

[L.S.]



I Assent,

James B. Carlisle,
Governor-General.

13th March, 1998.

ANTIGUA AND BARBUDA
No. 2 of 1998

AN ACT to provide that certain testamentary instruments shall be probative if such instruments conform to the Convention on Conflicts of Laws relating to the form of Testamentary Dispositions concluded at the Hague on 5th October 1961.

[*19th March, 1998*]

WHEREAS a Convention on Conflicts of Laws relating to the form of Testamentary Dispositions was concluded on 5th October 1961 at the ninth session of the Hague Conference on Private International Law and was signed on behalf of the United Kingdom on 13th February 1962;

AND WHEREAS Her Majesty's Government in the United Kingdom in her right as the administering authority for Antigua and Barbuda at the time of signature extended the Convention to Antigua and Barbuda;

AND WHEREAS on the 1st May 1985 Antigua and Barbuda succeeded to the Convention and declared itself to be bound by the Convention as of the date of its independence;

AND WHEREAS with a view to implementing the provisions of the Convention in Antigua and Barbuda and for other purposes, it is expedient to enact the provisions of the Convention into law;

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The **WILLS (Convention on Conflict
of Laws) Act 1998.**

No. 2 of 1998.

NOW, THEREFORE, IT IS —

ENACTED by the Parliament of Antigua and Barbuda as follows —

Short title. 1. **This Act** may be cited as the Wills (Convention on Conflict of Laws) Act **1998.**

Interpretation. 2. In this Act —

"internal law" in relation to any territory or state means the law which would apply in case where no question of law in force in any other territory or state arose;

"state" means a territory or group of territories having its own law of nationality;

"will" includes any testamentary instrument or act, and "testator" shall be construed accordingly.

**Procedure for
determining
applicable law.**

3. (1) Where under this Act the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in the territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows —

(a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

(b) if there is not such rule, the system shall be that with which the testator was most closely connected at the relevant time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of the execution of the will in any other case.

(2) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard shall be had to the **formal** requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

4. (1) For the purposes of probating wills, a will is treated as properly **executed** if its execution conformed to the internal law **inforce** in the territory where it was executed, or in the territory where, at the time of its execution or the testator's death, he was domiciled or has his habitual residence, or in a state which, at either of those times, he was a national.

General rules as to formal validity.

(2) The determination of domicile in a particular place shall be governed by the law of that place.

5. (1) Without prejudice to section 4, the following shall be treated as properly executed —

Additional rules.

- (a) a will executed on board a vessel or aircraft of any description if the execution of the will conformed to the internal law in force in the territory with which, having regard to its **registration** (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will in so far as it disposes of **immoveable** property, if its execution conformed to the internal law in force in the territory where the property was situated;
- (c) a will in so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;

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(d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

Certain require
ments to be treated
as formal.

6. Where (whether in pursuance of this Act or not) a law enforce outside Antigua and Barbuda fails to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witness to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Application.

7. This Act applies to a will made on or after the 1st day of May, 1985 and which has not been probated at the time this Act comes into force.

Construction of
a will

8. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

Passed the House of Representatives this 12th
day of February, 1998.

Passed the Senate this 23rd
day of February, 1998.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk of the House of Representatives.

S. Walker,
Clerk of the Senate.

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