

Article

Resealing of Foreign Grants of Probate in the British Virgin Islands

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Where a person has died and left assets in the British Virgin Islands (BVI), it is not possible to deal with those assets without first obtaining a grant of representation from the relevant local Court. The rule applies to all forms of property (including shares and intangible property) in respect of where the deceased died, where they resided during their lifetime, and whether or not they left a will.

This means that where an individual held shares in a company incorporated in the BVI, the grant of representation will be required in order to deal with those company shares. Generally, until such a grant is obtained, the shares will effectively be frozen as they cannot be transferred, their voting powers cannot be exercised, and dividends paid on the shares cannot be distributed.

A grant of representation can take two forms, being either:

- (i) a BVI grant of probate/letters of administration; or
- (ii) the resealing of a foreign grant of representation so that such foreign grant once sealed has the same legal effect if it were a BVI grant of probate.

This article focuses on the resealing of foreign grants of representation in the BVI given the recently enacted Probate (Resealing) Act 2021 which came into force on 9 July 2021 (the 2021 Act).

Effect of resealing

The effect of resealing a foreign grant in the BVI is such that it “shall have the like force and effect, and have the same operation in the [BVI] as if granted by [the BVI Court]”.¹

The 2021 Act repeals and replaces the Probate (Resealing) Act (Cap. 6C) 1937 (the 1937 Act). The 1937 Act only permitted the resealing of grants issued by any British court having jurisdiction out of “[Her] Majesty’s dominions” which was limited to countries such as the United Kingdom, Canada, Australia, New Zealand and British Overseas Territories. The BVI has taken a welcome step to enact new legislation whereby the 2021 Act expands the list of relevant jurisdictions to 67 jurisdictions whose grants of representations may be resealed in the BVI. Significantly, Hong Kong and the USA are now included, in addition to all Commonwealth countries.

Eligibility

If the deceased shareholder of a BVI company left a will covering their BVI shares, or if the shareholder died without a will (intestate) and a grant of probate or letters of administration has been made in one of the 67 jurisdictions listed under the 2021 Act, the person who has obtained the foreign grant may apply to the BVI Probate Registry to have the foreign grant resealed in the BVI without the

¹ Section 3(2) of the Probates (Resealing) Act, 2021

need for a fresh application for probate. This is a more straightforward and expedited procedure compared to the process of obtaining a new BVI grant of probate.

Application Process

The resealing procedure is a simplified process which is set out in the BVI's Supreme Court (Non-Contentious Probate and Administration of Estates) Rules, 2017 which provide, inter alia, that the applicant must provide the following in support of the resealing application:

- original death certificate;
- original or official certified copy of the foreign grant;
- an affidavit of foreign law provided by a lawyer practising in the jurisdiction where the deceased was domiciled at death;
- certified copy certificates of marriage or birth certificates may be required;
- if any of the above documents are not in English, certified translations must also be provided by a suitably qualified translator;
- BVI newspaper advertisement; and
- BVI Court fees.

Conclusion

The recent enactment of the 2021 Act is welcome news for individuals who can now take advantage of a streamlined and quicker procedure in the BVI to obtain formal recognition of a foreign grant for a deceased shareholder of a BVI company who died domiciled in the USA and Commonwealth countries, significantly Hong Kong.

For further information, please contact your usual Conyers contact or the contact listed below.

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