

Replacement of a company's director and sole member before the issuing of a grant



When a company's shareholder dies, the company will ordinarily have to wait for the grant of probate to be extracted before the deceased's executor can be registered as the holder of the shares.

However, in the recent case of *Elliott v Cimarron UK* [2017] EWHC 3872 (Ch), the High Court made an order under s125 of the Companies Act 2006 to replace the deceased member with the executor prior to the grant being issued.

In this matter, the deceased was the sole member and director of a company and, following her death, there was a real risk that, without shareholders or a director, the company's bank would freeze the company's account, the company would not be able to trade and it would not be able to pay its employees or its tax liabilities.

It was expected that it would take around 3 months for the grant to be issued, however the court took the view that even a period of a month or two could put the company in unacceptable jeopardy. When taking into account the fact that the employees had no objection to the application, the court considered it appropriate to order rectification of the register. As there was no officer of the company who could make these changes, the court used its inherent power under s.125 of the 2006 Act to authorise the executor to make the entries himself to give effect to the rectification.



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