

# ASIAN LEGAL BUSINESS

THOMSON REUTERS®

OCT 2022 / ASIA EDITION

MCI (P) 005/02/2022  
ISSN 0219 - 6875  
KDN PPS 1867/10/2015(025605)



## ASIA 40 UNDER 40 2022

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## Estate in the BVI and other Offshore Jurisdictions: Your Family Business

Many high-net-worth individuals have used companies incorporated in offshore financial centres, such as the British Virgin Islands (“BVI”) to hold their assets and business. When they plan their estate or distribute the estate of their deceased family members, they often adopt a family-oriented approach: the passing of the family assets and business to the next generation.

There are many ways to achieve this strategically:

- Amending the articles of the asset-holding companies;
- Obtaining a grant of representation in the relevant offshore jurisdiction; and
- Contesting a will to prevent any assets or business falling in the hands of a non-family member.

These options are available at different stages of a person’s estate arrangement.

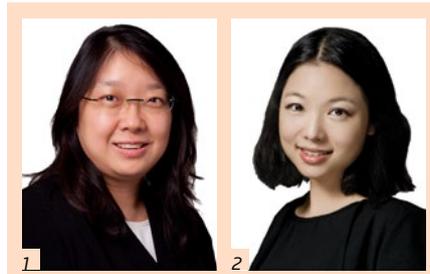
### A. Planning ahead: amending the articles of the asset-holding companies

Having the appropriate provisions in the articles of the asset-holding companies can simplify the passing of the asset-holding company to the next generation upon the untimely demise of the family head, doing away with the need to apply to the BVI court for a grant of representation.

For example, the articles can provide for the issuance of, say, three classes of shares: Class A, Class B and ordinary shares. Class A shares are issued to the parents, Class B to the children and ordinary shares to other investors. The articles can further provide that upon the death of one or more parents, their shares as well as their management powers will automatically transmit to the children.

### B. Making a Will

When the estate of the family consists of more than just shares in companies or where shares are held in a BVI company with other shareholders, a Will could help you in ensuring that all of the properties within the estate will be appropriately managed and distributed pursuant to your will.



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A Will is a written instrument validly and legally executed pursuant to which a person may make dispositions of his or her estate to take effect after death. A Will determines how your estate will be distributed and who will assume responsibility for your spouse, children and other persons or entities whom you wish to benefit. A suitably drafted and validly executed Will can provide you with the peace of mind of knowing that your family business, members and other causes you wish to support will be left with your nominated person whom you trust to manage your estate.

Where assets involve shares in a BVI company, it is important to note that probate will need to be sought in the BVI. It may therefore simplify and expedite estate administration to have a specific Will to cover solely the BVI assets in an estate.

### C. Distributing the estate: obtaining a Grant in offshore jurisdictions

When a family member passes away, his or her executors or administrators often face the need to apply for a Grant of representation in order to manage and distribute the estate. As mentioned earlier, where the estate includes shares in a BVI company, a Grant will need to be sought in the BVI.

There are three main types of applications for a Grant of representation:

1. An application for a grant of probate which is made where the deceased has left a will and appointed an executor;
2. An application for letters of administration with will annexed which is made where the deceased has left a will but failed to appoint an executor; and
3. An application for letters of administration which is made where the deceased has died intestate (i.e. without leaving a will).

### D. Contesting a will

Family members who are disinherited by persons outside of the family are conceivably disappointed. They may be able to contest a will with a view to safeguarding the integrity of the family business. Below are some of the common grounds for launching such a challenge:

- Want of due execution
- Lack of testamentary capacity
- Undue influence
- Fraud
- Forgery

The proceedings are often complicated, involving the application of a specific set of rules, fact-sensitive arguments, review of a large amount of historic documents and the use of expert evidence.

### E. Duties of an administrator to an estate

In determining any dispute as to representation of an estate, it is well-established that the fundamental duty of personal representatives is to administer the estate and to distribute it in accordance with the will or under the rules of intestacy. In carrying out these duties, an administrator must be cognisant that he or she is acting in a fiduciary capacity.

### Conclusion

It would be worthwhile considering the need for the continuation for the family business and legacy well in advance. It is imperative to plan ahead and ensure that your family business could be well protected to ensure family business’ continuation and harmony.