

Administering a Cayman Islands estate

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This article was co-written with Roger Priaux and Lee Hart from Genesis. It first appeared in STEP Cayman magazine.

The administration of deceased estates in the Cayman Islands is governed by the Succession Law, 2006 Revision (the **Law**) and its accompanying Probate and Administration Rules, 2008 Revision (the **Rules**). As required by the Law, when an individual dies owning Cayman Islands assets, some form of grant of representation issued by the Grand Court of the Cayman Islands is usually required before the Cayman assets can be administered. This will be a grant of probate in the case of an individual who has died leaving a valid will; or letters of administration on intestacy or with will annexed where there is either no valid will or it is not possible for the executor named in the will to apply for probate. It is also possible to reseal a foreign grant before the Grand Court of the Cayman Islands if the foreign grant is of like force and effect to a Cayman grant, as confirmed by foreign law evidence.

Application procedures

The application procedures for probate, letters of administration and resealing are set out in the Rules and the filing process takes about six months to obtain a grant from when the matter commences. The executor or administrator of the estate (the Personal Representative) has two further filing requirements following the issue of the grant; filing of the inventory and finally the affidavit of general accounting which effectively closes the estate administration proceedings before the Grand Court. The estate administration should be concluded within twelve months of the original filing for the grant, providing everything runs smoothly.

Possible disputes

But what if the estate administration does not go as planned? Complications with the will,

disputes between beneficiaries and difficult executors are all common examples of the complexities that often arise within this area of the law. Sometimes it is necessary for the Court to intervene to resolve any difficulties in respect of Cayman Islands estates and in connection with those appointed to administer them. Thankfully there are a number of options available to executors and beneficiaries in order to resolve difficulties. These include referring questions of construction or seeking the court's direction on any thorny issues pursuant to s.48 of the Trusts Law (2020 revision), and even removing a problematic personal representative.

Removal applications

There have already been two occasions during 2020 on which the Cayman court has removed personal representatives following contested hearings. Previously there were few reported decisions considering such matters. As a consequence of the recent removals it has been clarified that the Cayman court has the ability to do so either under s.8 of the Law for cause, and that inappropriate conduct must constitute either "neglect" or "misconduct"; or otherwise than for cause, pursuant to section 50 of the UK Administration of Justice Act 1985 (effectively incorporated into Cayman Islands law by section 42 of the Law), and which provides the statutory jurisdiction of the English High Court to remove personal representatives. The latter jurisdiction has been interpreted to be one that ought to be used in a flexible and practical way without the need for costly and time consuming factual inquiries, and indeed it is not necessary for an applicant to establish wrongdoing or for the court to make adverse factual findings for a personal representative to be removed. The key concern of the court on any removal application reliant on section 50 is to consider the best interests of the beneficiaries as a whole and thus to decide whether such interests require a different personal representative to complete the administration of the estate. The court's emphasis of the availability of swift removal in justified circumstances without the need for lengthy court proceedings makes it plain that the court will intervene to ensure the due and efficient administration of Cayman Islands estates.

Service provider observations

When appointing a new personal representative it is important to choose a licensed Cayman Islands service provider who has the necessary expertise and experience in dealing with estates and resolving disputes. The role of the new personal representative includes:

- Gathering accurate information on the estate's assets and liabilities.
- Ensuring assumption of proper governance and control over bank/investment accounts
- Obtaining appropriate and cost-effective valuations of estate assets, particularly for operating companies
- Being mindful of the costs of administering the estate and keeping these under control

- Being aware of, and proactively dealing with, any non-Cayman situated assets and liabilities and other cross border issues, for example, claims from non-Cayman residents or active or threatened litigation in other jurisdictions, which may impact on the Cayman estate and the beneficiaries
- Where there is an active or potential dispute, canvassing the views of the beneficiaries and seeking to find consensus over a practical resolution at an early stage
- Seeking the assistance of the Cayman Court, where applicable, to address any uncertainty, give directions, and bless any important decisions or proposed settlements
- Working closely with specialist Cayman counsel (and overseas counsel where applicable) is essential to support the process

Conclusion

In every case of an individual dying leaving assets in the Cayman Islands, some form of grant must be obtained in order for the Cayman assets to be legally administered. Cayman as a jurisdiction has a robust framework for resolving estate disputes. The availability of professional trustee service providers to be appointed as personal representatives and who can draw on their substantial executor and trusts experience in complex estates is also a huge advantage.

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