

International Succession

FIFTH EDITION

Edited by

LOUIS GARB

Advocate, Louis Garb & Associates

RICHARD NORRIDGE

Partner & Solicitor Advocate, Herbert Smith Freehills LLP

Editor Emeritus

JOHN WOOD

Associate Editors

OSHER RUBINGER

Advocate

JADE HU

Senior Associate & Solicitor Advocate, Herbert Smith Freehills LLP

OXFORD
UNIVERSITY PRESS

Singapore

Harish Kumar (Rajah & Tann Singapore LLP), Marissa Zhao (Rajah & Tann Singapore LLP), Low Weng Hong (Rajah & Tann Singapore LLP)

SECTION A: BRIEF SURVEY OF THE LOCAL SYSTEM

1. Type of System

- Singapore is a common law jurisdiction. The three primary acts that govern substantive succession law in Singapore are the Intestate Succession Act,¹ the Probate and Administration Act,² and the Wills Act.³ **47.01**
- The disposition of the estate of any person who is Muslim (i.e. a person who professes to the religion of Islam)⁴ and domiciled in Singapore, whether passing away testate or not, will be subject to the provisions of the Administration of Muslim Law Act.⁵ **47.02**
- The procedural rules that govern the functioning of the Acts referred to are set out in the Family Justice Rules 2014 promulgated pursuant to the Family Justice Act 2014.⁶ **47.03**
- In general, should a person die testate (i.e. with a will), his or her estate will be distributed in accordance with the instructions set out in his or her will. Should the person die intestate (i.e. without a will), his or her estate will be distributed in accordance with the rules and provisions of the Intestate Succession Act. **47.04**
- Singapore is a city state and its legal system is not part of any greater federal system. **47.05**

2. Wills

Formal Wills

- No appointment made by a will, in exercise of any power, shall be valid unless the will is executed in the manner required by the Wills Act.⁷ **47.06**

¹ Intestate Succession Act (Cap 146).

² Probate and Administration Act (Cap 251).

³ Wills Act (Cap 352).

⁴ Administration of Muslim Law Act (Cap 3), s. 2.

⁵ Administration of Muslim Law Act, s. 111 read with s.112.

⁶ Section 46 of the Family Justice Act (Cap 27 of 2014).

⁷ Wills Act, s. 7(1).

47.07 Under Singapore law, for a will to be valid, it must meet these cumulative requirements:

- The testator must be above 21 years of age;⁸
- The will must be made in writing;⁹ and signed by the testator at the foot or end of the will or by some other person in the testator's presence and by his or her direction in the presence of two or more witnesses; and with these witnesses also signing the will in the testator's presence.¹⁰

47.08 In general, a codicil is attached to the original will and will be read together with the original will on the testator's passing.

47.09 A will created outside Singapore will be treated as properly executed if, *inter alia*, the manner in which it was executed conforms to the internal law in force in the territory where it was executed.¹¹

Nuncupative Wills

47.10 Nuncupative wills (i.e. verbal wills or testaments) are considered invalid under Singapore law unless made by a very narrow class of persons in very limited circumstances.¹² The Wills Act limits these persons and circumstances to:

- soldiers (including members of the air force) in actual military service; or
- any mariner or seaman being at sea.¹³

Donatio Mortis Causa

47.11 The doctrine of *donatio mortis causa*, or a gift 'where the donor so gives that if indeed he should die, the recipient is the owner of the thing; but if he should survive or if the donee should predecease him, the donor may take the thing back', exists in Singapore.

47.12 It has been held that for the doctrine validly to apply, these conditions must be met:

- The gift had to have been made in contemplation of impending death;
- The gift had to have been made upon the condition that it was to be absolute and complete only on the donor's death, such a condition being express or implied from the fact that the gift was made when the donor was ill; and
- The donor must have intended to part with dominion over the subject matter, and there must be delivery of the said subject matter (or something representing it) which the donee accepted.¹⁴

47.13 Under Singapore law, a gift made by way of the doctrine of *donatio mortis causa* is considered a *sui generis* category of property dealing that is neither completely *inter vivos* nor completely testamentary.

47.14 In general, no obliteration, interlineation, or other alteration made in a will after its execution shall be valid. Such alteration is valid only if executed in the same manner in which a will is to be executed.¹⁵

⁸ Wills Act, s. 4.

⁹ Wills Act, s. 6(1).

¹⁰ Wills Act, s. 6(2).

¹¹ Wills Act, s. 5(2).

¹² Wills Act, s. 27, see *Tan Pwee Eng v Tan Pwee Hwa* [2011] 1 SLR 113.

¹³ Wills Act, s. 27.

¹⁴ *Koh Cheong Heng v Ho Yee Fong* [2011] 3 SLR 125.

¹⁵ Wills Act, s. 16(1).

A will containing alterations will only be deemed duly executed if the signature of the testator and witnesses be made: **47.15**

- In the margin; or
- On some other part of the will opposite or near to the alteration; or
- At the foot or end or opposite to a memorandum referring to the alteration and written at the end or some other part of the will.¹⁶

A will may also be altered or amended by way of a codicil. **47.16**

There are only four instances recognised by statute where a will may be revoked: **47.17**

- Automatically when the testator marries (for completeness, there is no concept of civil partnership under Singapore law);¹⁷
- By another will or codicil executed in the manner provided for by the Wills Act;
- By some form of writing declaring an intention to revoke the will and executed in the manner in which a will has to be executed under the Wills Act; or
- The burning, tearing, or otherwise destroying of the will by the testator, or by some person in his or her presence and by his or her direction, with the intention of revoking the will.¹⁸

In general, no will or codicil or any part thereof that has been revoked can be revived unless re-executed in compliance with the manner prescribed by the Wills Act.¹⁹ **47.18**

As already noted, there is no concept of civil partnership under Singapore law. Under Singapore law, a divorce does not invalidate a will. **47.19**

Singapore does not recognise by statute the concept of a mutual will. The function of a mutual will can be effected by careful drafting. **47.20**

A third party can attempt to determine the identity of a beneficiary by way of: **47.21**

- Application to court for an order for a will to be brought in and examined;²⁰ or
- If probate proceedings have already begun, he or she may, with good reason, apply to court to inspect the relevant court file.

In practice, the wording of most wills creates a trust over the testator's estate to be distributed in accordance with the provisions of the will by the named executor. **47.22**

Accordingly, there does not seem to be any restriction on the creation of trusts by way of a will subject to compliance with the requirements of a trust under Singapore law. Similarly, it appears possible for a gift to be made under a will to fund a trust. **47.23**

In Singapore, there is a Wills Registry maintained by the Singapore Academy of Law which is presently under the purview of the Public Trustee's Office. However, the Wills Registry does not allow the depositing of the original or copy of the testator's will. It is a registry where testators or their solicitors can only deposit information relating to the testator, the date of the will, the drafter of the will, and where the will is kept. **47.24**

¹⁶ Wills Act, s. 16(2).

¹⁷ Wills Act, s. 13.

¹⁸ Wills Act, s. 15.

¹⁹ Wills Act, s. 17(1).

²⁰ Probate and Administration Act, s. 54 read with Family Justice Rules 2014, r. 247.

3. Intestacy

- 47.25** In cases of intestacy, the deceased's estate will be distributed according to the rules set out in the Intestate Succession Act.²¹
- 47.26** For example, if a person dies intestate and:
- Leaves a surviving spouse, no children, and no parents, then the spouse will be entitled to the whole of the estate; or
 - Leaves a surviving spouse and a child, then the spouse and child shall each be entitled to one half of the estate.²²
- 47.27** The succession provisions of the Intestate Succession Act also apply to adopted children and half blood claimants.²³
- 47.28** The succession provisions of the Intestate Succession Act do not apply to ex-spouses,²⁴ children born out of wedlock (i.e. illegitimate children),²⁵ foster children,²⁶ and stepchildren.²⁷
- 47.29** The provisions of the Intestate Succession Act do not apply to any Muslim person.²⁸
- 47.30** The distribution of the deceased's moveable property shall be regulated by the law of the country in which he or she was domiciled at the time of death.²⁹
- 47.31** The distribution of the deceased's immoveable property in Singapore will be regulated by the provisions of the Intestate Succession Act.³⁰

4. Freedom of Testation

- 47.32** Under Singapore law, it appears that the concepts of compulsory shares, contracts of inheritance, partition, anticipation, or successor or family settlement do not exist. A testator is generally free to dispose of his or her estate as he or she wishes subject to the formalities imposed by the Wills Act set out earlier and common law rules (e.g. the doctrine of survivorship for property held in joint names).
- 47.33** However, a testator who does not make any provision for his or her spouse, mentally or physically disabled child, or unmarried daughter who is by reason of some mental or physical disability incapable of maintaining herself or infant child, who is by reason of some mental or physical disability incapable of maintaining him- or herself, may leave him- or

²¹ Intestate Succession Act, s. 7.

²² Intestate Succession Act, s. 7.

²³ For principles relating to adopted children, see Intestate Succession Act, s. 3, and *Lim Weipin v Lim Boh Chuan* [2010] 3 SLR 423. For further principles on half blood children, see Intestate Succession Act, s. 6 and *Chng Heng Tee (alias Cheng Kim Tee) and another v Estate & Trust Agencies (1927)* [2010] 1 SLR 681.

²⁴ See Women's Charter (Cap 353), s. 103.

²⁵ *AAG v Estate of AAH* [2010] 1 SLR 769, *China Taiping Insurance (Singapore) Pte Ltd and another v Low Yi Lian Cindy and others* [2018] 4 SLR 523.

²⁶ *Lim Weipin v Lim Boh Chuan* [2010] 3 SLR 423.

²⁷ *Low Guang Hong David & Ors v Suryono Wino Goei* [2012] SGHC 93.

²⁸ Intestate Succession Act, s. 2.

²⁹ Intestate Succession Act, s. 4(1).

³⁰ Intestate Succession Act, s. 4(2).

herself open to a maintenance claim under the Inheritance (Family Provision) Act by such person.³¹

Adopted children fall within the ambit of the maintenance provisions of the Inheritance (Family Provision) Act,³² but children born out of wedlock (i.e. illegitimate children),³³ and, presumably, step- or foster children, do not. **47.34**

A testator will also not be able to dispose of his Central Provident Fund moneys by way of a will. He or she will have to make the relevant nominations with the Central Provident Fund Board pursuant to the provisions of the Central Provident Fund Act. **47.35**

Certain classes of insurance policy that allow the policyholder to name his or her spouse and children as beneficiaries create a statutory trust over the proceeds of the policy, which in turn do not form part of the policyholder's estate. The proceeds of the insurance policy will be distributed according to the policyholder's nomination.³⁴ **47.36**

A Muslim person's freedom of testation is limited by the provisions of the Administration of Muslim Law Act. **47.37**

A bankrupt person who creates a will runs the risk of having his or her estate being vested in the Official Assignee and distributed in accordance with the prevailing bankruptcy laws in Singapore. **47.38**

5. Maintenance

As stated, a testator who does not make any provision for his or her spouse, mentally or physically disabled child, unmarried daughter who is by reason of some mental or physical disability incapable of maintaining herself or infant child may leave him- or herself open to a maintenance claim under the Inheritance (Family Provision) Act by these persons.³⁵ **47.39**

6. Community of Property between Husband and Wife

The concept of community of property is not recognised under Singapore law. The matrimonial regime has little to no effect on how an individual decides to divide his or her estate on death. **47.40**

However, these rules have to be borne in mind: **47.41**

- Marriage automatically revokes a will made before marriage;
- A spouse who is not provided for in a will can make a maintenance claim pursuant to the Inheritance (Family Provision) Act; and
- A spouse will benefit from the rules of distribution under the Intestate Succession Act.

³¹ Inheritance (Family Provision) Act (Cap 183), s. 3.

³² See Inheritance (Family Provision) Act, s. 2 read with s. 3.

³³ *AAG v Estate of AAH* [2010] SLR 769.

³⁴ See *inter alia* the Conveyancing and Law of Property Act (Cap 61), s. 73.

³⁵ Inheritance (Family Provision) Act, s. 3.

7. Joint Property

- 47.42** Under Singapore law, the right of survivorship or doctrine of survivorship ensures that jointly owned property will devolve to the remaining joint-owner on the death of the other joint-owner.
- 47.43** The doctrine of survivorship also applies to Muslim persons in Singapore.³⁶

8. Gifts (*Inter Vivos*)

- 47.44** As already set out, the concept of an heir's inheritance does not exist under Singapore law. An heir can only receive part of a deceased's estate if it was willed to him or her or if the deceased died intestate and the heir was entitled to it under the Intestate Succession Act.
- 47.45** Accordingly, gifts given *inter vivos* do not affect the subsequent distribution of a deceased person's estate.

9. Capacity

- 47.46** Under Singapore law, a person is presumed to have capacity unless established otherwise.³⁷ The only exception to this principle in the context of the creation of wills is that a testator must be above the age of 21. Any will created by a person under the age of 21 will be considered invalid.³⁸
- 47.47** A witness to a will should not be a beneficiary or the spouse of a beneficiary. Gifts made to these persons will be considered utterly null and void if these persons were to attest to (i.e. act as a witness) the will.³⁹
- 47.48** Although the Wills Act does not prescribe any statutory requirements for witnesses, it will be prudent to ensure that a witness is of capacity, not a minor, has reasonable life expectancy and is therefore capable of providing an affidavit on the testator's death if required.
- 47.49** In general, minors, unborn children, companies, and even predeceased beneficiaries (or more accurately their estates or next of kin) can benefit from gifts made under a will. However, minors or infants will not be able to give a valid receipt for such gifts. It should be noted that the statutory and common law rules relating to the inability of minors to hold property will continue to apply.
- 47.50** In situations of intestacy, only spouses, parents, and issue (as defined in the Intestate Succession Act) of the deceased will benefit from the deceased's estate. Again, infants or minors will not be able to give a valid receipt for any benefits they receive under intestacy.

³⁶ *Shafeeg bin Salim Talib an another v Fatimah bte Abud bin Talib and others* [2010] 2-SLR 1123.

³⁷ Mental Capacity Act (Cap 177A), s. 3(2).

³⁸ Wills Act, s. 4.

³⁹ Wills Act, s. 10.

It should be noted that a bankrupt might not be able to give a valid receipt for property received under a will or intestacy as, under Singapore law, a bankrupt's estate vests in the Official Assignee.⁴⁰ 47.51

10. Authority (Court, Notarial, or Other)

Probate and letters of administration are granted solely by the courts. 47.52

An application for either probate or letters of administration is usually begun by way of an *ex-parte* originating summons and supporting affidavit filed in court. If uncontested, the process is relatively straightforward, and the costs for a typical application, inclusive of both legal fees and disbursements, will be a few thousand Singapore dollars.⁴¹ Contentious proceedings for probate or letters of administration must be begun by writ (see below).⁴² 47.53

An interested person may lodge a caveat on the estate of any deceased person. This caveat is valid for six months from the date of lodgement and no grant of probate or letters of administration will be given by the court until this caveat is discharged.⁴³ 47.54

In order to oppose a grant of probate or letters of administration or to have it revoked, the interested person must begin an action by way of a writ of summons, endorsed with a statement of the nature of his or her interest and the defendant's interest in the estate of the deceased.⁴⁴ Alternatively, an interested person may apply to intervene in an existing probate or letters of administration application by way of a summons supported by affidavit.⁴⁵ 47.55

11. Invalidity of Will

Possible grounds for a will to be found invalid include the testator's lack of capacity, fraud, undue influence, defect in formalities, and presumably duress.⁴⁶ 47.56

A finding that a will is invalid will result in the will being void. 47.57

The circumstances under which the court may rectify an invalid or ineffective will are varied. Generally, the court can intervene in situations where parts of the will were procured by fraud, undue influence, or mistake. 47.58

The court can sever the parts of a will procured by fraud, undue influence, or mistake and allow the remaining portions to be admitted to obtain a grant of probate. 47.59

It appears that the court does not have the power to intervene to rectify or validate a will in situations where there has been a defect in formalities. 47.60

⁴⁰ Insolvency, Restructuring and Dissolution Act 2018 s. 327.

⁴¹ Family Justice Rules, r. 208.

⁴² Family Justice Rules, rr. 252 and 253.

⁴³ Family Justice Rules, r. 239.

⁴⁴ Family Justice Rules, rr. 252 and 253.

⁴⁵ Family Justice Rules, r. 255.

⁴⁶ *ULV v ULW* [2019] 3 SLR 1270.

47.61 In general, the burden of proof to probate a will lies upon the party seeking to probate the will. This will *prima facie* be established by the due execution of the will in ordinary circumstances where the testator was not known to be suffering from any kind of mental disability. The party challenging the will may rebut this presumption by adducing evidence to the contrary and the court then considers the evidence as a whole. This presumption does not arise when there are suspicious circumstances surrounding the execution of the will which would raise a well-grounded suspicion that the will did not express the mind of the testator. It will be for those who submit the will to remove such suspicion by proving affirmatively that the testator knew and approved the contents of the will.⁴⁷

12. Simultaneous Death

47.62 In all cases where two or more persons die in circumstances rendering it uncertain which of them survived the other/s, such deaths shall (subject to any order of the court) for all purposes affecting the title to property be presumed to have occurred in order of seniority and accordingly the younger shall be deemed to have survived the elder.⁴⁸ Presumably, the same rule should apply in situations where there are simultaneous deaths.

13. Presumption of Death

47.63 Under Singapore law, there appears to be no statutory rule that presumes death under a pre-determined set of circumstances. However, there are provisions in the Evidence Act, which dictate which party has the burden of proof if he or she wishes to apply to court to have a person declared dead.⁴⁹

14. Estate Taxes

47.64 Estate duty has been abolished in Singapore since 15 February 2008.

15. Administration of Estates

47.65 Where a person dies testate, his or her estate will be administered by the executor/s named in his or her will. If the testator fails to name an executor in the will, letters of administration may be granted to the following persons, in order of descending priority:

- A universal or residuary legatee;
- A legal personal representative of a deceased universal or residuary legatee;

⁴⁷ *ULV v ULW* [2019] 3 SLR 1270, *UAM v UAN and another* [2018] 4 SLR 1086 following *Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373.

⁴⁸ Civil Law Act, s. 30.

⁴⁹ Evidence Act, ss. 109 and 110.

- Such person or persons, being beneficiaries under the will, as would have been entitled to a grant of letters of administration if the deceased had died intestate;
- A legatee having a beneficial interest; and
- A creditor of the deceased.⁵⁰

Accordingly, it is recommended that any person who makes a will appoints an executor. **47.66**

Where a person dies intestate, his or her estate can be administered by the husband or widow or next of kin or any of the persons interested in the estate of the deceased, and if there is land settled previously to the death of the deceased, the trustees of the settlement.⁵¹ The classes of persons, in order of descending priority, which are interested in the estate pursuant to the Intestate Succession Act are: the spouse; the children of the deceased; the parents; the siblings; the nephews and nieces; grandparents; uncles and aunts.⁵² **47.67**

Under Singapore law, there is no requirement for estate reports to be submitted. **47.68**

The Singapore courts have complete oversight over an application for probate or letters of administration or any dispute arising from their grant. The Insolvency and Public Trustee's Office also has some measure of supervision over the estate of an undischarged bankrupt.⁵³ **47.69**

In general, the statute allows any person with an interest in the estate of the deceased to query or object to a grant of probate or letters of administration.⁵⁴ Ostensibly, these interested persons include relatives and creditors. **47.70**

Assets are given to the beneficiaries directly by the person holding the grant of probate or letters of administration ('personal representative'). In the case of a beneficiary under 21 years old, a trustee will have to retain the share belonging to the infant with the power to make advances for his or her maintenance or education as deemed necessary.⁵⁵ **47.71**

The personal representative is obliged to determine if there are any creditors who have a claim against the estate. As a matter of prudence, the personal representative should advertise to ascertain if there are any potential creditors of the estate. The notice to such creditors could take the form of an advertisement in a newspaper.⁵⁶ **47.72**

Creditors may then come forward and lodge a claim with the personal representative.⁵⁷ If valid, the personal representative can pay the creditor directly.⁵⁸ **47.73**

For insolvent estates, a creditor may apply to administer the estate of the deceased under the Insolvency, Restructuring and Dissolution Act 2018.⁵⁹ **47.74**

⁵⁰ Probate and Administration Act, s. 13(2).

⁵¹ Probate and Administration Act, s. 18.

⁵² This order is determined by reference to the Intestate Succession Act, s. 7.

⁵³ See *inter alia* Probate and Administration Act, s. 57(1) and the First Schedule read with the Insolvency, Restructuring and Dissolution Act 2018, s. 419.

⁵⁴ See *inter alia* Probate and Administration Act, s. 18(2).

⁵⁵ *Halsbury's Laws of Singapore Volume 15* (LexisNexis Singapore, 2016) ('*Halsbury's Laws of Singapore*') at [190.105].

⁵⁶ *Halsbury's Laws of Singapore* at [190.93 to 190.95], Trustees Act (Cap 337), s. 29.

⁵⁷ *Halsbury's Laws of Singapore* at [190.93 to 190.95].

⁵⁸ Probate and Administration Act, s. 57.

⁵⁹ Insolvency, Restructuring and Dissolution Act 2018, s. 419.

- 47.75** Once an administration order is made, the estate of the deceased will vest in the Official Assignee who will proceed to realise and distribute it in accordance with the provisions of the Insolvency, Restructuring and Dissolution Act 2018.⁶⁰
- 47.76** The beneficiaries may, either during the administration or later, enter into an agreement allowing for a division of assets other than stated in the will, or provided for by the laws of intestacy. Depending on when the agreement was entered into and the class of asset, stamp duty may be payable when the assets are reallocated.
- 47.77** An executor or administrator is in a fiduciary relationship with the beneficiaries and has a duty to act in the best interests of the beneficiaries. As such, beneficiaries can make a claim against the executor or administrator for breach of duty.⁶¹ See also paragraph 47.65.

16. Domicile/Nationality

- 47.78** Where relevant, the effects of the deceased's domicile have been referenced in the answers set out already. In summary, the distribution of the deceased's moveable property is governed by the law of his or her domicile. Further, the effect of domicile in the context of international succession is discussed at Section B2.
- 47.79** There does not appear to be any statutory bar to a Singapore court granting probate on a will executed in Singapore even if there are no assets in Singapore whatsoever. The domicile of the deceased usually only affects the law regulating distribution in relation to his or her moveable property.⁶²

17. Charitable Giving

- 47.80** A will can include a provision that a gift be made to a charity directly. The executor of the will is responsible for ensuring that this instruction is carried out.
- 47.81** Gifts can be made to a charity or to charitable trusts or objects.
- 47.82** There does not appear to be any statutory bar to making a gift to foreign charities.
- 47.83** Critically, the name of the charity or charitable trust must be correctly given. If the charity or charitable trust is no longer in existence when the testator passes away, a *cy-près* application may have to be made to court.⁶³
- 47.84** As set out at Section A14, estate duty has been abolished in Singapore since 15 February 2008.

⁶⁰ Insolvency, Restructuring and Dissolution Act 2018, s. 419(7).

⁶¹ *Foo Jee Boo v Foo Jee Seng* [2016] SGHC 225.

⁶² See, *inter alia*, Intestate Succession Act, s. 4.

⁶³ See generally, *Khoo Jeffrey and others v Life Bible-Presbyterian Church and others* [2011] 3 SLR 500. *Cy-près* is the equitable doctrine that courts utilise to reform a written instrument with a gift to a charity as closely to the donor's intention as possible to ensure that the gift does not fail.

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

1. Jurisdiction

A distinction should be drawn between the law of administration of estates (i.e. the law concerning applying for grants of representation, collection of assets, and payment of liabilities) and the law of succession (i.e. the law concerning the beneficial entitlement to the deceased's estate after discharge of liabilities upon it). **47.85**

Law of Administration

A grant of probate or letters of administration in Singapore is needed only where there is property of the deceased in Singapore. **47.86**

The Family Justice Courts consisting both of the Family Division of the High Court and the Family Courts have the jurisdiction to grant probates of wills and testaments and letters of administration of the estates of deceased persons.⁶⁴ Where the gross value of the estate in Singapore exceeds SGD 5 million, the application for grant should be made to the Family Division of the High Court.⁶⁵ **47.87**

It is possible that the Family Courts may entertain an application for a grant even though there is no property in Singapore if there is some good reason for making it, e.g. because it is required by a foreign court,⁶⁶ although the issue has yet to be decided in Singapore. **47.88**

Law of Succession

A Singapore court has no jurisdiction to determine the succession to the property of any deceased person unless there is a properly constituted representative of his or her estate before the court. A foreign grant of representation or other authority to represent a deceased person has no force in Singapore (this is elaborated at Section B3),⁶⁷ and therefore will not give rise to a properly constituted representative of the estate. **47.89**

If a grant has been obtained, the jurisdiction of the court in relation to the law of succession is determined by general conflict of laws principles.⁶⁸ **47.90**

It should be noted that a Singapore court does not have subject matter jurisdiction over disputes involving the determination of title or right of possession to foreign immoveable property,⁶⁹ **47.91**

⁶⁴ Family Justice Act 2014, ss. 2 and 26.

⁶⁵ Family Justice (Family Proceedings before Family Division of High Court) Order 2014, s. 2.

⁶⁶ See C G J Morse and others, *Dicey, Morris, and Collins on the Conflict of Laws* (London: Sweet & Maxwell, 2012), at [26-004] ('*Dicey, Morris & Collins*').

⁶⁷ *Issar Singh s/o Bhola Singh v Samund Singh s/o Mayiah* [1941] MLJ 28. *Dicey, Morris & Collins* at [26R-036] cites *Carter and Cross's Case* (1585) Godb. 33; *Tourton v Flower* (1735) 3 P. Will. 369, 370; *New York Breweries v Att-Gen* [1899] AC 62; *Finnegan v Cementation Co Ltd* [1953] 1 QB 688; *Peer International Corp v Termidor Music Publishers Ltd* [2006] EWHC 2883 (Ch.).

⁶⁸ See e.g. *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381, where the Singapore High Court applied the *forum conveniens* principle to determine if the exercise of jurisdiction is appropriate.

⁶⁹ This is commonly known as the *Moçambique* rule and reflects the practical fact that only at the *situs* of the land can there be an effective determination of title (*Murakami Takako (executrix of the estate of Takashi Murakami Suroso, deceased) v Wiryadi Louise Maria and others* [2009] 1 SLR(R) 508 at [6] (CA)). It is subject to three exceptions: (1) where the issue is purely of personal obligations founded on contract or equity between the parties; (2) where the court is called upon to administer a trust or estate that includes local and foreign property; and (3) actions *in rem* to enforce a maritime lien.

although it does have jurisdiction to administer a trust or estate which includes local and foreign property.⁷⁰

- 47.92** While there are no different rules regarding the *jurisdiction* of the Singapore courts, different laws may apply for moveable and immoveable assets. See Section B2.
- 47.93** As to which local court has jurisdiction, see paragraph 47.87.

2. Applicable Law

- 47.94** The applicable law governing succession is determined by the domicile of the deceased at death.⁷¹
- 47.95** The governing law depends on whether the property is moveable or immoveable property. The classification of moveable or immoveable property is governed by the *lex situs*, or the law of the place where the property is situated.⁷²
- 47.96** Succession to immoveable property is governed by the *lex situs*.⁷³
- 47.97** Succession to moveable property is governed by the *lex domicilii*, or the law of the deceased's domicile.⁷⁴
- 47.98** The testator's will is valid if it is valid according to the *lex domicilii*.⁷⁵ Where there is an issue as to the interpretation of the deceased's will, it will be construed according to the law of the testator's domicile at the time that the will was executed.⁷⁶

⁷⁰ See *Re Duke of Wellington* [1948] Ch 118, [1947] 2 All ER 854; *Nelson v Bridport* (1846) 8 Beav 547, 50 ER 215; *Re Piercy* [1895] 1 Ch 83; *Re Hoyles* [1911] 1 Ch 179; *Re Ross* [1930] 1 Ch 377.

⁷¹ Family Justice Rules, r. 227.

⁷² *Meyammai Achi v Valliammai* (unreported, 8 July 1995; OS No. 659 of 1992); *Banque Indosuez v Sumilan Awal* (unreported, 20 January 1998; OS No. 811 of 1994); *Hague v Hague (No 2)* (1965) 114 CLR 98, *Price v Dewhurst* (1838) 4 My & Cr 76.

⁷³ *Re Choo Eng Choon (decd)*, *Choo Ang Chee v Neo Chan Neo* (1908) 12 SSLR 120; *Re Soo-Hoo Hem Leng* [1963] MLJ 38; *Ee Hoon Soon v Chin Chay Sam* (1889) 1 SLJ 147; *Re Lao Leong An's Goods* (1867) 1 SSLR 1. See *Banque Indosuez v Sumilan Awal* (unreported, 20 January 1998; OS No. 811 of 1994). See also *State of Johor v Tunku Alam Shah ibni Tunku Abdul Rahman* [2005] 4 SLR 380. But the will of a foreign domiciliary is not revoked by the local rule on revocation by marriage even in respect of immoveable property: *Re Syed Hassan Bin Abdullah Aljofri (decd)*; *The Estate & Trust Agencies (1927) Ltd v Syed Hamid Bin Hassan Aljofri* [1949] MLJ 198, not following the previous case of *Re Shaik Abubakar bin Mohamed Lajam, decd* [1935] MLJ 137.

⁷⁴ 'Domicile' denotes the place where a person has or is deemed to have his or her permanent home: *Re Bhagwan Singh, decd* [1964] MLJ 360. See *Peters Roger May v Pinder Lillian Gek Lian* [2006] SGHC 39 for the various factors the court will consider in determining a testator's domicile.

⁷⁵ Whether a will is essentially valid depends on whether the testator had capacity to make the will according to the testator's *lex domicilii*: The issue of where a domicile rests was considered in *Peters Roger May v Pinder Lillian Gek Lian* [2009] SGHC 90 (the court held that the concept of domicile under Singapore law was based on the traditional concept of domicile in English law and considered the issue of domicile of origin and domicile of choice). Under common law, a will is formally valid if it is validly executed according to the *lex domicilii*. The Wills Act has broadened the number of laws applicable to the wills of testators who die after 26 June 1992; these wills are formally valid if validly executed according to the laws of the countries enumerated in s. 5(2). See *Banque Indosuez v Sumilan Awal* (unreported, 20 January 1998; OS No. 811 of 1994); *Re Syed Hassan Bin Abdullah Aljofri (decd)*, *The Estate & Trust Agencies (1927) Ltd v Syed Hamid Bin Hassan Aljofri* [1949] MLJ 198, *Stanley v Bernes* (1830) 3 Hagg Ecc 373; *De Bonneval v De Bonneval* (1838) 1 Curt 856; *Maltass v Maltass* (1844) 1 Rob Ecc 67.

⁷⁶ Wills Act, s. 5(5)-(7).

3. Foreign Succession/Inheritance Orders

The Singapore courts will only recognise a grant of probate or letters of administration issued in Singapore.⁷⁷ Where a foreign succession or inheritance order is granted, a Singapore grant must also be obtained. In this regard, there is a distinction between Commonwealth and non-Commonwealth countries. **47.99**

Commonwealth Countries

Grants of probate or letters of administration issued by a country that is a member of the Commonwealth ('Commonwealth grants') may be resealed, in which case the grant will have effect as if it was made by the Singapore High Court to the person by whom or on whose behalf the application for resealing was made.⁷⁸ **47.100**

The application is to be made in the form of an application for a local grant of probate.⁷⁹ The grant issued by the Commonwealth country, or a certified copy, sealed with the seal of the court of that Commonwealth country, is produced together with the application.⁸⁰ A certified true copy of the will, if any, duly sealed, is submitted together with the application. **47.101**

Apart from Commonwealth countries, the privileges of resealing have also been extended to Hong Kong.⁸¹ **47.102**

Before a foreign grant is resealed in Singapore, no action may be brought by the personal representative, nor can the personal representative be empowered to defend any action.⁸² If any action is brought at all prior to the resealing of the grant, the entire proceedings would be a nullity from the outset, and it has been held that the subsequent resealing of the grant would not in any way validate the proceedings from the outset.⁸³ **47.103**

Non-Commonwealth Countries

Personal representatives of persons who have obtained foreign succession or inheritance orders from non-Commonwealth countries (excluding Hong Kong) must apply for a grant of probate (where the deceased died with a will) or letters of administration. **47.104**

⁷⁷ See above, note 71: *Issar Singh s/o Bhola Singh v Samund Singh s/o Mayiah* [1941] MLJ 28. *Dicey, Morris & Collins* at [26R-036] cites *Carter and Crost's Case* (1585) Godb. 33; *Tourton v Flower* (1735) 3 P. Will. 369, 370; *New York Breweries v Att-Gen* [1899] AC 62; *Finnegan v Cementation Co Ltd* [1953] 1 QB 688; *Peer International Corp v Termidor Music Publishers Ltd* [2006] EWHC 2883 (Ch.).

⁷⁸ Probate and Administration Act, s. 47(2).

⁷⁹ Family Justice Rules, r. 208.

⁸⁰ Probate and Administration Act, s. 47(1).

⁸¹ Probate and Administration (Hong Kong Special Administrative Region of the People's Republic of China) Notification 1999 (Cap 251, N 2, 2001 edn.).

⁸² See above, note 71: *Issar Singh s/o Bhola Singh v Samund Singh s/o Mayiah* [1941] MLJ 28. *Dicey, Morris & Collins* at [26R-036] cites *Carter and Crost's Case* (1585) Godb. 33; *Tourton v Flower* (1735) 3 P. Will. 369, 370; *New York Breweries v Att-Gen* [1899] AC 62; *Finnegan v Cementation Co Ltd* [1953] 1 Q.B. 688; *Peer International Corp v Termidor Music Publishers Ltd* [2006] EWHC 2883 (Ch.).

⁸³ *Haji Akhbar Khan v D Patel* [1960-1963] SCR 140.

- 47.105** The person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled is entitled to apply for and obtain a grant.⁸⁴
- 47.106** Singapore does not have forced heirship (with the exception of Muslims).

4. Two or More Succession or Probate Orders

- 47.107** The approach of the court to an existing foreign order for succession will depend on the domicile of the deceased and the location and type (moveable or immoveable) of the property involved.
- 47.108** Where the courts of a foreign country have issued a succession order for the moveable property of a deceased person who died domiciled in that foreign country, such determination will be followed by the Singapore courts.
- 47.109** Where the courts of a foreign country have issued a succession order for the property of the deceased situated in that country (whether moveable or immoveable), even if the deceased was not domiciled in that country, such determination will be followed by the Singapore courts.
- 47.110** Apart from these two situations, it appears that the Singapore courts would not be bound to follow the existing foreign order and may make a contrary determination.

5. Assets

- 47.111** It is possible for the Family Justice Courts to entertain an application for a grant even though there is no property in Singapore if there is some good reason for making it, e.g. because it is required by a foreign court.⁸⁵

6. Expert Evidence

- 47.112** The testator's will is valid if it is valid according to the *lex domicilii*. Where there is an issue as to the interpretation of the deceased's will, it will be construed according to the law of the testator's domicile at the time that the will was executed.
- 47.113** Under Singapore law, foreign law is an issue of fact and must generally be pleaded and proved.⁸⁶ Such facts need not be proved if parties admit to it (e.g. by agreement or by a rule of pleadings) although the court may nevertheless in its discretion require the facts admitted to be otherwise proved.⁸⁷ Where evidence of law of a foreign country is required on

⁸⁴ Family Justice Rules, r. 227.

⁸⁵ See *Dicey, Morris & Collins* at [26-004].

⁸⁶ *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR 377 (CA) at [43]; *Multi-Code Electronics Industries (M) Bhd v Toh Chun Toh Gordon* [2009] 1 SLR 1000 at [49]–[50].

⁸⁷ Evidence Act, s. 60,

any application for a grant, an affidavit of a person who practises law in that country may be accepted by the Family Justice Courts.⁸⁸

Singapore courts, under the Evidence Act, are allowed to pay attention to any statement of law contained in books or reports printed or published under the authority of that country.⁸⁹ The court may also take judicial notice of legislation passed in Commonwealth countries⁹⁰ and 'may resort for its aid to appropriate books or documents of reference'.⁹¹ **47.114**

The Family Justice Court may order one or more parties to commence proceedings in a foreign country to determine a question relating to the law of that foreign law.⁹² As a general rule, the court will still require the opinion of an expert to assist it in interpreting materials relating to foreign law.⁹³ Usually, such an opinion will be given by way of a written report signed by the expert,⁹⁴ with each party furnishing its own expert report to the court.⁹⁵ The expert's foremost duty is to assist the court, and this duty supersedes any obligations owed to the person instructing him or her.⁹⁶ It is the responsibility of the instructing solicitor, as an officer of the court, to draw the expert's attention to this.⁹⁷ **47.115**

Generally, expert opinion is admissible⁹⁸ but should be proved by direct oral evidence unless the expert is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense that the court regards as unreasonable.⁹⁹ **47.116**

The expert's function can be summarised thus: he or she is to **47.117**

- inform the court of the relevant contents of the foreign law; identifying statutes or other legislation and explaining where necessary the foreign court's approach to their construction;
- identify judgments or other authorities, explaining what status they have as sources of the foreign law; and
- where there is no authority directly on point, to assist the court in making a finding as to what the foreign court's ruling would be if the issue was to arise for decision there.¹⁰⁰

⁸⁸ Family Justice Rules, r. 218.

⁸⁹ Evidence Act, s. 40.

⁹⁰ Evidence Act, s. 59(1)(b).

⁹¹ Evidence Act, s. 59(2).

⁹² Family Justice Rules, rr. 947 to 952A.

⁹³ *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491 (CA) at [60]. See also *Kuala Lumpur City Securities Sdn Bhd v Boston Asset Management Pte Ltd* [2006] SGHC 99 at [75]. For a succinct summary of the duties of an expert under Singapore law, see *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491 (CA) at [76]–[89].

⁹⁴ Family Justice Rules, r. 638.

⁹⁵ *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491 (CA) at [64].

⁹⁶ Family Justice Rules, r. 637. See *The H156* [1999] 3 SLR 756 at [27], *Vita Health Laboratories Pte Ltd v Pang Seng Meng* [2004] 4 SLR 162 at [82]–[83], cited with approval in *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491 (CA) at [69]–[70].

⁹⁷ *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491 (CA) at [72].

⁹⁸ Evidence Act, s. 32(1)(d).

⁹⁹ Evidence Act, s. 62(2).

¹⁰⁰ *MCC Proceeds Inc v Bishopsgate Investment Trust plc* [1999] CLC 417 at [23], adopted in *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491 (CA) at [76].

- 47.118** The Singapore Court of Appeal has held that an expert 'cannot merely present his conclusion on what the foreign law is without also presenting the underlying evidence and the analytical process by which he reached his conclusion.'¹⁰¹
- 47.119** In the absence of satisfactory evidence of foreign law, the court will assume foreign law to be the same as the law of the forum.¹⁰²

7. Unity of Succession

- 47.120** The principle of unity of succession is not accepted in Singapore. The governing law is determined by the type of property. See Section B2.

8. Formalities

- 47.121** The testator's will is valid if it is valid according to the *lex domicilii*.¹⁰³
- 47.122** As to wills of testators who died after 26 June 1992, a will is formally valid if its execution conformed to the internal law in force:¹⁰⁴
- in the territory where it was executed;
 - in the territory where the testator was domiciled either at the time
 - when the will was executed; or
 - of his or her death;
 - in the territory where the testator habitually resided either at the time when the will was executed or of his or her death; or
 - in the state of which the testator was a national either at the time when the will was executed or of his or her death.

9. Hague Convention

- 47.123** The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions is not applicable. The necessary formalities are detailed at Section B8.

¹⁰¹ *Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR 491 (CA) at [85]. Without supporting legal arguments and justifications, bare assertions by opposing experts were found singularly unhelpful to the court in *Wu Yang Construction Group Ltd v Zhejiang Jinyi Group Co Ltd* [2006] 4 SLR 451 at [14].

¹⁰² *Ong Jane Rebecca v Lim Lie Hoa (also known as Lim Le Hoa and Lily Arief Husni) and Others* [2003] SGHC 126 at [46]–[48].

¹⁰³ Whether a will is essentially valid depends on whether the testator had capacity to make the will according to the testator's *lex domicilii*: The issue of where a domicile rests was considered in *Peters Roger May v Pinder Lillian Gek Lian* [2009] SGHC 90 (the court held that the concept of domicile under Singapore law was based on the traditional concept of domicile in English law and considered the issue of domicile of origin and domicile of choice). Under common law, a will is formally valid if it is validly executed according to the *lex domicilii*. The Wills Act has broadened the number of laws applicable to the wills of testators who die after 26 June 1992; these wills are formally valid if validly executed according to the laws of the countries enumerated in s. 5(2).

¹⁰⁴ Wills Act, s. 5.

Table 47.1 Governing law for wills and associated issues

Factor	Governing law
Legal requirements for execution of wills, e.g. number of witnesses, execution of codicil	See Section B8
Construction/interpretation, e.g. of terminology used in the will, such as 'next of kin', etc.	The law of the testator's domicile at the time that the will was executed
Rights of heirs/beneficiaries, e.g. minimum portion	Moveable property: <i>lex domicilii</i> at the time of the testator's death Immoveable property: <i>lex situs</i>
Capacity to inherit	Moveable property: the <i>lex domicilii</i> of the beneficiary, or the <i>lex domicilii</i> of the testator at the time of the testator's death Immoveable property: <i>lex situs</i>
Capacity to make will	Moveable property: <i>lex domicilii</i> at the time the will was executed Immoveable property: <i>lex situs</i>
Essential or material validity of will or particular bequests, e.g. public policy/duress/legacy to witness	<i>Lex domicilii</i> of the testator at the time of his or her death
Powers of appointment, i.e. where a person in his or her will nominates someone else who, in his or her own will, shall have the power to specify the ultimate recipient of the asset that is the subject matter of the original will	<i>Lex domicilii</i> of the testator at the time of making the will.
Amendment, revocation, and revival of a revoked will	<i>Lex domicilii</i> of the testator at the time of amendment, revocation, or revival
Applicability of laws regarding reserve to a non-resident in respect of moveable/ immoveable property	Moveable property: <i>lex domicilii</i> at the time of the testator's death Immoveable property: <i>lex situs</i>

10. wills

In case of conflicts or foreign factors, for the governing law, see Table 47.1.

47.124

11. Domicile/Nationality

The domicile of the beneficiary is relevant to the beneficiary's capacity to inherit.

47.125

The question of domicile is to be resolved by the law of the forum, or Singapore law.¹⁰⁵

47.126

Under Singapore law, a person's domicile of origin (the father's domicile if he or she is legitimate and born within the father's lifetime, and the mother's if he or she is illegitimate or born after the father's death) will stay with him or her until he or she acquires a domicile of choice or of dependence.¹⁰⁶

47.127

¹⁰⁵ *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381 at [17].

¹⁰⁶ *Peters Roger May v Pinder Lillian Gek Lian* [2009] 3 SLR(R) 765 at [17].

- 47.128** The domicile of a dependent person will change with the domicile of the person on whom he or she is legally dependent.
- 47.129** A domicile of choice is a conclusion or inference that the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time.

12. Taxation

- 47.130** Estate duty has been abolished in Singapore since 15 February 2008.