

## Alert

### Death in Paradise

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#### What to do when a deceased person has assets in the Cayman Islands: resealing of foreign Grants of Probate

**Where a person has died and left assets in the Cayman Islands, it is not possible to deal with those assets without first obtaining a grant of representation from the relevant local Court. The rule applies to all forms of property (including shares and intangible property) irrespective of where the deceased died, where they resided during their lifetime, and whether or not they left a Will.**

This means that where an individual held shares in a company incorporated in the Cayman Islands, a grant of representation will be required in order to deal with those shares. Generally, until such a grant is obtained, the shares will effectively be frozen as they cannot be transferred, their voting powers cannot be exercised, and dividends paid on the shares cannot be distributed.

A grant of representation can take two forms, being either:

1. a Cayman Islands grant of probate; or
2. the resealing of a foreign grant of representation so that such foreign grant once sealed has the same legal effect if it were a local grant of probate.

For individuals whose Cayman assets form only a portion of their overall estate, the resealing of a foreign grant is likely to present the more logical option, being swifter, simpler and less expensive.

#### Eligibility

For a foreign grant to be eligible for resealing in the Cayman Islands, the key requirement is that such grant must have "*the same effect which under English law is given to probate and letters of administration respectively*".<sup>1</sup> Grants from the United States, United Kingdom, UK dependent and overseas territories and certain Commonwealth countries will typically satisfy this requirement.

With regards to other jurisdictions, the foreign grant must operate in a similar manner, empowering and requiring the grantee(s) (often referred to as the "executor") to take

possession of the deceased's property and to apply such property in discharging liabilities, and then distributing the residue in accordance with the legal entitlements of beneficiaries (which may be set out in a Will or governed by the laws of intestacy where there is no Will).

#### Application process

A grant of representation is obtained by way of a paper application to the Civil Registry of the Grand Court of the Cayman Islands. As such, it is not necessary for the deceased's personal representative (i.e. their executor) to travel to the Cayman Islands for a court hearing, or to execute documents.

Broadly, the application will consist of the following:

- a copy of the original death certificate by the issuing office and certified as a true copy;
- a copy of the original foreign Grant sealed by the issuing court and certified as a true copy;
- a copy of the Will and any codicils sealed by the issuing court and certified as a true copy;
- an affidavit of the deceased's personal representative who is making the application (being their executor/administrator as applicable);
- an inventory with values of all the estate within the Cayman Islands;
- an affidavit from a legal practitioner qualified or authorised to practice in the relevant jurisdiction, being the deceased's domicile at death; and

<sup>1</sup> Succession Law (2006 Revision), s 2

- a certified translation if any of the above is not written in English.

It should also be noted that the Court has an overriding power to require any evidence or documents in addition to the above. Where it deems appropriate, the Court may also require advertising in such manner and place as it may direct, and may also order that adequate security be given prior to resealing, for payment of debts to creditors residing in the Cayman Islands.

Further, it should be assumed that the usual restrictions which apply to domestic grants of representation in the Cayman Islands, also apply also to the resealing of foreign Grants. In particular, no Grant will be made to more than four persons, and no Grant will be issued to any person under 18 years of age.

## Court Fees

Court filing fees are relatively inexpensive (being under US\$400 at the time of writing) and there is no death duty or inheritance taxes in the Cayman Islands.

## Timeframe

As the relevant legislation provides personal representatives with six months from the date of death to apply for probate or for resealing of foreign grants of probate, and only one year to administer and realise the estate, personal representatives and their advisors should not delay commencing this process. Although, it is possible to make applications outside of this timeframe, additional costs and requirements may be incurred.

Following lodgment of a complete and correct application, it can take approximately 2-4 months before receiving the probate order from the Court.

Conyers' Trust and Private Client team is highly experienced in navigating the Cayman Islands' probate laws and has successfully applied for orders resealing grants from a variety of jurisdictions. Please feel free to contact us for assistance or further advice in respect of resealing of foreign grants and administering deceased estates in the Cayman Islands.

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