

CAYMAN ISLANDS



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THE GRAND COURT (AMENDMENT NO. 2) RULES 1997.

THE GRAND COURT LAW (1995 REVISION)

THE GRAND COURT (AMENDMENT NO. 2) RULES 1997

These Rules are made by the Rules Committee pursuant to Section 19(3)(d) of the Grand Court Law (1995 Revision).

1. Citation, Commencement and Interpretation

(1) These Rules shall be cited as the Grand Court (Amendment No. 2) Rules 1997.

(2) (a) These Rules shall come into operation on the 1st day of January, 1998, referred to in this rules as the "Commencement Date".

(b) These Rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.

(3) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 shall have the same meaning in these Rules as in the Grand Court Rules 1995.

2. Revocation and Replacement of Order 85

GCR Order 85 is hereby revoked and replaced by the order contained in Schedule 1 hereto.

MADE by the Rules Committee on the 8th day of December, 1997.

The Hon. George Harre,
Chief Justice

The Hon. Richard Coles
Attorney General

Andrew J. Jones, Esq.
Legal Practitioner

Alden M. McLaughlin, Esq.
Legal Practitioner

Explanatory Note

1. Order 85 has been amended for the purpose of giving effect to contain provisions of the Special Trusts (Alternative Regime) Law, 1997.
2. Subscribers to the Gazette should remove page numbers 369-74 from their ring binders and substitute the new pages 369-74A. Since this amendment does not result in a significant change of pagination, the Index is not being re-issued.

ORDER 85

ADMINISTRATION AND SIMILAR ACTIONS

Interpretation (O.85, r.1)

1. - In this Order -

"administration action" means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

"trust" and "trustee" have the meanings ascribed to them in Section 2 of the Trusts Law (Revised).

Determination of questions, etc., without administration (O.85, r.2)

2. - (1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions -

- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
- (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust; or
- (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs -

- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
- (b) an order requiring the payment into Court of money held by a person in his capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee; or
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court;
- (f) the advice or opinion of the Court on any question respecting the management of the estate or trust.

(4) An action may be brought under this rule by -

- (a) any executor or administrator of an estate;
- (b) any trustee of a trust; or
- (c) any beneficiary of an estate or trust.

Parties (O.85, r.3)

3. - (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one

or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

Grant of relief in action begun by originating summons (O.85, r.4)

4. - In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 8, in relation to the action.

Judgments and orders in administration actions (O.85, r.5)

5. - (1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may -

- (a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are

to be taken under the judgment or order, or under any particular account or inquiry directed without the leave of the Judge.

Conduct of sale of trust property (O.85, r.6)

6. - Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

Ordinary application under Section 45 of the Trusts Law (Revised) (O.85, r.7)

7. - (1) Unless made by written submission under rule 8, an application by an executor, administrator or trustee under Section 45 of the Trusts Law (Revised) for the opinion, advice or direction of the Court upon any question respecting the management or administration of the estate or trust fund shall be made in accordance with this rule.

(2) An application under this rule shall be made by originating summons in Form No. 3 of Appendix I or an ex parte originating summons in Form No. 4 of Appendix I.

(3) Every application under this rule shall be supported by an affidavit which shall -

- (a) have exhibited to it -
 - (i) the will and order of probate;
 - (ii) the letters of administration;
 - (iii) the deed of settlement; or
 - (iv) the declaration of trust,

as the case may be;
- (b) contain full particulars of the beneficiaries or classes of beneficiaries and their respective interests;
- (c) define the question in respect of which the Court's opinion, advice or direction is sought; and
- (d) give a full and frank disclosure of all facts material to the application.

- (a) give its written opinion, advice or direction; or
- (b) give directions for the application to proceed in accordance with rule 2 or rule 7.

(8) An application may not be made under this rule by an executor, administrator or trustee acting in person.

(9) Order 28 shall not apply to a written application under this rule unless the Court gives directions for the application to proceed in accordance with rule 2 or rule 7.

(10) Order 42, rule 5, shall not apply to a written opinion, advice or direction given on an application under this rule, which shall be drawn up by the Judge and sent by the Clerk of the Court to the applicant's attorney.

Written application under Section 45 of the Trusts Law (Revised) (O.85, r.8)

8. - (1) An application by an executor, administrator or trustee under Section 45 of the Trusts Law (Revised) for the opinion, advice or direction of the Court upon any question respecting the management or administration of the estate or trust fund may be made by written submission without any oral hearing.

(2) An application under this rule shall be made by ex parte originating application in Form No. 57 of Appendix I.

(3) An application under this rule shall be supported by a written submission signed by the applicant's attorney which shall -

- (a) explain why the application is not made under rule 2 and served in accordance with rule 3;
- (b) define the question in respect of which the Court's opinion, advice or direction is sought;
- (c) identify and discuss all matters of law which are material to the application; and
- (d) give a full and frank disclosure of all facts material to the application.

(4) An application under this rule may be supported by a statement of agreed facts signed by the executor, administrator or trustee, as the case may be, and by all the adult beneficiaries of the estate or trust.

(5) Unless supported by a statement of agreed facts signed in accordance with paragraph (4), an application under this rule shall be supported by an affidavit which shall -

- (a) contain full particulars of the beneficiaries or classes of beneficiaries and their respective interests; and
- (b) verify the statement of material facts contained in the written submission.

(6) A statement of agreed facts or affidavit shall have exhibited to it a true copy of the will and grant of probate or the letters of administration or the deed of settlement or the declaration of trust, as the case may be.

(7) Upon an application under this rule the Court may -