

# Guide for Hong Kong Clients on Obtaining BVI Grants of Probate

BVI companies are widely used in Hong Kong for various purposes, so it is important for clients to understand the nuances and intricacies of obtaining grants of probate and administration in the BVI. A recent legislative change now means that grants of probate and administration obtained in Hong Kong can be resealed in the BVI. As a result, if there is an existing Hong Kong grant of probate or letters of administration, one no longer needs to apply for a fresh grant in the BVI if one intends to take control over a deceased's shareholding in a BVI company for distribution amongst beneficiaries.

## Resealing a Hong Kong grant in the BVI

Following the coming into force of the Probates (Resealing) Act 2021, grants of probate and letters of administration issued in Hong Kong can be resealed in the BVI.

Resealing foreign grants gives them the same effect in the BVI as if they had been granted by the BVI Court itself, and is a much more streamlined process than having to obtain fresh grants in the BVI.

The application must be made by the personal representative of the deceased or his or her attorney, but the process can be done entirely remotely.

To apply for a reseat, the following documents are required:

- Original grant from Hong Kong, or where unavailable, a court certified copy
- Original will of the deceased, or where the original will is being used in another legal proceeding and cannot be removed, a court certified copy of the will

The application documentation includes:

- Application on oath to reseat grant
- Declaration and account of the estate of the deceased, limited to the property within the BVI
- Affidavit detailing the place of execution of the will
- Affidavit of delay
- Affidavit of search, which confirms that no other application for probate of the estate has or is being made

- Advertisement published in a BVI newspaper at least seven days prior to the filing of the application
- Draft order and draft resealed grant

If the application is being made more than three years after the death of the deceased, the applicant will be required to provide the reason for delay in an affidavit. In our experience, an acceptable reason for delay includes the intention to obtain probate in Hong Kong first before applying for probate in other jurisdictions.

Documents to be executed by the applicant must be signed in triplicate, notarised, and apostilled by the Hong Kong Court.

## Applying for a fresh grant in the BVI when there is no Hong Kong grant

Alternatively, if no Hong Kong grant has been obtained and a deceased left a valid will disposing of BVI assets, and dies domiciled in Hong Kong the appointed executors will need to apply for a grant of probate. The executors will need to provide the original death certificate, or a certified copy issued by the Births and Deaths Registry in Hong Kong, in addition to those documents set out above for a reseat application.

Once Harneys receives the documents above, we will draft the following for the applicants:

- Application for grant
- Declaration and account of the estate of the deceased, limited to the property within the BVI
- Affidavit of search, which confirms that no other application for probate of the estate has or is being made

- Affidavit of due execution
- Affidavit of delay (if more than three years has passed since the death of the deceased)
- Affidavit of Hong Kong Law
- Draft order and draft grant of probate
- Advertisement to be placed in two consecutive issues of a BVI newspaper

Any valid will would have been executed before witnesses, and affidavits will have to be sworn by those witnesses in support of the application for grant of probate.

All documents executed by clients in Hong Kong to support the application for grant of probate are required to be signed in triplicate, notarised, and apostilled by the Hong Kong Court, before they are accepted by the BVI probate registry.

Any documents not in English will need a translation and affidavit of translation.

Clients often wonder why the bar for documentation is so stringent compared to Hong Kong. The reason is that in the

eyes of the BVI probate registry, Hong Kong is a foreign jurisdiction, and therefore it is reluctant to rely on documents originating from Hong Kong unless it is issued by the relevant governmental body or the courts of Hong Kong.

Another common question is why an affidavit on Hong Kong law is required, when the application for grant of probate is being made in the BVI. The reason is that the BVI court needs to ensure the will is valid pursuant to the laws of Hong Kong (even though it deals with BVI assets). Because pursuant to BVI law, the distribution of an estate must be done in accordance with laws of the domicile of the deceased, the foreign law affidavit provides assurance to the BVI probate registry that the distributions contemplated by the will are aligned with Hong Kong law. The affidavit should deal with validity of the will, entitlement of applicant to apply, and domicile of deceased; it does not need to deal with succession issues.

The time it takes to obtain grant of probate from the BVI probate registry is usually between three to five months from the date on which documents are filed; however, if there are incomplete documents or if the BVI probate registry requests for further information to be provided, the process may be longer.



For more information and key contacts please visit [harneys.com](https://www.harneys.com)

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