

What is Probate?

Probate is required when heirs or executors of the will of a deceased seek to take control and distribute the wealth from an estate. This is because official bodies, banks and other financial institutions typically require probate in order for the transfer of ownership from the deceased to the rightful heirs to take place as outlined under the terms of the deceased's will.

If a client dies without a will, called dying "intestate", then intestacy laws of the country where you reside will determine how your property is distributed upon your death.

Why is Probate Problematic?

Firstly, it costs money (it usually requires a lawyer). Secondly, it takes time, generally a lot of time. Finally, it normally needs a lot of patience with form-filling, record keeping and administration. All of this can be particularly challenging at what is typically a difficult time. Moreover, it is often financially frustrating for heirs looking to finalise and regularise their inheritance.

Traditional Ways to Avoid Probate

The traditional solution to avoiding probate is to place assets into a trust. This ensures that upon the death of a family member, the trustees, who already own and control the assets, can distribute them in accordance with the deceased's letter of wishes.

The letter of wishes also allows the settlor to indicate scenarios where the trustees may elect not to distribute to certain family

members (e.g. divorce, minimum ages and other conditions). A trust may or may not confer estate duty benefits depending on how it is set up.

However, there are a number of challenges with the use of trusts. Firstly, there are minimum fixed costs annually and at set up, which make a trust affordable typically only for clients with £1 million to invest. Furthermore, within a trust the investment administration and dealing can also be more burdensome and often restrictive. Issues of situs with UK and US investments can also cause trustees reporting issues. (See below for a solution to situs).

Endowment or Life Assurance Policies

These allow clients to nominate a beneficiary of the assets upon their death, thereby avoiding probate which can be an attractive benefit. It should be noted that the value remains inside the estate for SA tax and administration purposes. The downside of these policies can be their costs, plus there is tax paid by the life company within the policy which can act as a drag on performance. In addition, the investment options available in these policies can be restrictive.

Using Simple Joint Ownership to Avoid Probate

By holding an investment account in joint names, the account passes automatically to the surviving owner on the death of the first. This route is attractive because it avoids the costs of the endowment or life policy and, when using an open architecture platform, it offers extensive flexibility.

It is also possible to put additional holders on to the account over time thereby enabling the account to continue after the death of parents or other relatives. Please note that adding a joint owner to an existing account, where the new owner is not a spouse, will be deemed a donation and donations tax may apply in SA on the donor.

Care also needs to be taken to ensure that the deceased's executors are aware of this arrangement and that it does not cause conflict with details within the deceased's will. As with the endowment policy, whilst probate is avoided with a joint investment account, the value is still within the estate for SA tax and administration purposes. This means the account will still be dealt with by the SA executors albeit the offshore administration is simplified.

The final point to this simple joint account arrangement is that it does not deal with the issue of situs. In addition, income and capital gains taxes will need to be paid in an arising basis each year.

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Joint Kinesis Accounts Solve Situs AND Probate

Using a structured note to “wrap” the investment account and holding it on a joint ownership basis provides the same benefits as the joint investment account outlined above in avoiding probate. However, it also confers additional benefits in that a tax event should only occur upon any encashment of the note and not on any investment activity within the note. This therefore can achieve the benefit of true gross roll-up investment performance with little to no tax drag.

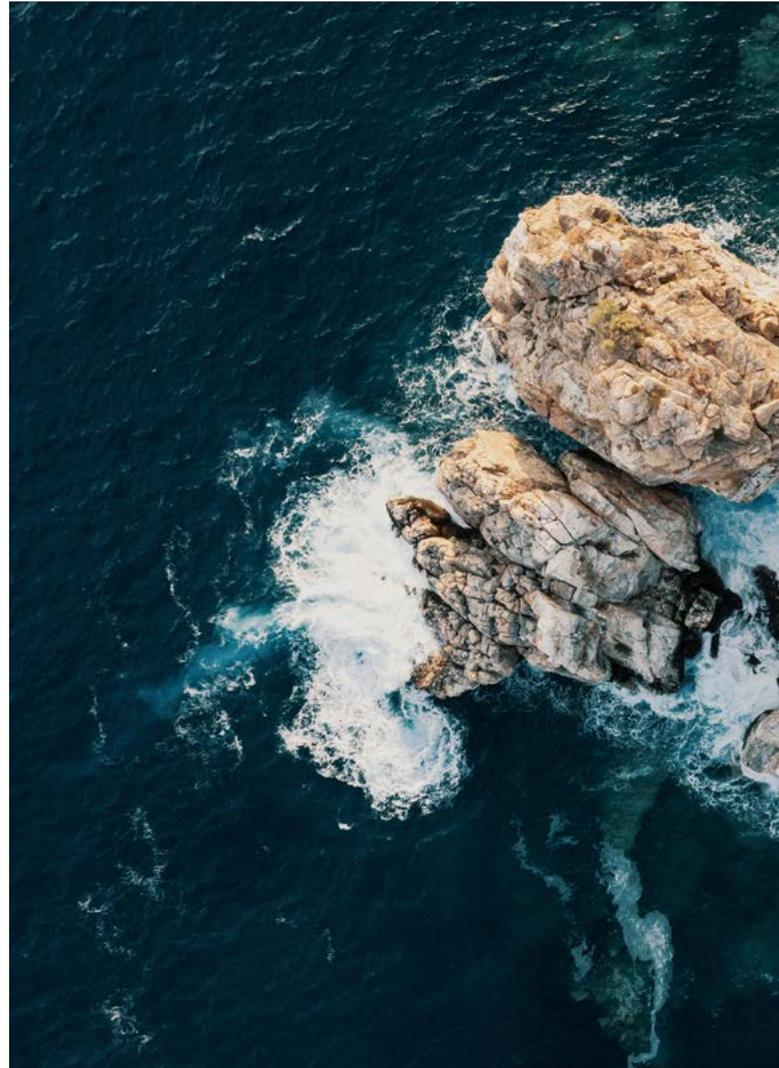
Furthermore, the use of a structured note solves the issue of situs. This can make it an ideal solution to making tax administration simpler during an investor’s lifetime as well as on their demise.

What Happens if I did not Plan for Probate?

If you hold your investments in custody with Capital International Group (CIG), there is no Isle of Man inheritance tax and there is no notification to Her Majesty’s Revenue and Customs (HMRC) in the UK that could trigger an application for UK inheritance tax. CIG recommends that all clients seek professional advice regarding their tax situation and any liabilities that may exist when holding assets in custody in the Isle of Man.

The process that would be required on death of the sole owner of an account is as follows:

1. Provide a certified copy of the death certificate and a certified copy of relevant probate as well as certified KYC information on the appointed executors. Upon satisfactory receipt of these documents, CIG will satisfy themselves that the executors can take over the running of the account at CIG.
2. On occasion, CIG may require that the executors arrange for IOM probate by following the process highlighted using this link: <https://www.courts.im/court-procedures/probate-and-admin-of-estates/> or by contacting an IOM lawyer/advocate. CIG can provide names if required. Indicative costs can be found here: <https://www.courts.im/fees/#HCFprobate>
3. Upon satisfactory receipt of IOM probate, CIG will satisfy themselves that the executors can take over the running of the account at CIG.
4. The executors can then instruct how they want the account to operate (i.e. carry on in the name of the beneficiary or be paid away as per the terms of the client’s will).



To find out more about probate and situs and how Capital International Group can assist you in solving these issues using their Kinesis solutions, please contact a member of the business development team: businessdevelopment@capital-iom.com

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