Press Book

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LAST WILLS
- IN SPAIN -

Dimas Cuesta, a lawyer and partner of Lexland Abogados, has vast experience in commercial law and insolvency proceedings, and advises UK-owned groups of companies in relation to multi-jurisdictional commercial and insolvency issues. He is included on the list of Judicial Insolvency Practitioners of the Spanish Bar and is part of the Creditors' Rights and Insolvency Proceedings Section of the International Bar Association.

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If you own, or have the intention of buying a property or any other asset located in Spain, you need to know that even though an English will is valid under Spanish law in accordance to the Spanish Civil Code and the dispositions of the Hague Convention on recognition of Wills, it is, however, very advisable to execute a separate Spanish Will for assets here. In case of decease, if a Spanish will has not been settled and registered in the Last Wills Central Registry in Madrid, your beneficiary would pass through a long, highly bureaucratic and expensive process in order to take control of your assets in Spain. In this case, the beneficiary could be stuck in a long legal process with multi-jurisdictional problems and pay legal bills of a few thousand euros in order to execute an English will in Spain. The main reasons to execute a separate Spanish will are as follows:

- The English will requires obtaining a Grant of Probate in order to be valid in Spain. Please note that the said Grant of Probate is not required in England when the assets left in England are low, however the said probate will be still necessary in Spain.
- The English will and Grant of Probate require translation and legalisation at the foreign and commonwealth office.
- If the testator/trix died being resident in Spain with no assets in England, Grant of Probate is difficult to obtain and special procedure should be requested to the corresponding English court.
- The drafting of some English wills may include, in some circumstances, complicated concepts of trust, which may be difficult to adapt or to understand under Spanish law, and certificates of English law may be required for the benefit of the Spanish Notary Public and registrar.

All the above complications together, result in a very large difference in costs and consumption of time that can be easily avoided by executing a separate Spanish will for a reduced cost.

If you are a British national resident in England, Wales or Northern Ireland, in case you decease with assets only in Spain (that is, leaving no other assets in England or any other jurisdiction) the Spanish forced heirship rules would be held applicable and the will could be contested by the legal inheritors before the courts. This is a very important issue too often overlooked by non-specialised solicitors. In England, Wales and Northern Ireland, individuals can leave assets to whomever they choose. However, the Spanish system of succession defines specific rights for certain persons (the protected heirs). Whatever a will might say, it can easily be overturned by the protected heirs. This is known as forced heirship. From a Spanish perspective (and most of European countries) it is considered perfectly proper for testators to be required to make adequate provisions for their dependants. Spanish forced heirship rules, amongst other things, basically impose that a minimum of two thirds must be left to the children and only one third can be freely disposed. Also, a life interest or usufruct on one third must also be left to surviving spouse.

If you need help or a second opinion about estate planning and inheritance tax or you are willing to contest an invalid will with inadequate provisions in your favour, please contact us now to arrange a free first consultation meeting over a fresh coffee in the comfort of our offices.