

## RESEALING AND ACCOUNTS

### Resealing of probate or administration

#### 4.1 An application to reseat a foreign probate or administration must:

[4.1.1] By whom application made Regulation 46(1) provides that the application may be granted to “any person being the personal representative whether original or by representation or by any person duly authorized by power of attorney in that behalf, under the hand and seal of such personal representative”. See also *Lewis v Balshaw* (1935) 54 CLR 188.

(a) be in Form 15; and

(b) have with it the original probate or administration, and a copy; and

[4.1.2] Difficulties As discussed in [4.1.3], this rule relates only to the Commonwealth. Some Commonwealth legal systems are, however, based on civil law (eg Malta, Mauritius and Quebec). In civil law systems, testate succession occurs by the heir or legatee being made by law the direct successor, thus precluding the need for a grant. There is accordingly no formal authority which the heir can present to the Supreme Court of Vanuatu for resealing.

(c) have with it a sworn statement in Form 16.

[4.1.3] Application This rule relates only to “foreign probate or administration” which is a phrase defined in r.1.5. See further [1.5.3] and reg.46(1), *Queen’s Regulation*.

[4.1.4] Effect of foreign grant on local property Grants of probate or administration in other countries do not entitle the legal personal representative to administer property locally: *Blackwood v R* (1882) 8 App Cas 82 at 92; *Lewis v Balshaw* (1935) 54 CLR 188. Accordingly, this procedure allows a probate or administration obtained in a Commonwealth country or territory to be re-sealed in Vanuatu, thus avoiding the inconvenience of a fresh application. The re-sealed grant has the same effect as a local grant: reg.46(2), *Queen’s Regulation*.

[4.1.5] Other countries Where personal representatives from other countries cannot take advantage of this rule, they may seek to proceed under the exceptions to the rule in *Blackwood v R* (1882) 8 App Cas 82, of which there appear to be two: (1) A person who has a grant of representation or otherwise has authority to represent a deceased person under the law of a foreign country where the deceased died domiciled may apply to the court for an order for the transfer to him of the net balance of assets under the administration but is not entitled as of right to such an order. *Re Achilopoulos* [1928] Ch 433; *In the Estate of Weiss* [1962] P 136; cf *Re Lorillard* [1922] 2 Ch 638; *Re Manifold* [1962] Ch 1; and (2) A foreign personal representative has a good title to movable property of the deceased to which good title has been acquired in a foreign country under the *lex situs* and which he has reduced into possession: See Dicey & Morris, *The Conflict of Laws* (9th ed. 1973) at 579-82.

[4.1.6] Discretion Regulation 46(2), *Queen’s Regulation* confers a discretionary power which will usually follow the interest. For exceptions see *In Will of Lambe* [1972] 2 NSWLR 273 (invalid will); *Bath v British and Malayan Trustees Ltd* [1969] 2 NSWLR 114 (grant would operate as an indirect method of enforcing a foreign revenue claim).

### Accounts

#### 4.2 (1) The Court may order that a personal representative file accounts.

#### (2) The Court may make the order:

(a) on application by a beneficiary, a creditor or any other person with an interest in the estate, or on its own initiative; and

(b) when it grants probate or administration, or at any other time.

### **Form of accounts**

#### **4.3 (1) Accounts filed must list:**

- (a) the property of the deceased; and**
  - (b) the debts; and**
  - (c) the funeral expenses; and**
  - (d) the income of the estate; and**
  - (e) if property has been sold, the proceeds of the sale; and**
  - (f) any other amounts received by the personal representative; and**
  - (g) any amounts paid by the personal representative:**
    - (i) in paying debts; and**
    - (ii) in bequests; and**
    - (iii) otherwise in administering the estate.**
- (2) The accounts must be signed by the personal representative.**
- (3) A person with an interest in the estate may inspect the accounts and obtain copies.**