

Guide to the BVI Probate Rules for BVI Company Owners

Many companies registered in the British Virgin Islands have individual shareholders. Under the BVI Business Companies Act, shares in BVI companies are deemed to be situated in the BVI. Therefore, regardless of where the owner of a BVI company dies, his or her interest in a BVI company cannot be validly transmitted to his or her intended heirs until the appropriate grant has been obtained from the BVI Court.

Prior to the required grant being obtained, the shares are effectively frozen, as they cannot be voted on, transferred or sold, nor can any dividends payable on those shares be distributed.

In November 2017, the BVI's original probate rules, which dated back to the 1980s, were revamped. The revisions to the Probate rules clarified, modernised and streamlined the probate process.

Further, in July 2021 the BVI significantly expanded the number of jurisdictions from which the BVI Courts would recognise foreign grants and allow them to be resealed in the BVI.

This briefing note summarises the process of obtaining a grant of probate or letters of administration in the BVI.

The grant

A **grant of probate** is obtained where the deceased left a will which contains a valid appointment of an executor. Where there is a will, the executor applies for the grant.

A **grant of letters of administration** is obtained where the deceased died intestate (ie where there is no will). Where there is no will, the administrator applies for the grant.

A **re-sealing of a foreign grant** is obtained where a grant has been obtained in a qualifying jurisdiction.

General procedure for applications for a grant

The required grant is obtained via a paper application to the Probate Court in the BVI. For the avoidance of doubt, it is not necessary for the executor/administrator to be physically present in the BVI to execute or submit the application.

The application consists of a number of documents and affidavits, and regardless of the nature of the grant sought, will include:

- An original or appropriately authenticated death certificate
- Copies of newspaper adverts published on two consecutive weeks in a BVI newspaper containing notice of the intention to submit the application with the Probate Court (undertaken by Harneys)
- The information in the advert includes the name, address and date of death of the deceased and name and address of the executor/administrator, but does not include any information regarding the nature or value of the BVI assets
- An *affidavit of search* confirming that a search of the Court records has been conducted to confirm that no other application has been submitted (undertaken by Harneys)
- An *oath in support of application for grant* sworn by the executor/administrator
- A *declaration and account of estate* sworn by the executor/administrator providing an estimated value of the deceased's shareholding in the BVI company

No tax/estate duty is payable in the BVI, but Court fees are payable based on the shareholding's value (please see further below).

- An *affidavit of foreign law* sworn by a lawyer practicing in the country in which the deceased died domiciled confirming either that (a) the will is valid under the laws of that country; or (b) the person appointed as administrator is entitled to be so appointed under the laws of that country together with supplementary documentary evidence as may be appropriate (ie a marriage certificate)
- An *affidavit of delay* if the application is being made more than three years after the deceased's death
- A draft court order and a draft grant

Where a **grant of probate** is being applied for, the following additional documents must be submitted:

- The original will (and any codicils to it), or if unavailable a copy certified by the court with which the original will has been deposited.
- An *affidavit of due execution* sworn by one of the witnesses to the will confirming the execution of the will by the testator. Where no witness is available to provide such confirmation, it will be necessary to provide confirmation by affidavit that the signature on the will is indeed that of the deceased.

Where a **grant of letters of administration** is being applied for, the following additional documents must be submitted:

- An original court issued or court certified copy of any deed or document equivalent to a grant of probate or letters of administration issued in the deceased's home country evidencing the administrator's appointment.

General procedure for a reseal of a foreign grant

Following the coming into force of the Probates (Resealing) Act 2021 in July 2021, the BVI Court can now reseal grants of probate and letters of administration from over sixty jurisdictions, including Hong Kong, Singapore, Canada, the United States, India and South Africa.

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 applicant will be the personal representative of the deceased, or his or her attorney.

The application documentation includes:

- Advertisement published in a BVI newspaper at least seven days prior to the filing of the application
- A *declaration and account of estate*
- An *affidavit of search*
- An *affidavit detailing the place*
- An *affidavit of delay* (if more than three years have passed since the deceased's death)
- Draft order and draft resealed grant

Authentication of affidavits

All affidavits must be sworn (or affirmed) in triplicate in the presence of a notary public or equivalent and apostilled.

Where an affidavit is sworn in the presence of a notary in a non-commonwealth country, the affidavit will require to be legalised.

Documents in a foreign language

Where documents which are not in English require to be submitted as part of the application (for example, the death certificate and the will), full translations of those documents must be submitted. Translations by official sworn translators bearing a seal are preferred. In other cases, a duly legalised *affidavit of translation* sworn by the translator will need to be submitted.

Court fees

Broadly, a filing fee of US\$100 is charged on each document submitted as part of the application. In addition, a fee based on the value of the assets in the BVI on the following scale is charged:

Below \$10,000	-	US\$200
US\$10,001 - US\$50,000	-	US\$500
US\$50,000 - US\$250,000	-	US\$750
US\$250,001 - US\$500,000	-	US\$1,000
US\$500,001 - US\$1,000,000	-	US\$1,200
US\$1,000,001 - US\$5,000,000	-	US\$2,000
Over US\$5,000,000	-	US\$5,000

Summary

The rules outlining the process for applying for a grant are technical, detailed and specific. Time delays will be incurred if an incorrect or incomplete application is submitted.

Our Private Wealth team in the BVI has years of experience advising on and obtaining grants of probate and letters of administration and so we can be relied upon to get it right. Harneys are unusual amongst the offshore firms in that we have lawyers on the ground in the BVI dealing with applications, meaning that we have developed a close working relationship with the BVI Court which better enables us to ensure a smooth application process.



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

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