacks mental capacity will not be able to give valid receipt for their inheritance. The executors or administrators of the estate will hold the inheritance upon trust for the benefit of such beneficiary for the lifetime.
- 19.45** Companies can also be a beneficiary and inherit under a will. If a testator is choosing to benefit a company under the will, a valid receipt clause should be included to determine who can give valid receipt for the inheritance.

10. Authority (Court, Notarial, or Other)

- 19.46** (a) Prior to collecting and administering the estate assets a grant will need to be obtained from the Registrar of the Supreme Court of Gibraltar. There are three different types of grants that can be issued: firstly, a Grant of Probate is where there are executors appointed and they are able to prove the will; secondly, a Grant of Letters of Administration with the will annexed is where the executors that are appointed have either predeceased or do not wish to act and there are no substitutions; lastly, a Grant of Letters of Administration in the case of an intestacy.
- 19.47** (b) In order to apply for a grant in Gibraltar the executor or intended administrator must swear or affirm an oath in the presence of a Commissioner for Oaths or Notary Public, exhibiting the will and codicils (if any). In the case of foreign domiciled individuals, additional documents may be required as part of the application. In the oath the

executor or intended administrator must set out the basis upon which they are applying and provide the net value of the estate. The application is made to the Registrar of the Supreme Court of Gibraltar. The original will and codicils, certified copy of the death certificate, and any other original documents referred to in the oath must be submitted together with the appropriate fee.

There is a Supreme Court filing fee payable on the net value of the estate. The filing fees is calculated as follows: **19.48**

- i. less than £20,000—no fee
- ii. exceeds £20,000 and is less than £25,000—£40
- iii. exceeds £25,000 and is less than £40,000—£80
- iv. exceeds £40,000 and is less than £70,000—£150
- v. exceeds £70,000 and is less than £100,000—£215
- vi. exceeds £150,000 and is less than £200,000—£300
- vii. exceeds £200,000—£300 plus £100 for every additional £100,000 or part thereof exceeding £200,000.

(c) In order to oppose a grant being issued by the Supreme Court of Gibraltar, an individual would need to enter a caveat against the estate. The caveat is valid for six months and can be renewed when it expires. The caveat is submitted to the Registrar of the Supreme Court of Gibraltar. When an application for the issue of a grant is submitted the caveator will be notified and the person applying will be able to obtain a copy of the caveat. **19.49**

The executor or intended administrator can attempt to resolve matters without the involvement of the courts. If the caveat is not removed, then a ‘warning to caveat’ can be issued to the caveator requesting for them to enter an appearance either in person or by solicitor setting out what interest they have in the estate within eight days or receiving the warning. If they do not enter an appearance within the eight days, then the Registrar can proceed to issue the grant. If the caveator enters an ‘appearance’ then the caveat remains in force until such time where court proceedings are instigated. If the ‘warning to caveat’ and ‘entering an appearance’ steps have not been taken, then the caveat can be removed at any time. **19.50**

11. Invalidity of Will

- (a) A will may be deemed invalid on the following grounds: **19.51**
- (i) the testator lacked the capacity;
 - (ii) the testator lacked knowledge and approval of the contents of the will;
 - (iii) the testator was suffering from undue influence, duress, or fraud by a third party; or
 - (iv) the will was not properly executed.
- (b) If a will is determined to be invalid it would result in the will being void. **19.52**

- 19.53** (c) The Court will only rectify a clerical error made in a will. An application for rectification can be made under rule 55 of the Non-Contentious Probate Rules.⁷ The Court will not rectify a will in the basis of an error in law by the person drafting the will.
- 19.54** (d) Generally, the burden of proving a will lies with executors or intended administrators.

12. Simultaneous Death

- 19.55** (a) In the case of simultaneous deaths the commorientes rule shall apply to gifts under a will and assets which pass by survivorship. With the commorientes rule, where two or more people die at the same time in circumstances where it is uncertain which of them died first, the assumption is the deaths occurred in order in seniority. This rule does not apply on intestacy or if the will contains a survivorship clause.
- 19.56** (b) If there is no external evidence and the date of death of two or more potential testators or beneficiaries of an estate cannot be determined, the presumption is that the oldest individual is deemed to have predeceased the younger individual(s).

13. Presumption of Death

- 19.57** Under the Matrimonial Causes Act 1962⁸ a marriage or civil partnership can be dissolved in Gibraltar on the presumption of death where for the period of seven years or more the spouse or civil partner has not been heard of; they have been continually been absent; the applicant has no reason to believe that their spouse or civil partner has been living within that time. The presumption is that the spouse or civil partner is dead until the contrary has been proved. Once a presumption of death order has been granted the executor or intended administrator can apply for a grant. The applicant must include the evidence as to the presumption of death as part of the application.

14. Estate Taxes

- 19.58** (a) There is no inheritance tax payable in Gibraltar. It was abolished on 1 April 1997.
- 19.59** (b) Not applicable.
- 19.60** (c) There are no other taxes as a result of transferring assets to the heirs of an estate.

⁷ Non-Contentious Probate Rules 1987.

⁸ Matrimonial Causes Act 1962.

15. Administration of Estates

- (a) When an individual dies having a valid will, the executors appointed under the said will are responsible for administering the estate. In order to administer the estate, the executors must prove the will and obtain a Grant of Probate. If an individual dies intestate the rules of intestacy determine who can apply to be appointed as the administrator of the estate. The individuals that can apply are those beneficially entitled to the estate of the deceased. **19.61**
- (b) There is no formal requirement for estate reports to be submitted. However, the Court can request a full inventory and accounts of the estate if a beneficiary challenges the manner in which the executors have administered the estate. It is important to note that the net value of the estate must be included in the oath when an application for probate or letters of administration is made to the Supreme Court of Gibraltar. **19.62**
- (c) The executors or intended administrators of an estate in Gibraltar have a duty to produce estate accounts to the residuary beneficiaries. These accounts do not have to be submitted to the Supreme Court of Gibraltar. However, if a beneficiary is unsatisfied with the administration of the estate, they can query this with the Registrar. The Courts will request a full inventory of the said estate and accounts. **19.63**
- (d) A beneficiary of an estate can raise queries and object to how an estate is being distributed by the executors or administrators. **19.64**
- (e) Assets can be transferred to the beneficiaries of the estate once all debts and funeral and testamentary expenses have been settled. Each asset may have a specific manner in which they are required to be transferred. Under Gibraltar Law in order to transfer a property the grant must be registered in the Gibraltar Land Registry. The executors or administrators can then assent the property to the beneficiaries. **19.65**
- (f) The executors and administrators will pay creditors of a Gibraltar estate from the assets in the residuary estate prior to distributing the assets to the residuary beneficiaries. No advertisements for creditors have to be placed under Gibraltar law but it is good practice. **19.66**
- (g) If a testator has not appointed an executor, or the executor appointed is unwilling or unable to act, then a Grant of Letters of Administration with the will annexed must be applied for in the Supreme Court of Gibraltar by one or more residuary beneficiaries. The distribution of the estate will remain the same. **19.67**
- (h) The beneficiaries of an estate can enter into a Deed of Variation in order to divide the assets other than stated in the will. All beneficiaries would need to obtain independent legal advice to understand the consequences of entering into such an arrangement. As there is no inheritance tax in Gibraltar there are no taxation consequences in respect of any agreements. **19.68**
- B. An affected person can make a claim under the Inheritance (Provisions for Family and Dependents) Act. See paragraph 19.29. **19.69**

16. Domicile/Nationality

- 19.70** (a) The nationality, permanent residence, or domicile of the deceased, either at time of death or at time of execution of a will, affects the following above answers:
- 19.71** (i) At the time of executing a will the nationality, domicile, habitual residence of the deceased can determine the formal validity of a will and its execution.
- 19.72** (ii) When determining the testamentary capacity of a testator/testatrix the domicile when the will is executed is important. The requirements under Gibraltar law do not automatically apply. .
- 19.73** (iii) The deceased's domicile at the date of their death is relevant when determining how moveable assets are distributed. As mentioned in Section B, immoveable property situate in Gibraltar devolves in accordance with Gibraltar law.
- 19.74** (iv) The domicile of the deceased at their date of death will affect a beneficiaries' ability to make a claim under the Inheritance (Provisions for Family and Dependents) Act.
- 19.75** (b) The Supreme Court of Gibraltar does not normally issue grants if the deceased was domiciled and/or executed a will in Gibraltar and there are no assets within the jurisdiction. However, an application can be made to the Registrar to set out why a grant would be required in the circumstances of a nil estate. It will be at the Registrar's discretion as to whether a grant will be issued.

17. Charitable Giving

- 19.76** (a) Under Gibraltar law a testator has testamentary freedom and can therefore gift assets to a charity from their estate. In order for the charitable gift to be binding on the executors the gift will need to be included in the will together with the provision that a proper officer of the charity can give receipt for the gift.
- 19.77** (b) A gift to charity in a will is normally drafted as an outright gift which specifies an amount or percentage payable to an established charity. It is also possible for a will to specify a charitable trust or object as a beneficiary of the will. In order to do so the will needs to be carefully drafted to ensure that the gift will not fail. The inclusion of specific details of the charitable trust or object are important to ensure the success of the gift.
- 19.78** (c) An individual has the ability to leave a gift to any foreign charity under the will. It is advisable that details of the charity are included in the will in order to assist the executors with the distribution.
- 19.79** (d) There is no inheritance or other tax exemptions for an estate when gifts to charities are made.

SECTION B: APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

1. Jurisdiction

- (a) The Supreme Court of Gibraltar would not hold that it had jurisdiction unless the deceased was domiciled in Gibraltar at the date of their death or there were immoveable assets situate in Gibraltar.

19.80
- (b) Immoveable and moveable assets require a Grant of Probate or Grant of Letters of Administration to be issued in order for the administrators. They are not treated differently in this respect. The rules in relation to the distribution of the assets differentiate between moveable and immoveable assets. See Section B2.

19.81
- (c) If local jurisdiction applies then the Supreme Court of Gibraltar will have jurisdiction.

19.82

2. Applicable Law

The law relating to a deceased person who dies domiciled outside of Gibraltar is very similar to that of England and Wales. The Supreme Court of Gibraltar will apply the law of the deceased's domicile in respect of moveable property. Immoveable property is treated differently and under Gibraltar law the Supreme Court of Gibraltar will apply the law of where the immoveable assets are situated. **19.83**

3. Foreign Succession/Inheritance Orders

- (a) A foreign succession or inheritance order will not be recognized in respect of collecting and distributing assets locally whether moveable or immoveable. The exception to this is with grants issued in the United Kingdom. Under the Probates (Re-sealing) Act 1934⁹ a grant issued by a court of probate in the United Kingdom or in a British possession or a British court in a foreign country can be sealed with the seal of the Supreme Court of Gibraltar and shall have the same operation in Gibraltar as if granted by the Supreme Court of Gibraltar.

19.84
- (b) Except for the estates where a grant can be resealed in Gibraltar, all foreign estates require a Gibraltar grant to be issued in order for banks and other institutions situated in Gibraltar to accept instructions from the intended administrators.

19.85
- (c) In order to obtain a Grant of Letters of Administration on the basis of a foreign succession or inheritance order, an application must be made under rule 30 of the Non-Contentious Probate Rules 1987.¹⁰ Under rule 30(1)(a) a grant can be issued to

19.86

⁹ Probates (Re-sealing) Act 1934.

¹⁰ Non-Contentious Probate Rules 1987.

the person entrusted with the administration of the estate by the court where the deceased died domiciled. Under rule 30(1)(b) a grant can be issued to the person or persons beneficially entitled to the estate by the law where the deceased died domiciled. Both of these options will require court certified or notarial copies of the such documents which can confirm either the person entrusted with the administration or the person beneficially entitled to be submitted with the oath. If the documents are in another language an official translation will be required and the said original documents and translations will need to be notarized and apostilled. If no application can be made under rule 30(1)(a) or 30(1)(b), then an application can be made to the under rule 30(1)(c) to such person as the Registrar may direct, based on the submission of an affidavit of facts and law.

- 19.87** (d) (i) The concept of a trust is accepted under Gibraltar Law. The principle of forced heirship is not one that is applicable under Gibraltar law therefore there is no need for the Supreme Court of Gibraltar to overrule the forced heirship rule.
- 19.88** (ii) Not applicable.

4. Two or More Succession or Probate Orders

- 19.89** Foreign orders of succession or inheritance are not accepted in Gibraltar. In order to deal with the assets within Gibraltar a grant needs to be applied for. An application can be made under rule 30 of the Non-Contentious Probate Rules 1987¹¹ to request that a grant be issued on the basis of a foreign order of succession or inheritance. An application can be made by a person entrusted by the court of domicile of the deceased;¹² by a person beneficially entitled to the state by the law of domicile of the deceased¹³ or such person as the Registrar may direct¹⁴

5. Assets

- 19.90** See paragraph 19.16 (b).

6. Expert Evidence

- 19.91** (a) In respect of a foreign will, an affidavit of law will be required by the Supreme Court of Gibraltar in order to confirm that the will was executed in accordance with the law of domicile, habitual residence, nationality of the deceased, or the country in which the will was executed. It is important to note that a foreign will will only be accepted if the will is restricted to the assets situate in Gibraltar. If the will is not specifically restricted

¹¹ Non-Contentious Probate Rules 1987 (NCPR).

¹² NCPR 30(1)(a).

¹³ NCPR 30(1)(b).

¹⁴ NCPR 30(1)(c).

to the assets situate in Gibraltar, and the deceased was domiciled outside of Gibraltar, then the Supreme Court of Gibraltar would require a Court order from the country of the deceased's domicile in order to confirm who is entitled to administer the estate or who is entitled to inherit the estate in order to issue a grant.

- (b) It would not be necessary for a foreign lawyer to appear in court to give evidence. The evidence provided can be done by way of affidavit signed in the presence of a Notary. **19.92**

7. Unity of Succession

The principle of unity of succession is not an accepted principle in Gibraltar. Immoveable property will devolve in accordance with the laws of where they are situated, and moveable property devolves in accordance with the laws of the country in which the deceased died domiciled. **19.93**

8. Formalities

The execution of a will in a foreign country does not need to satisfy the same execution formalities required in Gibraltar. Under section 5 of the Wills Act a will shall be treated as properly executed if its execution conforms to the internal law in force in the territory or State where it was executed, or in the territory or State where, at the time of its execution or of the testator's death, they were domiciled or had their habitual residence, or in a state of which, at either of those times, they were a national.¹⁵ **19.94**

9. Hague Convention

The Gibraltar Wills Act gives broad effect to the Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961. As mentioned above in Section B8, the formalities of a will executed in a foreign country do not need to be the same as the formalities under Gibraltar law for the will to be submitted for a succession order. **19.95**

10. Wills

Gibraltar law applies the general principle that immoveable property devolves in accordance with the law of where it is situated, and moveable property passes in accordance with the law of the deceased's domicile at the date of death. In case of conflict or foreign factors the law that governs is as follows: **19.96**

- (a) Generally, the legal requirements for the execution of wills under Gibraltar law will apply to immoveable property. The Supreme Court of Gibraltar will, however, accept **19.97**

¹⁵ Section 5, Wills Act 2009.

wills executed in accordance with the laws of where the individual was domiciled, habitually resident, a national, or where the will was executed.

- 19.98** (b) When determining the terminology used in a will, domicile or nationality is not normally applicable. The Supreme Court of Gibraltar will attempt to determine the true meaning of the terminology used when construing the will. If when adopting this approach, the true meaning is clear then the court will give effect to the true meaning determined. If the true meaning cannot be determined under Gibraltar law, the law of the deceased's domicile at the time the will was executed will be applicable and the rules of construction of the said domicile will be required.
- 19.99** (c) The rights of beneficiaries or heirs will be determined by whether the assets are moveable or immovable. The law of the deceased's domicile will be applicable to moveable assets and the law where the assets are situate will be applicable to immovable property.
- 19.100** (d) As above, the capacity to inherit from a deceased's estate will depend on whether the assets are moveable or immovable. A beneficiaries' capacity to inherit will be determined by the laws of the deceased's domicile in respect of moveable assets. A beneficiary will need to satisfy the capacity requirements under Gibraltar law in order to inherit immovable assets.
- 19.101** (e) The capacity requirements to make a will, will also depend on the moveable nature of the assets in Gibraltar. The capacity requirements to make a will for moveable property will be determined either by the domicile, habitual residence, nationality of the deceased, or where the will was executed. As mentioned above, Gibraltar law will be applicable to immovable assets and therefore a testator/testatrix will need to comply with the capacity requirements under Gibraltar law to make a will for immovable assets.
- 19.102** (f) The applicable law to moveable and immovable assets will be relevant for the essential or material validity of a will or particular gifts/wishes.
- 19.103** (g) The applicable law to powers of appointment if the will specifically mentions that it is governed by Gibraltar law will generally be Gibraltar law. The applicable law may change in respect of moveable and immovable assets as stated previously if the will does not specifically mention governing law. As mentioned above, the law of the deceased's domicile will be applicable to moveable assets and the law where the assets are situate will be applicable to immovable property.
- 19.104** (h) In order for a testator/testatrix to amend, revoke, or revive a will they would generally need to satisfy the requirements of their law of domicile. If the will is specifically drafted for Gibraltar law to govern the will then the requirements to amend, revoke, or revive a will be in accordance with Gibraltar law.
- 19.105** (i) The ability for a beneficiary to make a claim under the Inheritance (Provision for Family and Dependents) Act in Gibraltar can only be made where the deceased was domiciled in Gibraltar. If the deceased was domiciled outside of Gibraltar this specific law would not apply regardless of whether the assets were moveable or immovable. The Wills Act and Administration of Estates Act would still be applicable to individuals domiciled outside of Gibraltar in the circumstances mentioned above.

11. Domicile/Nationality

- (a) It is the deceased's domicile which determines the above answers. The exception is in the case of the execution of wills where the nationality of the deceased at the date of their death can be used to determine if a will has been executed correctly. **19.106**
- (b) The domicile of a beneficiary is not relevant. Only the domicile of the deceased is applicable to succession matters. **19.107**
- (c) Under Gibraltar law a person can only have one domicile. This can either be their domicile of origin which is inherited from the parents or their domicile of choice. In order for an individual to acquire a domicile of choice they will need to move to a jurisdiction with the intention of remaining there permanently and make it their home. If an individual's domicile is unclear it is important to note that their domicile of origin will be applicable when determining succession. **19.108**

12. Taxation

There are no estate taxes payable in Gibraltar. **19.109**