Cross-border estate planning for farming families: Will your plan still work if family members move overseas?

For farming families, succession planning can become more complicated when family members, assets or decision-makers are based overseas.

It is increasingly common for farming families to have children living in different countries. One child may remain involved in the farming operation in New Zealand while siblings establish careers and families overseas.

Those international connections can affect who is expected to make decisions in the future. A family member living overseas may be intended to become an executor, trustee, attorney or director. The family may own foreign property or investments or have interests in overseas superannuation. The farm may be held in a trust or company whose future control is expected to pass to someone living offshore.

None of this is unusual. However, an estate plan that appears straightforward from a New Zealand perspective may not operate as intended when it is needed. Effective planning requires more than a valid will. It requires a coordinated approach to the ownership, management and control of the family's assets on death and incapacity.

When does an overseas connection matter?

Cross-border issues are not limited to families with substantial offshore wealth. A single overseas connection can justify a closer review. Relevant circumstances include:

- a child, beneficiary or intended decision-maker living overseas or planning to relocate;
- foreign land, bank accounts, investments, insurance, pensions or superannuation;
- an existing will or succession document prepared in another country;
- a trust, company or partnership with an overseas-resident owner, trustee, director, partner or controller; or
- a beneficiary who may receive a substantial inheritance while living overseas.

For many of our rural clients, the international element develops gradually. A child moves overseas for work, another returns to the farm, family circumstances change, and existing documents remain unchanged because the significant land asset is in New Zealand. The location of the farm is only one part of the picture. The residence of the people who will inherit, manage or control it can be equally important.

Work out what is owned

A will only controls assets that form part of the deceased's estate. It does not automatically control every asset a person uses, manages or regards as their own.

A farm may be owned personally, jointly, by a family trust, through a company or partnership, or through a combination of structures. The farming business may operate through one entity while the land is held through another. Shares in a farming company may be personally owned, but the company's stock, plant and other assets belong to the company. A trustee company may hold trust assets, while control depends on who owns its shares and appoints its directors.

Different assets may therefore pass in different ways. Personally owned assets may pass under a will. Jointly owned assets may pass by survivorship, depending on the form of ownership. Trust assets remain governed by the trust deed and applicable law. Company shares may pass under a will, but the company's underlying assets do not.

A useful first step is to map each significant asset and entity, recording:

- where the asset is located and who legally owns it;
- whether another person or entity has a beneficial interest;
- the document or arrangement governing the asset;
- who currently controls it; and
- what happens to ownership and control on death and incapacity.

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(Continued)

For families with several trusts, companies and personal assets, a structure diagram can expose gaps that a conventional asset list may miss. It may show, for example, that a will transfers company shares but does not address who will become a director, or that a family member is intended to take control without having a legal right to do so.

Ownership and control are different

A succession plan should answer two separate questions: who will receive the value, and who will make the decisions?

Where farm assets are held through trusts or companies, control may depend on who receives shares, who appoints and removes directors or trustees, who owns the corporate trustee, and whether personal powers under a trust deed continue after death. Enduring powers of attorney also need to be considered, particularly where a key person loses capacity while continuing to hold shares, directorships, trustee roles or powers of appointment.

The person who inherits value is not necessarily the person who can control the structure. A comprehensive plan identifies who holds every relevant role now, who should hold it later and the legal mechanism by which control will pass.

Plan separately for death and incapacity

Farming succession discussions often concentrate on death, but incapacity can be equally disruptive. A family may know who is expected to step in, but that expectation does not itself provide legal authority.

For each key person, consider who can manage personal property, exercise shareholder rights, replace a director, operate accounts, deal with lenders and exercise any trust-related powers during incapacity. Review the will, enduring powers of attorney, trust documents, company records and succession agreements together. Authority under one document should not be assumed to extend across the entire farming structure.

A plan that works after death may fail during incapacity. Both scenarios should be tested while the relevant people can still make decisions and correct any gaps.

Choosing overseas executors, trustees and attorneys

An overseas-resident family member may be a trusted and appropriate executor, trustee or attorney. Overseas residence does not automatically make the person unsuitable, but it can create practical, legal or tax issues.

Before appointing someone into a key role, consider whether the person can perform the role from overseas, whether urgent operational decisions may be required, whether the person will act with someone based in New Zealand, and whether the appointment affects a trust or company. In some cases, a combination of family and independent decision-makers may be more workable. The objective is not to exclude overseas family members, but to understand the consequences and structure the role deliberately.

One will may not deal with every asset

Families sometimes assume that a New Zealand will automatically covers overseas assets. Others assume that a separate will is needed in every country. Neither approach should be adopted without advice in the relevant jurisdiction.

Whether one will or coordinated wills are appropriate depends on the nature and location of the assets, local succession and probate requirements, registration rules, and whether a local will would simplify administration. Multiple wills may assist with foreign land or administration, but they also create risks. A later will may accidentally revoke an earlier will, the documents may overlap, or amendments may be made without considering the wider plan.

If more than one will is required, the documents must clearly identify the assets and jurisdictions covered by each will and be coordinated to avoid inconsistent provisions, duplication or accidental revocation.

Investigate foreign assets and benefits

Foreign land requires local investigation. The family should identify the precise ownership interest, any co-owner or security, the local succession rules, the grant required, whether a New Zealand grant will be recognised, and local transfer or registration requirements. Where Australian property is owned, advice should be obtained in the relevant state or territory.

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(Continued)

Overseas bank accounts, investments and investment platform assets also require close review. The applicable rules may depend on the issuer, custodian, platform provider, account terms or ownership structure, rather than the owner's residence. Cryptocurrency and other digital assets add questions about proof of ownership, custody and access. Sensitive credentials should be stored securely and not included in a will.

Not every valuable interest passes under the will. Jointly owned assets may pass by survivorship. Insurance, contractual death benefits, pensions and superannuation may be governed by nominations, beneficiary designations, fund rules or trustee discretion. Australian superannuation is a common example. The fund rules and any binding or non-binding nomination should be reviewed and Australian advice obtained.

For every foreign asset or benefit, ask: What is owned? Who legally owns it? What determines what happens on death? What will the executor need to access, transfer or realise it?

Coordinate the trust and estate plan

Trusts remain central to the ownership of many New Zealand farms. If farm assets are held in trust, the original trust deed and every later deed affecting the trust must be reviewed. It is unsafe to assume that an older deed contains standard powers or succession provisions.

The review should confirm the current trustees, the governance of any corporate trustee, powers to appoint or remove trustees, any powers of direction or control, and what happens to those powers on death and incapacity. Care is required if an overseas-resident child is expected to become a trustee, control a trustee company or receive a significant distribution. Specialist tax or foreign legal advice should be obtained before the plan is finalised.

The will and trust plan must be coordinated. If a will leaves assets to an existing trust, confirm the trust still exists, remains an appropriate recipient and will continue long enough to achieve the intended outcome. The will should include an effective alternative if the trust has been wound up or cannot receive the gift.

Be cautious with long-term arrangements

Long-term testamentary trusts and life interests can become more complicated as family members move between countries. It is not unusual to see wills that provide income or use of assets to a surviving spouse for life, with capital passing later to the children. That may work while everyone lives in New Zealand, but years later the spouse, trustees and children may be resident in different jurisdictions.

If the family later wants to end the life interest or distribute capital, legal and tax advice will be needed in several countries. Beneficiaries may receive different after-tax outcomes, and the arrangement may become costly or difficult to change. Similar issues can arise where a young beneficiary's inheritance remains on trust until a specified age.

Long-term protection may still be appropriate, but it should be tested against foreseeable mobility and balanced against the cost, tax and administration consequences of continuing the trust.

When should overseas advice be obtained?

A New Zealand lawyer can identify and coordinate cross-border issues, but foreign legal questions should be answered by an adviser qualified in the relevant jurisdiction. Advice should be obtained where there is foreign land, a significant offshore investment, an existing foreign will, foreign probate, an overseas-resident decision maker or beneficiary, overseas superannuation, a proposed relocation, a cross-border trust distribution, or foreign ownership or control of an entity.

Any referral should set out the confirmed facts, relevant documents, affected jurisdictions and specific questions. Accountants, tax advisers, rural professionals and lawyers may each hold part of the information, so their advice should be based on the same facts and assumptions.

Review the plan when circumstances change

Cross-border estate planning is not a one-off exercise. Review the plan when a family member or decision-maker moves overseas, a relationship changes, foreign property is acquired or sold, a trust or company is restructured, company or trustee-company shares change hands, an overseas will is prepared, or an insurance or superannuation nomination changes.

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(Continued)

For rural families, the farm is more than an asset. It is a business, a home and often the product of generations of work. Protecting it requires a coordinated plan that deals with ownership, management and control, and continues to work when members of the family are living in different countries.

A practical checklist for rural families

1. Have we identified all assets, including overseas property, investments, superannuation and digital assets?
2. Do we know which assets will pass under our wills, and which will pass in another way?
3. Have we mapped every relevant trust, company, partnership and trustee company?
4. Do we know who owns and controls each structure?
5. Is the intended successor legally able to take control, or is that outcome only an informal family expectation?
6. Have death and incapacity been considered separately?
7. Do any executors, trustees, attorneys, directors or beneficiaries live overseas or intend to move?
8. Have the will, enduring powers of attorney, trust documents and company arrangements been reviewed together?
9. Are insurance, superannuation, and pension assets in line with the wider plan?
10. Is advice required in another country before the plan is finalised?
11. Have all advisers been given the same facts?
12. Do we know which events should trigger a future review?

The purpose of this exercise is not to predict every possible change. It is to identify foreseeable risks, make deliberate decisions and create a plan that remains practical as the family evolves.

Want to know more?

If you have any questions about cross-border estate planning, farming succession or ownership structures for rural assets, please contact our specialist Property and Private Wealth team.

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