

The Resealing of Grants of Representation in the Cayman Islands

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Preface

This publication has been prepared for the assistance of those who are considering the process of resealing in the Cayman Islands grants of representation issued elsewhere. It deals in broad terms with the requirements of Cayman law for the process of resealing foreign grants of representation. It is not intended to be exhaustive but merely to provide an outline of the rules by which the process of re-sealing foreign grants of representation for which we hope will be of use to the clients of Conyers.

Before proceeding with any process of resealing foreign grants of representation in the Cayman Islands, clients are advised to consider the implications in their home jurisdiction and should consult with other professional advisers as appropriate.

We also recommend that our clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

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1. INTRODUCTION

The legislation that pertains to the resealing of grants of representation in the Cayman Islands is the Succession Act, (2021 Revision), and Probate and Administration Rules (2008 Revision). This publication gives general guidance on this process. This is only a brief outline. All applications for resealing remain subject to the overriding power of the Grand Court to require information and documentation in addition to those usually submitted.

2. THE NEED FOR A GRANT

Under the laws of the Cayman Islands no person may take possession of, administer, distribute or otherwise deal with any part of the property of a deceased person unless he has first obtained a grant of representation from the Grand Court.

This rule applies in relation to all forms of property, real and personal, movable and immovable, tangible and intangible, if it is situated in the Cayman Islands at the time of death; and the rule may apply to property subsequently brought into the jurisdiction. The rule applies regardless of whether the deceased died testate or intestate and regardless of whether he was domiciled in the Cayman Islands or elsewhere.

It makes no difference that under a foreign law a person has authority to deal with the estate, and it makes no difference that a foreign court has made a grant of representation or an equivalent order. However, subject to certain conditions, a foreign grant may be resealed by the Grand Court; and the effect of resealing is that the foreign grant confers the same authority as a domestic grant of representation.

Accordingly, persons interested in the estate of a deceased person which includes assets in the Cayman Islands have two alternative courses of action available to them - to apply for a domestic grant of representation or to reseal a foreign grant. If a foreign grant has been obtained or will in any case be necessary, the resealing alternative will generally be swifter, simpler and less expensive. It is beyond the scope of this publication to discuss the process for obtaining a domestic grant.

3. NECESSARY CONDITIONS FOR RESEALING

There must be a foreign grant and it must have "the same effect which under English law is given to probate and letters of administration respectively". In other words the foreign grant must authorise and require the grantee(s) to take possession of the deceased's property and apply it in discharging his liabilities and distributing the residue to the persons entitled.

It should be assumed that usual restrictions for domestic grants 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.

A company acting as personal representative may require to be licensed under the Banks and Trust Companies Act.

4. DOCUMENTS REQUIRED

The following documents will be required to support an application for resealing a grant from outside the Cayman Islands:

- (a) A certified copy of the original death certificate by the issuing office.
- (b) A certified copy of the original foreign grant sealed by the issuing court.
- (c) A certified copy of any will and codicils sealed by the issuing court.
- (d) An affidavit of the deceased's personal representative making application for the re-seal. Outside the Cayman Islands this should be sworn before a Notary Public or other person authorised to administer oaths.
- (e) An inventory with values of all the estate within the Cayman Islands. This is usually an exhibit to the affidavit or a separately sworn document. It can be submitted after resealing within a period notified by the Court. Where resealing is for access to a single asset only this can be included in the affidavit itself.
- (f) A certified translation of any of the above not written in English.
- (g) Court fees (including affidavits).

5. CAVEATS

A caveat may be entered by any person in the Probate Registry to prevent a resealing of a grant without notice to the caveator. There are provisions for requiring the caveator to declare his interest and provisions for removing caveats. In any case a caveat will lapse automatically in six months unless renewed.

6. ADDITIONAL REQUIREMENTS

The Court may require advertising in such manner and place as it may direct, where it deems appropriate.

In resealing of grants of letters of administration but not grants of probate, the Court requires a bond in a penalty of double the amount of the sworn value of the estate and effects or such lesser sum as the Court considers reasonable.

If an interested person so applies, the Court may also order that adequate security be given prior to resealing for payment of debts to creditors residing in the Islands.

The Court has an overriding power to require evidence or documents in addition to the above prior to resealing any grant.

7. ADMINISTRATION OF THE ESTATE

In general the duties of a personal representative are to collect and protect the assets of the estate, pay the liabilities of the estate (including the costs of administration) and distribute the residue in accordance with the will or applicable intestacy rules.

Questions concerning the validity of the will or the applicability of intestacy rules may arise if the resealed grant was originally issued in a jurisdiction other than the deceased's last domicile. Generally, succession to movable property is governed by the law of last domicile; succession to immovable property is governed by the *lex situs*.

Estate liabilities due to creditors in the Cayman Islands should be discharged first from the Cayman Islands assets.

Within one year of the resealing the personal representative is required to file in the Grand Court receipt and distribution accounts supported by affidavit. These are open to the inspection of persons beneficially interested.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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