

Cayman Islands' probate practice for non-Cayman domiciliaries

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When a non-Cayman domiciliary dies owning Cayman Islands assets such as shares in a Cayman Islands company and interests in Cayman Islands funds (Cayman estate), the transmission of such Cayman estate is governed by Cayman Islands law and a grant of representation (Cayman grant) issued by the Grand Court of Cayman (Grand Court) is usually required. The registered office provider is not authorised to update the register of members or limited partnership interests without a Cayman grant. Directors and general partners ought not to approve share/interest transfers involving a deceased shareholder/limited partner without reviewing a Cayman grant.

This article deals with the procedures and documentation required to secure a Cayman grant for the estate of a non-Cayman domiciliary, and highlights the pitfalls that practitioners should be mindful of.

A Cayman grant usually takes one of the following forms:

- grant of probate, if the deceased person left a will (testate) with the effective appointment of an executor
- grant of letters of administration with will annexed, if the deceased person died testate but the appointment of an executor is invalid
- grant of letters of administration on intestacy, if the deceased died without a valid will; or
- the resealing of a non-Cayman grant of representation or its equivalent, if there is a non-Cayman grant

Application procedure

To apply for a grant of probate; the probate registry of the Grand Court requires the following documents:

- the original will (and codicils if any) or court certified copies of these documents
- an original death certificate sealed by the appropriate government agency in the jurisdiction where the deceased died
- the application for the grant
- an affidavit in support of the application for probate with the value of the Cayman estate declared therein
- a letter of authorisation to authorise the attorney for the executor/administrator to file the application on his or her behalf

The applicant undertakes in the application for grant that, after the Cayman grant is made, he or she will prepare and file an inventory of the Cayman estate within six months of the grant being made and administer the estate and file an affidavit of general accounting within one year of the grant being made.

The documents required for a grant of letters of administration with will annexed or on intestacy are largely similar to the grant of probate, except the administrator must also sign a prescribed court document called a bond; arrange a third party bond of surety; and it may be necessary to file an affidavit of a legal practitioner qualified in the jurisdiction where the deceased person is domiciled explaining, among other things, the entitlements of the heirs. The amounts of the bond and bond of surety are set at double the sworn value of the estate to guarantee that the administrator administers the Cayman estate appropriately.

A grant of probate would generally be granted to the executor named in the will which is in the English language; or to an individual described by the will to have duties in terms sufficient to constitute him to be the executor according to the tenor of the will. In the case of letters of administration, the Probate and Administration Rules (Revised) (Rules) dictates who is entitled in priority to make such applications, and therefore entitled to be granted the Cayman grant. The Grand Court may order that the Cayman grant be made to the following if it finds the circumstances to be appropriate:

- to the individual entrusted with the estate administration by the court having jurisdiction at the place where the deceased died domiciled (entrusted individual)
- if there is no such entrusted individual, to the individual (or such of them if more than one as the Grand Court directs) beneficially entitled to the estate by the law of the place where the deceased died domiciled; or
- such other individual as the Grand Court determines

The Grand Court in general takes approximately three to six months to issue a grant depending on the court schedule.

Where a deceased's will has been admitted to probate in the deceased's jurisdiction of last domicile, it may be possible to be resealed by the Grand Court.

There is no inheritance tax, death tax or estate duty in the Cayman Islands and the filing fees for grant application are payable irrespective of the value of Cayman estate.

Pitfalls

Applications for a Cayman grant might at this juncture appear to be an easy and straightforward process. There are however a few material pitfalls that practitioners should be mindful of when an application is being prepared.

The application should be made within six months after the death of the non-Cayman domiciliary, unless a special leave for the extension of the six month deadline, setting out the circumstances of why the application is being filed out of time, is applied for. When the Grand Court has granted the special leave, the applicant is required to file the full grant application within 30 days. If the applicant fails to file the full grant application within 30 days for whatever reason, a fresh application for special leave must be filed.

The undertaking made during the grant application regarding the filing of the inventory of the Cayman estate and the affidavit of general accounting are statutory obligations imposed on the personal representative. The personal representative is required to file these within the prescribed time limit and in a form acceptable to the Grand Court.

Conclusion

The above outlines the general procedure for obtaining the Cayman grant. Many practical problems can arise which can make obtaining the Cayman grant difficult. Nonetheless, the fact remains that in every case a Cayman grant must be obtained to legally deal with the Cayman estate. In view of the popularity of Cayman Islands companies and funds in Asia and that shareholders and investors are aging, it is crucial to work with Cayman Islands counsel who are experienced in applying for a Cayman grant in order to deal with the transmission of a Cayman estate in a cost effective and time efficient manner.

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