

## Article

### Wills & Probate in the Cayman Islands

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**Where a person dies leaving any assets (including shares) in the Cayman Islands, it is not possible to deal with those assets without first obtaining a grant of representation from the Grand Court of the Cayman Islands. This rule applies irrespective of where the deceased died, where they resided during their lifetime, and whether or not they left a Will.**

#### Wills

It is preferable for a deceased person to have left a Will, thus ensuring their assets pass in accordance with their wishes rather than a statutory formula. However, where a person has left instructions as to how their estate should be distributed, questions can arise as to whether such instrument, and the manner in which it was executed, satisfies the formalities required for it to constitute a valid Will. As a result, there are many instances where uncertainty, due to formal requirements not being observed, has impacted the administration of an estate, increasing costs and potentially meaning that assets pass other than as the testator (the person executing the Will) had intended.

The Cayman Islands has recently taken a more flexible approach to recognising the validity of Wills for persons domiciled or habitually resident outside the jurisdiction. The Formal Validity of Wills (Persons Dying Abroad) Law, 2018 (the Law) came into force in early 2019. The Law replaced the common law rule which required that a Will disposing of movable property such as shares, must be executed according to the Law of the country in which the testator was domiciled at death. In contrast, the law now provides that a Will is valid where it conforms with any of the following:

- Cayman Islands law;
- the law in the territory where it was executed;
- the law in the territory where, at the time of its execution or at the time of the testator's death, the testator was domiciled or had his/her habitual residence; or
- the law in the territory where the deceased was a national at the time of execution or at the time of death.

The Law makes it easier for foreign persons to make a Will with regard to their Cayman assets, and is a welcome reform in the Cayman Islands for foreign investors seeking to establish Cayman structures. Clients wishing to make a Will specifically in respect of their Cayman assets can now do so in accordance with Cayman laws, which broadly require that a Will be executed at the end of the document in the presence of two witnesses.

#### Grants of representation

A grant of representation is required prior to dealing with a deceased person's assets. This means that where a deceased person held shares in a Cayman incorporated company a grant of representation is required to deal with those shares. Thus, until such a grant is obtained, the shares may 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 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.

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 as 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 resealing of a foreign grant

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).

Broadly, the application for resealing will consist of the following:

- a certified copy of the death certificate;
- a copy of the foreign Grant certified as a true copy by the issuing court;
- the original Will and any codicils or a copy certified by the issuing court;
- 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 place of domicile at death; and
- a certified translation if any of the above is not written in English.

Court filing fees are relatively inexpensive (being under US\$500 at the time of writing) and there is no death duty or inheritance taxes in the Cayman Islands.

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Conyers' Trust & Private Client team is highly experienced in navigating the Cayman Islands' wills and probate laws, and is well-positioned to assist with any queries concerning succession planning and administering of deceased estates.

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

For further information please contact: [media@conyers.com](mailto:media@conyers.com)

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