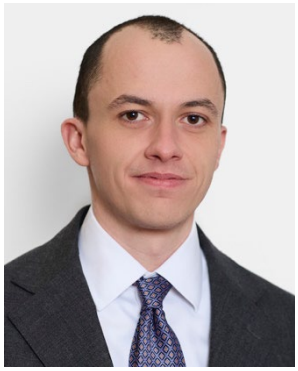
Private Client eBriefing

Grants to foreign personal representatives

Article by Andreas Giannakopoulos 30th April 2025



1. When a person dies domiciled abroad but leaves property in England and Wales, a question arises as to who should administer the deceased's estate in this jurisdiction. If a personal representative has been appointed in the country of the deceased's last domicile, is the foreign order appointing that person recognised in this country or is an original grant required? Absent a foreign grant, who is eligible to administer the deceased's English estate and what is the order of priority between potential candidates?

2. These issues are of practical importance. A foreign personal representative who deals with the deceased's English assets without authorisation may incur liability as an executor *de son tort*, with all the liabilities and none of the privileges of a properly appointed personal representative.[1] Further, foreign personal representatives may not bring proceedings before the English courts in a representative capacity unless they are authorised to deal with the English estate. Any proceedings initiated without authorisation will be a nullity.[2] Conversely, unless and until they have obtained authority, foreign personal representatives are immune from proceedings in this jurisdiction concerning the deceased's estate.[3]

3. A lot therefore hinges on identifying who is entitled to deal with the deceased's English assets. The answer to this question requires one to understand both the general principles underpinning the English courts' approach to the status of foreign personal representatives and the specific rules that define who may act where the deceased was foreign-domiciled.

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[1] e.g. *New York Breweries Co Ltd v Attorney General* [1899] AC 62.
[2] *Jennison v Jennison* [2023] Ch 225 at [20], [24]-[25].
[3] *Flood v Patterson* (1861) 29 Beav 295.

General principles

4. The starting point in this area is a mix of territoriality and universalism. On the one hand, the English courts adopt a territorial approach to the effects of foreign grants and analogous orders and decrees. The well-established rule is that a foreign grant has no effect as such in England and Wales.[4] Therefore, barring legislative intervention, the status and title of foreign personal representatives is not recognised in this country unless and until they obtain an English grant. The underlying notion appears to be that a grant of representation involves an exercise of sovereign authority by the state that grants power to gather in local estates. This should be recognised as effective within that state's territory but ineffective to affect title to property outside of it.[5]

5. The effect of an English grant is also purely territorial since it only vests in the personal representative assets situate in England and Wales at the time of death and any movables of the deceased subsequently brought into the jurisdiction before a clear title has been obtained under a foreign *lex situs*.[6] By contrast, assets located outside the jurisdiction do not vest under an English grant.[7]

6. On the other hand, there is no territorial constraint on the English court's jurisdiction to make grants of representation. A grant may issue to the estate of any person in the world, whether they died domiciled in this country or not,[8] although the jurisdiction will generally only be exercised if there is property to be administered in England and Wales.[9] Since the jurisdiction is theoretically unfettered, the issue of who should be appointed to represent a foreign-domiciled deceased may not infrequently arise before the English courts.

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[4] *New York Breweries Co Ltd v Attorney General* [1899] AC 62 esp. at 71-72 and 77; *PTNZ v AS* [2020] EWHC 3114 (Ch) at [51], citing Dicey, Morris & Collins, *The Conflict of Laws* (15th ed), [26-037] (now Dicey, Morris & Collins, *The Conflict of Laws* (16th ed), [27-036]).

[5] See *Government of Iran v The Barakat Galleries Ltd* [2009] QB 22 at [119]-[126] on the scope of the rule against enforcement of foreign public laws.

[6] Dicey, Morris & Collins, *The Conflict of Laws* (16th ed), [27-023].

[7] *Re Fitzpatrick* [1952] Ch 86.

[8] Administration of Justice Act 1932, s.2(1) now repealed but the effect of which is preserved by the Senior Courts Act 1981, s.25.

[9] *Aldrich v Attorney-General* [1968] P 281, 295.

Entitlement to an original grant of representation

7. Aside from statutory provisions for the reciprocal recognition of Northern Irish grants and Scottish confirmations,[10] a person wishing to administer a deceased's English estate needs to obtain an original grant of representation. This is subject to what is said below about the Colonial Probates Act 1892 and 1927, which permit the resealing of Commonwealth grants.

8. There are two different procedures to obtain an original grant depending on whether the deceased left a will appointing an executor.

9. Rule 30(3)(a) of the Non-Contentious Probate Rules 1987 ("**N-CPR**") provides for probate to be granted to an executor without a prior order from the district judge or registrar if the deceased left a will that is admissible to proof in England and Wales and either:

    (i) the will is in English or Welsh and appoints that person as named executor;[11] or
    (ii) the will describes (in any language)[12] the duties of that person in terms sufficient to constitute him an executor according to the tenor of the will under English law.[13]

10. As to the second alternative, a direction in the will to get in and distribute the estate or pay funeral expenses and debts before distribution would generally be sufficient to count as an appointment according to the tenor of the will.

11. If the requirements of r.30(3)(a) N-CPR are not met, r.30(1) N-CPR provides that a district judge or registrar may order a grant to issue to any of the following persons in order of priority:

    (a) the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled;

    (b) where there is no person so entrusted,[14] the person beneficially entitled to the estate by the law of the place where the deceased died domiciled or, if there is

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[10] Administration of Estates Act 1971, s. 1.
[11] N-CPR, r.30(3)(a)(i).
[12] If the will is in a language other than English or Welsh, a sufficiently authenticated translation should be provided.
[13] N-CPR, r.30(3)(a)(ii).
[14] e.g. because no application for a grant was made in the foreign country or because the foreign court does not appoint personal representatives in the English sense.

more than one person so entitled, such of them as the district judge or registrar may direct;

(c) where the circumstances so require, such other person as the district judge or registrar may direct.

12. A grant under r.30(1) N-CPR is always a grant of letters of administration, with or without will annexed, rather than a grant of probate.

13. Applicants under r.30(1)(a) will need to show sufficient evidence of a grant or other order conferring on them substantially the same authority as an English personal representative would have in the circumstances. Where r.30(1)(b) is relied on, evidence of the beneficiary's entitlement under the relevant foreign system of law will be required. Although r.30(1)(c) is rarely invoked, it may sometimes be used to pass over a person with a prior entitlement.

14. When making an order under r.30(1)(a), the court is not required to replicate the terms of the foreign grant. For instance, if there is a minority or life interest, the English grant will usually be made to a trust corporation or at least two individuals even if the foreign order appointed a single administrator.

15. Rule 30(1) N-CPR gives precedence to persons interested in the estate under the law of the deceased's last domicile. However, where the English estate consists of immovable assets, the English courts arguably have a greater claim to choose who is entrusted with authority to deal with these assets than when the deceased only had movable assets in this country. Accordingly, r.30(3)(b) provides that where the whole or substantially the whole of the deceased's English estate consists of immovable property, the court may make a grant to the person who would have been entitled to it if the deceased had died domiciled in England and Wales.

Resealing under the Colonial Probates Acts 1892 and 1927

16. The above procedure can be time-consuming and often requires evidence of foreign law. For Commonwealth countries, the Colonial Probates Act 1892 sets out a simpler and cheaper process by which grants may be resealed in England and Wales and thereupon produce the same effects as an English grant. The Colonial Probates (Protected States and Mandated Territories) Act 1927 extended the power to apply the 1892 Act to territories under what was then the protection or mandate of the United

Kingdom Government. The 1892 Act currently applies to almost all Commonwealth countries as well as Hong Kong.[15]

17. Importantly, resealing does not involve automatic recognition of the foreign grant. The court retains a discretion on whether to reseal and, save by leave of a district judge or registrar, it will not do so unless the grant was made to someone who would qualify for an English grant under r.30(1)(a)-(b) or r.30(3)(a) N-CPR.[16] In other words, the grant will usually only be resealed if it was issued to either the administrator appointed by the court of the deceased's domicile, an estate beneficiary under the law of that place, or the executor chosen by the deceased. Moreover, resealing only operates prospectively. A foreign administrator will therefore only obtain title to English property and standing to bring proceedings from the date of resealing. The rule is different in respect of foreign executors who, once the grant is resealed, are held to have acquired title from the date of death as a matter of English law–being the law of the country from which they thenceforth derive their authority to deal with English assets.[17]

Conclusion

18. Though statistics are hard to come by, cases where a foreign-domiciled individual dies leaving property in England and Wales must be relatively common nowadays. Given the numerous matters needing attention following the death of a loved one, it is easy to overlook the legal requirements to ensure that a cross-border estate is properly collected and liquidated. Yet, failure to observe these requirements may have serious consequences, from liability as an executor *de son tort* to nullity of legal proceedings and consequent waste of costs. It is therefore critical for those involved in cross-border estate administration to obtain appropriate legal advice early on.

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[15] Colonial Probates Act 1892, s.1A (inserted by SI 1997/1572, art.2).
[16] N-CPR, r.39(3).
[17] *Jennison v Jennison* [2023] Ch 225 at [50].