

UPDATE

# Trustee 'held before court' pending replacement

Update prepared by Jessica Vickers, Nicholas Fox and Jaclyn Pascoe (Cayman Islands)

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The Grand Court of the Cayman Islands has adopted a bespoke solution of having a trustee of a Cayman Islands trust *'held before the court'* in circumstances where a trustee found itself in the unattractive position of wanting to resign but with no replacement ready to take the helm. The decision demonstrates the flexible supervisory jurisdiction of the Grand Court and its willingness to assist trustees to charter a difficult or unique course.

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The trustee of a Cayman Islands trust (the **Trustee** and the **Trust**) found itself in the unattractive position of being a sole trustee wanting to resign from office, but with no replacement ready to step into its shoes. The Trustee therefore applied to the Grand Court for directions to manage the Trust pending its discharge and replacement.

The Trustee sought to resign due to a breakdown in relations with the Trust's primary beneficiary (the **Beneficiary**) in circumstances where it was unable to identify a suitable replacement trustee. The Grand Court described the Beneficiary as having *'huffed and puffed'* and *'grumbled'* but never having made any coherent criticisms of the conduct of the Trustee.<sup>1</sup> The Beneficiary did not appear at the hearing and had failed to substantially engage in earlier proceedings. The Grand Court had previously extended a final opportunity for the Beneficiary to file evidence to contest the Trustee's position, which the Beneficiary declined to do.

## Trustee 'held before the Court'

The Trustee's application was made pursuant to section 48 of the Trusts Act, which enables a Trustee to apply to Court for direction on any question respecting the administration of a trust. A trustee who is in genuine doubt about the propriety of any contemplated course of action in the exercise of their fiduciary duties and discretions is, if so advised, entitled to protect their position by seeking the guidance of the Grand Court.

In the absence of any relevant Cayman Islands authority, the Grand Court considered guidance from the Ontario Court of Appeal in *Gonder v Gonder Estate* 2010 ONCA 127, where a trustee was also entitled to be discharged but no replacement trustee could be found. The Ontario Court of Appeal held that the removal of a sole trustee without the appointment of a replacement was an extreme remedy that would be inappropriate in most cases and only available when no other option is realistically available.

In this case, the Trustee put forward a bespoke solution designed to navigate between the extremes of removing the Trustee without a replacement and what would in effect be a full administration order, where the Court would be administering the Trust. The mechanism proposed by the Trustee (and accepted by the Court), had the Trustee remain in office for the time being, until a replacement could be found. The Court directed that the Trustee:

- (a) be *'held before the Court'* without being discharged; and

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<sup>1</sup> In the matter of the O Trust [2025] CIGC FSD 56, at [6].

(b) file its accounts with the Court annually and serve the Beneficiary.

### Approval of Trust Accounts

A trustee has a statutory right to be indemnified out of trust assets for properly incurred expenses.<sup>2</sup>

While the Trustee was entitled to an indemnity, the Grand Court was asked to approve the Trustee's accounts in light of the Beneficiary having made unparticularised complaints about the administration of the Trust in the past.

The Grand Court held that the rules on a detailed assessment of costs, such as in a liquidator's remuneration application, were not applicable in these circumstances and adopted an approach analogous to approving an executor's account, with reference to *Mussell v Patience* [2018] EWHC 430 (Ch). The Trustee would have to demonstrate that its fees and expenses:

- (a) had been incurred; and
- (b) in the due execution of the administration of the Trust.

This test having been met, the Grand Court passed and approved the accounts for the period 1 January 2019 to 25 March 2025. Looking forward, the second direction at (b) above was framed in terms which excluded the need for any formal application to approve the Trust accounts. It would be for the Grand Court to review the relevant accounts and determine whether formal approval was required until a replacement trustee could be found.

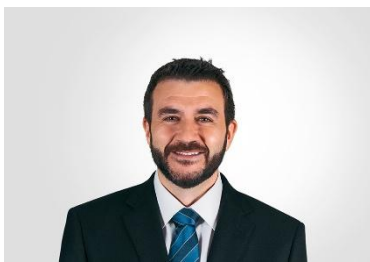
### Tax considerations

The Grand Court mentioned that the Trustee had refused to distribute to the Beneficiary funds which should properly be applied to meet her outstanding onshore tax obligations and which the Trustee wished to pay directly to the relevant authorities. The Grand Court commented that Caymanian trustees routinely ensure that their trusts are not used as a vehicle for tax evasion and that this represented the 'red lines' Caymanian trustees may have to draw.

### Comment

This case demonstrates the flexible supervisory jurisdiction of the Grand Court and its willingness to assist Trustees to charter a difficult or unique course. In this case, the option of leaving no Trustee in office was seen to be an inappropriate and extreme remedy. The Court was willing to come up with a bespoke and practical mechanism to enable the Trust to be administered in the intervening period until a replacement trustee is appointed.

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<sup>2</sup> Section 47(2) of the Trusts Act provides 'A trustee may reimburse themselves or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers'.