

## DE PINNA

### NOTE ON “FRENCH” WILLS

1. French Wills are either authentic Wills – *testament authentique* - made before two French notaries or one French notary and 2 witnesses (their use is relatively rare) or holograph Wills – *testament olographe* - , written out and dated, usually in French, in the handwriting of the testator, and signed by him or her without witnesses.

For technical reasons most holograph Wills must be physically signed in France, if they are not, they could be construed as void.

2. We do not recommend French holograph Wills for most clients in most situations for technical legal reasons.

EG: a separate French Will can easily and inadvertently revoke an English Will and vice versa, the testator must understand the words he is writing when he writes a French Will otherwise the will could be construed as void, etc.

3. In most cases we prefer putting the relevant provisions, dealing with the devolution of the French estate, (usually a secondary home) into the body of the English Will of the testator or better still preparing a Codicil to the English Will dealing specifically with the French estate. The Codicil has the advantage of being part and parcel of the Will and is proved together with it in the UK, but for the purposes of proving the Will and Codicil in France it is often necessary to file only a copy of the Will and a certified copy with translation of the Codicil in France, a much shorter document, and therefore more easily dealt with in many cases.

4. Whether you use an English Codicil, an English Will or a French Will to dispose of your French property however, you cannot exceed, or infringe, the legal reserve of children.

5. Remember that some gifts made *inter vivos* can have tax advantages in France and disadvantages in the UK.

For example, *inter vivos* gifts are possible in France at reduced tax rates (there is no 7-year rule as in the UK) and tax is payable when the gift is made, but usually on a reduced basis. However you need to take advice on English law as to whether such a gift is either a gift with reservation and/or subject to the new pre-owned asset tax (POAT) and/or considered as a trust.

Please contact a member of our French Department if you wish any further help in this respect.

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NB This note is a mere summary of certain areas covered and is given for guidance only. Readers must in all cases take appropriate independent legal and tax advice before acting on any aspect of this note.

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