



Guide to Probate & Administration in the Cayman Islands

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Preface

No one may distribute or take possession of a deceased person's property situated in the Cayman Islands unless they first obtain a Grant of Probate or Letters of Administration from the Cayman Islands Court. Where there has been a grant of probate (or its equivalent) or a grant of letters of administration (or their equivalents) in a foreign country, with respect to a deceased person having property in the Cayman Islands, the personal representatives may not take possession of, or administer any part of the Cayman Property until they first obtain a resealing of the probate or letters of administration by the Cayman Islands Court.

Probate and administration in the Cayman Islands are governed principally by the *Succession Law (2006 Revision)* and the *Probate and Administration Rules (2008 Revision)*. The main applications submitted to the court are for a grant of probate, grant of letters of administration and to reseal a grant obtained in an approved jurisdiction.

GRANT OF PROBATE

Application for a grant of probate ("Probate") is usually made where the deceased person signed a valid will appointing at least one executor who survived the deceased. The application is made by the named executor or executors. The application for Probate requires an affidavit of the executors and sometimes affidavits of witnesses and third parties. The original will and an original or certified copy of the death certificate of the deceased must be attached to the application.

If the executors have not obtained Probate within 6 months of the deceased's death, they must obtain special leave from the Cayman Islands Court to apply for Probate, which involves an affidavit of the executors giving the reasons for the delay. If the Court is satisfied with the reasons, they will give special leave to the executors to apply for Probate (usually within a limited time of 30 days).

The Clerk of the Cayman Islands Court must advertise the application for Probate, in respect of deceased persons domiciled in the Cayman Islands, in the Gazette before Probate can be granted. This advertisement discloses the names of the applicants, the date of the application, the deceased's name, the date of death and the estimated value of the estate. When Probate has been granted to the executors, usually within 1 - 3 months from the date of filing the application, the law provides that they must administer the estate within one year of Probate. The Court usually requests an inventory of the estate to be filed within 6 months of Probate and the executors are obligated by law to file within one year of Probate an affidavit of accounts disclosing the manner in which the estate was administered.

Legal fees will be relative to the complexity of the matter. An uncomplicated application for Probate (and where no Affidavit of Foreign Law is required) can cost between US\$3,500 to US\$3,750, plus disbursements.

LETTERS OF ADMINISTRATION

An application for letters of administration ("Administration") is usually made where a person dies intestate (i.e. without a will). Interested applicants should receive legal advice as to whether or not they have the right to apply for Administration and whether other persons may have any prior rights. The application for Administration requires an affidavit of the applicant and where appropriate, affidavits of third parties. The applicants are required to sign a bond for at least twice the value of the estate, and at least one surety must guarantee that bond.

An original or certified copy of the death certificate of the deceased also must be attached to the application. If Administration has not been obtained within six months of the deceased's death, special leave must be granted by the Court, as with Probate above. The Clerk of the Courts is required to post a notice of the application at the Court

House for three consecutive weeks. The Clerk must also advertise the application for Administration, in respect of deceased persons domiciled in the Cayman Islands, in the Cayman Islands Gazette before Administration can be granted. Both the Notice and the advertisement must disclose the names of the applicant, the date of the application, the deceased's name, the date of death and the estimated value of the estate. Administration cannot be granted until the expiration of 21 days from the day of the application for the grant. However, the Court may take up to 2 - 5 months after the application is filed to grant Administration, depending on the case load. When Administration is granted, the Court usually requests an inventory of the estate to be filed within 6 months of the grant. The administrators must also file an affidavit of accounts, within one year of the grant, which discloses the manner in which the estate was administered.

Legal fees will be relative to the complexity of the matter. An uncomplicated application for Administration (and where no Affidavit of Foreign Law is required) can cost between US\$3,500 to US\$4,500, plus disbursements.

RESEALING APPLICATIONS

In countries where the executors are authorized to administer the estate under a grant of probate or letters of administration (or their equivalents) the original or certified copy of the grant of probate, along with a certified copy of the will or letters of administration must be submitted with the application for resealing ("Resealing").

Where no grant of probate or letter of administration is required by a particular country, the will must be produced, certified as valid by the court of that country, and other original or certified documents confirming that the necessary recording procedures were complied with must also be produced. In addition, the following items are required:

- the original or certified copy of the death certificate;
- the list of the deceased's Cayman assets and the respective values;
- an affidavit of the executors;
- the application for Resealing;
- a bond if the foreign grant was for letters of administration or its equivalent; and
- the affidavit of Foreign Law (if required by the Cayman court).

Legal fees for uncomplicated applications will be approximately US\$2,500 to US\$3,500, if no Affidavit of Foreign Law is necessary.

An application for Resealing will generally take between 4 - 8 weeks to be granted.

The Court will usually require the filing of an inventory and affidavit of accounts in Resealing applications on the same basis that it does in applications for a fresh grant of probate or letters of administration.