

Obtaining a grant of representation in the Cayman Islands

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When an individual dies owning assets in the Cayman Islands, a grant of representation issued by the Grand Court of the Cayman Islands is usually required before the Cayman assets can be administered.

In this article, we outline the process for obtaining a grant in the Cayman Islands. However, we do recommend seeking specialist advice to ensure the process runs smoothly.

| Types of grant

There are three types of grant:

1. grant of probate - where the deceased left a valid will
2. grant of letters of administration (with or without will annexed) - where the deceased left a will but it did not appoint an executor or where no executor is willing or able to act
3. reseal of foreign grant - where a foreign grant of probate is being resealed in the Cayman Islands

| Who can apply?

Where the deceased left a will, the applicant would usually be the executor named in the will, or the residuary devisee if there is no executor able or willing to apply.

Where the deceased died intestate, the rights of family members to apply for letters of administration are determined by a strict order of priority.

For the estates of persons dying domiciled outside of the Cayman Islands, either with or without a will, there are slightly different rules that determine who can apply for a grant, as follows:

- if there is a will in the English language, to the executor named in it, or to persons who are described in the will as having equivalent duties
- if the Cayman estate substantially comprises of immovable property, to persons who would have authority to apply if the deceased had died domiciled in the Cayman Islands
- or, where ordered by the Judge, to the person entrusted with the administration of the estate (or alternatively the persons beneficially entitled to the estate) by the court having jurisdiction at the place where the deceased died domiciled

In other cases, the Judge may order that a grant be made to other persons. Many of the uncertainties arising from the application of these rules for non-Cayman domiciled individuals can be anticipated and avoided when preparing a will that governs Cayman assets.

Application requirements

Applications for a grant must be filed in paper form and on the electronic filing portal of the Cayman Islands Grand Court, either by the applicant or by an attorney acting on the applicant's behalf. The application is delivered to the Clerk and dealt with in chambers by a Judge of the Grand Court (unless the application is in respect of a "small estate", which can instead be dealt with by a magistrate).

If the deceased died more than six months before the application for a grant is filed, the applicant must first apply for special leave to make a "late" application. The application for special leave comprises an application in statutory form and an affidavit by the applicant in support of the application.

The following documents must be enclosed with an application for a grant:

- an application in the statutory form
- an affidavit made by the applicant, confirming whether there was settled land vested in the deceased, the deceased's domicile at death, and any other name the deceased was known by at the date of death
- where applicable, a duly marked original or court certified copy of the will
- a certificate of the death of the deceased (or such other evidence of death as the Grand Court may require)
- for a grant of letters of administration only, a bond of surety in an amount equal to twice the value of the Cayman Islands estate. This arises from a statutory requirement that the applicant (with some exceptions) provides personal security for the due performance of the office of administrator

- in addition, for the estates of persons dying domiciled outside of the Cayman Islands, an affidavit of foreign law must be provided by a legal practitioner who is qualified, authorised to practice, and has in fact practised in the relevant foreign jurisdiction
- the application fee

Within six months of the date of the grant, the applicant must produce and file an inventory of the Cayman Islands estate.

Within one year of the date of the grant, the applicant must produce and file an account of the administration of the Cayman Islands estate.

Depending on the particular circumstances in each case, the co-ordination and authentication of supporting documents can be protracted and expensive - particularly for estates of non-Cayman domiciled individuals. However, as previously noted, many of the probate requirements can be anticipated and planned for at the time of putting a will in place.

Fees

The total application fee for Cayman probate depends on each document filed, irrespective of the value of the estate. The fee, which is payable to the Grant Court, is usually in the region of US\$1,000.

Timing

An application for a grant of representation must be made within six months of the date of death. If this time period has passed, leave of the Grand Court must be obtained before an application can be made.

The earliest date that a grant of probate (or administration with will annexed) can be issued is 21 days from the date of death, and 28 days for grant of letters of administration. It usually takes three to six months to receive the grant after submitting an application, assuming that there are no issues or complications.

Planning

The Cayman probate rules are specific and technical. So, to expedite the probate process, it is important to anticipate issues and address these properly as part of the application. It is also advisable to consider what succession planning options might be undertaken for Cayman assets during lifetime, as this can simplify or avoid the Cayman probate process altogether.

If you have any questions about obtaining a grant of representation in the Cayman Islands, please

contact one of our team who will be happy to assist.

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