

Obtaining a grant of representation in the BVI

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A BVI grant of probate, or letters of administration, is required to validly deal with BVI assets held by a deceased person. This is most commonly required for shares in a BVI company (or other entity). It is important to note that the probate process cannot be circumvented by succession provisions in the articles of a BVI company.

The probate rules for the BVI are set out in the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules 2017. There is also separate legislation which specifically relates to the resealing of foreign probate from certain countries, a slightly faster and more cost-effective process than making an application for a BVI grant.

In this article, we outline the process for obtaining a grant of representation in the BVI. However, we do recommend seeking specialist advice to ensure the process runs smoothly.

| Types of grant

There are three types of grant:

1. grant of probate - where the deceased left a valid will
2. grant of letters of administration (with or without will annexed) - where the deceased left a will but it did not appoint an executor or where no executor is willing or able to act
3. reseal of foreign grant - where a foreign grant of probate is being resealed in the BVI

| Who can apply?

Where the deceased left a will, the applicant would usually be the executor named in the will, or the residuary devisee if there is no executor able or willing to apply.

Where the deceased died intestate, the rights of family members to apply for letters of administration are determined by a strict order of priority.

For the estates of persons dying domiciled outside of the BVI, either with or without a will, there are slightly different rules that determine who can apply for a grant, depending on the circumstances, which are quite particular and include:

- whether the will is in the English language and admissible to proof
- whether the will describes the duties of a named person in terms sufficient to constitute him or her as an executor
- whether the BVI estate comprises immovable property

In other cases, the court may order that a grant be issued to other persons. Many of the uncertainties arising from the application of these rules for non-BVI domiciled individuals can be anticipated and avoided when preparing a will that governs BVI assets.

| Application requirements

Applications for a grant must be filed in paper form and on the electronic filing portal of the BVI Supreme Court. A number of documents must be enclosed with all applications, depending on the circumstances, including:

- an oath in the correct form and sworn by the applicant
- a certificate or affidavit of search confirming that no other grant has been issued, no other applications have been made, and no caveats have been filed
- a certified copy of the death certificate (or an affidavit together with the burial certificate or other relevant document)
- where applicable, a duly marked original or official certified copy of the will and an affidavit of due execution of the will
- a declaration and account of the estate of the deceased
- a draft order and a draft grant (with copies)
- the application fee

In addition, for the estates of persons dying domiciled outside of the BVI, an affidavit of foreign law must be provided from a suitably qualified attorney in the country concerned. If a will is being proved, there should be an accompanying affidavit of facts setting out the place of execution of the will, and details of the domicile and habitual residence of the deceased must also be provided. If a foreign grant is being resealed, it must be translated into English. All affidavits must be legalised or apostilled.

Depending on the particular circumstances in each case, the co-ordination, translation, and

authentication of supporting documents can be protracted and expensive - particularly for estates of non-BVI domiciled individuals, as the BVI Registry will not accept or consider incomplete applications. However, as previously noted, many of the probate requirements can be anticipated and planned for at the time of putting a will in place.

Fees

The total fee for BVI probate depends on each document filed as part of the application.

The fee for the declaration and account of estate depends on the value of the BVI estate and can range from US\$200 to US\$5,000.

Advertisement

At the time of making the application for a grant of probate or letters of administration, the applicant is required to advertise the application for two consecutive weeks in a local BVI newspaper. The advertisement must contain some limited details about the estate.

Timing

There is no deadline for making an application. However, an application that is made more than three years after the death of the deceased will need to include an affidavit which explains the reason for the delay.

It usually takes three to six months to receive the grant after submitting an application, assuming that there are no issues or complications.

Planning

The BVI probate rules are specific and technical. So, to expedite the whole probate process, it is important to anticipate issues and address these properly as part of the application. It is also advisable to consider what succession planning options might be undertaken for BVI assets during lifetime, as this can simplify or avoid the BVI probate process altogether.

If you have any questions about obtaining a grant of representation in the BVI, please contact one of our team who will be happy to assist.

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