

## Briefing Note

International Probate

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### Background

Increasingly, we live in a world where people move from country to country throughout their lives. It is no longer uncommon for a person's estate to contain property and assets in several jurisdictions and, in the event of death, this can lead to complications if appropriate advice is not sought in advance.

For those who die domiciled outside the UK (that is those with a permanent home in a foreign country at the time of death) it is increasingly common for Scottish asset/service providers to insist that any grant of probate issued abroad, either in a Commonwealth country or another jurisdiction, be resealed, reissued or confirmed by the Scottish Courts.

### When is such Action Necessary?

If the deceased held a bank account, stocks and shares portfolio, holiday home or any other property with a substantial value in Scotland, it is likely that the bank, stockbroker or other provider will require a UK-granted probate or confirmation before they will release the funds to the executors of the estate.

International estate administration is not simple. Whether the Scottish-based estate is worth tens of thousands of pounds or tens of millions of pounds, getting the right advice at an early stage is essential if the procedure is to be successful.

### How does it Work?

The procedure differs depending on whether the deceased died with or without a Will.

If the deceased left a Will, which is valid according to the laws of his home country, it may be possible to rely on that Will for the purposes of gaining Scottish Confirmation to the Scottish estate.

If the deceased died intestate (without a Will) it will be necessary either to rely on the Letters of Administration or the equivalent granted in his or her home jurisdiction. Alternatively, it may be necessary to gain an affidavit from a lawyer in that jurisdiction as to who is entitled to be appointed as an Executor of the deceased's estate in that country.

All of these procedures require an application to the Commissary Office, a department of the Sheriff Court in Edinburgh. The court in Edinburgh is the only court able to deal with applications relating to the estate of a non-UK domiciled deceased.

### Do You Need to be Aware of any Tax Issues for the Estate?

We know that the issue of residence and domicile can be difficult and complicated, especially for an adviser who is not used to the Scottish legal system and the UK tax system. We are here to facilitate that process in its entirety and are able to submit the relevant forms and returns to HM Revenue & Customs, the UK tax authority, and are happy to advise on the information that is likely to be required in order for the non-UK domiciled deceased's application to be accepted.

The UK's form of estate duty, Inheritance Tax, may be an issue for an estate with substantial UK assets with a value in excess of the nil-rate band which is currently set at £325,000. Incorrect advice may result in tax being charged at 40%. The executors may need advice because of the limitation placed on spousal exemption from Inheritance Tax for foreign-domiciled spouses. Turcan Connell is able to provide expert advice on all areas of UK inheritance tax issues for those who die non-resident and non-domiciled in the UK. We are also able to provide advice on Income Tax, Capital Gains Tax, Stamp Duty and all other UK taxes if required as well as advice in relation to Scottish Trusts from which the deceased benefitted.

### What can Turcan Connell do to help?

Turcan Connell is able to work with the executors directly or with existing advisers in the deceased's home country in order to gather the information that is required by the Scottish courts to enable the executors to apply for a Grant of Confirmation for the Scottish assets in the estate. In an intestate situation, we are able to assist with the application for the appointment of an Executor-Dative as well as assisting with the resealing / reconfirming of the Letters of Administration.

We will be involved as much or as little as is required and we can advise on:

- The process and make the application on behalf of the executors
- UK laws of domicile where the matter is unclear or in doubt
- Death duties and conflict of laws matters

Turcan Connell is happy to comment on the effectiveness of foreign testamentary writings in Scotland as well as providing advice in relation to the Scottish laws of intestacy. We have a long history of successful applications to the Scottish courts for grants of Confirmation and we are consistently ranked above all other firms in Scotland for our expertise when it comes to matters of succession, estate planning and general private client matters.

The lawyers at Turcan Connell are renowned for their technical ability when dealing with both high net worth and more modest estates.

Much of the procedure in this area relies on international agreements and a mutual understanding of the law where the deceased died and where the deceased held assets. Turcan Connell will work with foreign advisers in order to ensure that the executors receive the best possible advice in all areas of the estate administration.

### What should you do next?

For more information on international probate, estate administration and the other services Turcan Connell provide, please contact Peter Littlefield at [peter.littlefield@turcanconnell.com](mailto:peter.littlefield@turcanconnell.com) or Tom Duguid at [tom.duguid@turcanconnell.com](mailto:tom.duguid@turcanconnell.com).

This note is intended as a brief summary of international probate as at June 2014. Taxation is subject to change and depends on the individual circumstances of each client. Legislation is also subject to change. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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