



MACKENZIE
Investments

Non-resident executors and the requirement to post bond

As advisors increasingly embrace the family office and holistic wealth planning approach, conversations with their clients frequently turn to a basic but significant aspect of estate planning — the office of the executor or personal representative (the estate trustee in Ontario and liquidator in Quebec).

The immediate question early in the estate planning process revolves around the office and the naming of the executor.

In its simplest form, the executor is the individual or entity appointed to carry out the terms of the will, which involves the administration of the estate.

In contemplating the choice of an executor, several things must be considered as part of the process, and these would include:

- The residency of the executor
- Whether a bond or security is required to be posted for an out-of-jurisdiction (province/country) executor.

Estate bonds

An estate bond or security (also known as a probate bond) is essentially an insurance policy that the executor is compelled by law to take out, ensuring that the executor faithfully carries out their fiduciary responsibilities. At the same time, it protects the interests of the beneficiaries of the estate in the event of mismanagement. In many instances, the executor (also known as the principal) is expected to pay for the cost of the bond, and once their appointment is approved, they can seek reimbursement from the estate.

Common-law requirements

Common-law provinces in Canada generally require the posting of an estate bond by the administrator of an intestate estate (where the deceased died without a will), and in many cases, this is irrespective of the administrator's place of residence. In addition to this, **most** common-law provinces in Canada require the posting of an estate bond if the executor named in the deceased person's will resides outside of the province or country.

Non-resident executors

Apart from the logistical issues that attend the naming of a non-resident executor, a particularly vexing issue is the time, effort and cost of obtaining the required estate bond. This cost is required to be at least the sworn value of the estate (or in some provinces the value of the deceased's estate located in the province); or even as high as double the value of the estate.



Tim Brisibe, TEP, LLM

Director,
Tax and Estate Planning, Distribution
Mackenzie Investments

Clients may need to revise their wills if they have already named out of province/country executors, but for some, this may not be an option. This could be because they have lost testamentary capacity, and if that is the case, they would also lose the ability to revise their wills. But all hope is not lost, as the estate administration and surrogate acts of these provinces also provide, under certain conditions, for the exemption from posting an estate bond, or the reduction or complete dispensation from posting bond.

Exemption from posting bond

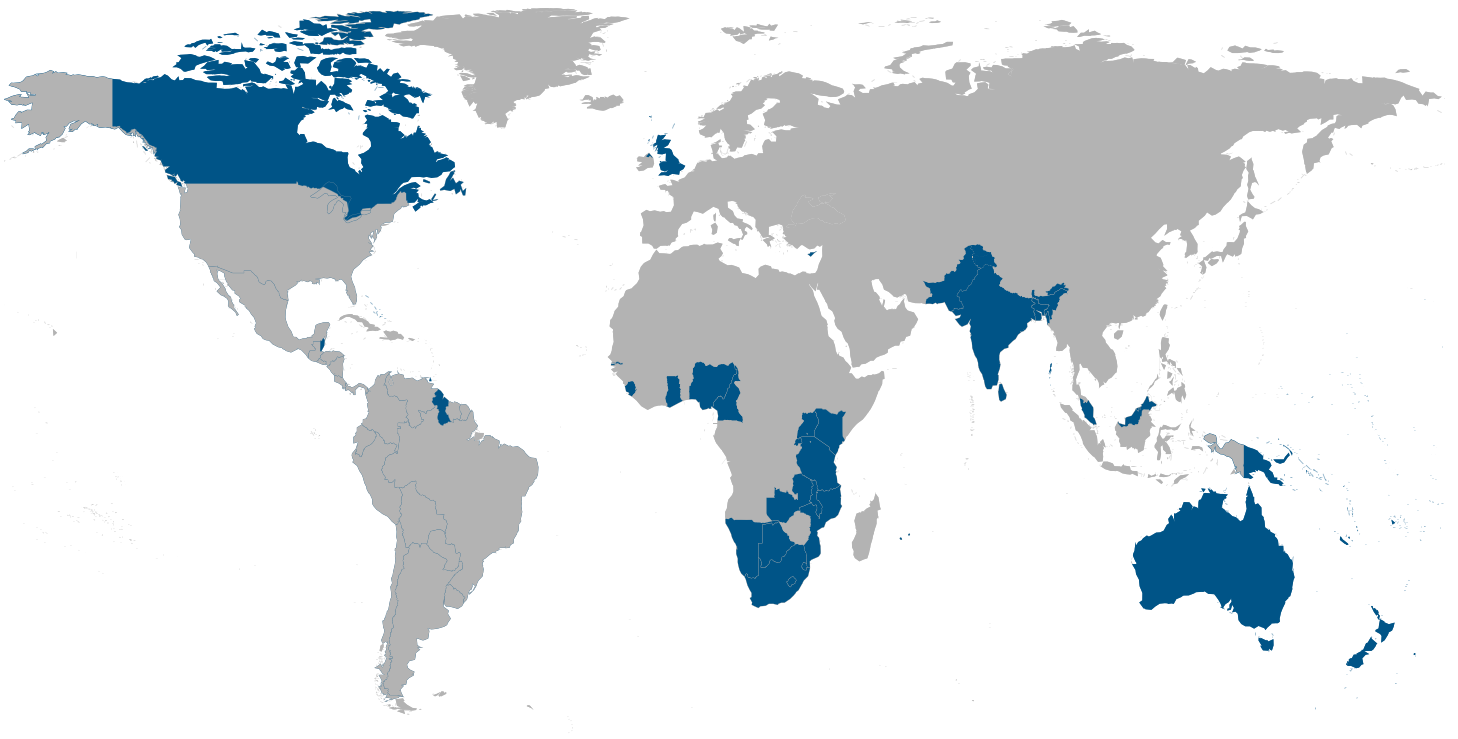
Depending on the province, non-resident executors are provided a variety of exemptions from posting bond. Examples are:

- If there are two or more executors and one resides in the province
- If the public guardian and trustee, or other provincial government agency is named executor
- If a trust company is named sole or co-executor

For Ontario, if the non-resident executor "*resides elsewhere in the Commonwealth*" (for example, a non-resident executor residing in Australia), they would be exempt from posting bond, but a non-resident executor residing in the United States (for example) would not. The Commonwealth is made of countries most of which were once ruled by Britain. Today, the list stands at 54.

The Commonwealth

Click [here](#) to learn more about the Commonwealth countries.



Dispensation or reduction of bond

There are also various criteria that allow the non-resident executor to apply for a reduction in the value of the bond or a complete dispensation from posting bond. Examples are:

- If the estate does not have debts
- If there are debts but creditors have been paid
- Small estates, if the value of the estate is below a certain threshold
- If the administrator is also the sole beneficiary of the estate
- If all beneficiaries are adults and provide written consent to waive bond
- For minors and/or incapacitated beneficiaries, the consent of the public guardian and trustee's consent is required

Cancellation of bond

The bond is typically cancelled when final accounts are passed, the residue of the estate paid to the beneficiaries and, in some cases, written release by the beneficiaries is secured by the executor.

Summary

Each province/territory in Canada has different rules. Advisors should familiarize themselves with the rules in their particular jurisdiction.

If you have any questions regarding non-resident executors and the need to post bond, please contact your Mackenzie sales team.