

Administration of Estates on Death Part 2: Guidance for non-residents who have Cayman assets forming part of their estate

The Cayman Islands attract investment from jurisdictions worldwide and its population is a smorgasbord of backgrounds and nationalities. As such, it is very common for the administration of Cayman estates to have an international element and for international estates to include elements of Cayman property. Due to the application of conflict of law rules in these circumstances, this is a complicated area of law and it is highly advisable to seek legal advice specific to your particular circumstances. This article is designed to give only a broad overview of the legal requirements in relation to administration of Cayman assets where the deceased was not domiciled in the Cayman Islands at the date of their death.

The Cayman Islands model of succession is based upon freedom of testamentary disposition and therefore, in general, an individual domiciled in Cayman may make any kind of *intervivos* (during lifetime) gift or testamentary gift (on death) by will. However, when a individual has died holding Cayman assets in their individual name, the Succession Law provides that no one shall administer a Cayman estate without first obtaining a grant of representation from the Grand Court of the Cayman Islands.

Basic application of the conflict of law rules:

The conflict of law rules in common law jurisdictions determine that the law of the state in which the deceased was domiciled at the date of their death, should apply in relation to succession.¹

The law governing succession in relation to personal or ‘*moveable*’ property, is determined by the deceased’s domicile at the time of their death. Therefore, it is advisable to have a will which complies with the formal validity requirements under the law of the deceased’s last domicile. It is also important to ensure that if a person’s domicile

¹ Domicile is legally different to mere residence in a jurisdiction. It denotes more of a legal relationship between a person/place and must have some degree of permanency.

changes, that their will is reviewed to ensure compliance with local law. If the scale of the assets makes it worthwhile, an alternative solution is to set up a Cayman Islands trust to hold assets, which avoids these conflict of laws pitfalls and potential forced heirship regimes.

In relation to real-estate and land (*'immovable'* property) or shares in a company, the law of succession where the land is located, or the company is incorporated, will apply. For this reason, it is highly advisable that when purchasing Cayman real-estate or investing in a Cayman Islands company, an individual should have a will which complies with the formalities specified under Cayman Islands law.

Situations where an order for a grant of representation will not be necessary:

If ownership of assets is held jointly, this can negate the need to apply to the court for a grant of representation. For example if real-estate is co-owned as a 'joint proprietor' with another party, then this asset will not fall to be determined as part of the estate of the deceased, instead it will automatically pass to the other owner(s) upon death. Similarly, if insurance policies or pensions provide for named beneficiaries, then this will also dictate who will benefit from that asset without the need for a court order.

The position in relation to non-domiciled individuals where there are Cayman assets forming part of the estate

If a person dies domiciled in another jurisdiction, the conflict of laws issues will need to be addressed before the heirs can access any Cayman Islands assets. For real-estate situated in Cayman, the Cayman Islands law will apply to the administration of the estate and the validity of any will. With immovable property, the validity of any will, will be determined per the law of the testator's last domicile.

The process which needs to be followed in the Cayman Islands depends upon:-

1. whether the person died with or without a valid will;
2. if there is a will, whether that will has been admitted to probate in another jurisdiction;
3. and whether the will names executors to administer it.

- **Non-domiciled individual dies intestate, without a valid will which applies to the Cayman assets:**

An application for a Grant of Letters of Administration will need to be made in relation to the Cayman assets. The Cayman legislative intestacy rules may conflict with the law of the deceased's last domicile and therefore such a dispute would fall to be determined by complex conflict of law rules.

- **Non-domiciled individual dies leaving a will with Cayman assets forming part of the estate:**

If a deceased has left a will that is admitted to probate in the testator's home jurisdiction, where a foreign court has granted probate or letters of administration in respect of a deceased person's estate, that grant can be 'resealed' in the Cayman Islands. It then takes effect as if granted by the Cayman Islands court. However, in order to be capable of recognition under this method, the original grant must be made by a probate court in a common law jurisdiction and be in a similar form to a Cayman grant of probate.

Where a foreign grant of probate is not available or the order is not capable of recognition by the Cayman Island's court, then the resealing process will not be available. However, the will could still be recognised (if it complies with the validity rules for the property to which it applies) and if so, will still govern the distribution of the Cayman assets. This process will require an application for a Grant of Probate by the person entrusted with the administration of the estate in the home jurisdiction, executors of the will, persons beneficially entitled or such other person as the judge considers appropriate. This process can be very complicated because it may require evidence of foreign law and translations to be submitted. If the validity of the will is not ultimately capable of recognition in the Cayman courts, then the process of administration under the intestacy rules may need to be followed instead.

Questions around the administration of estates and probate can often be complex. It is advisable to seek the assistance of a legal professional who can give advice and support. Broadhurst LLC has a wide range of experience in trusts and estates and we would be delighted to assist you through the process.

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