COLLAS CRILL

Resealing foreign grants of probate in the BVI: New Act brings welcome clarity

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The Probates (Resealing) Act, 2021 (the **Act**) has been in force in the British Virgin Islands (the BVI) since 9 July 2021, repealing The Probates (Resealing) Act (Cap. 60), 1937 (**the 1937 Act**).

This note focuses on the changes brought about by the Act and who might benefit from it.

Grants of representation

If a person dies leaving property in the BVI (including shares in a BVI company), a BVI grant of representation is required in order to deal with those assets.

After the death of the shareholder, any BVI shares will be effectively frozen; voting rights will likely be suspended and the BVI company will be unable to distribute any dividends paid on the shares because no one will be authorised to give a good receipt. A BVI grant is required to transfer the deceased shareholder's shares to his or her heirs.

In the BVI, there are several types of grants of representation, including:

- **Grant of probate** – where the deceased died having made a valid will;
- **Grant of letters of administration** – required where a person dies without leaving a valid will to cover their BVI assets;
- **Grant of letters of administration (with will annexed)** – required where a person dies leaving a valid will to cover their BVI assets, but where the will fails to appoint executors, or the executor appointments fail for some reason;
- **Resealing of a foreign grant** – where a grant obtained in a foreign jurisdiction (eg England & Wales) is "resealed" to realise assets in another jurisdiction (eg the BVI), without the need for a fresh grant. Often the reseal application is simpler than a new grant application.

What does the Act do?

The Act is concerned with resealing a foreign grant of probate. This has long been possible in the BVI, but under the Act the process is clearer and simpler.

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The Act recognises 67 jurisdictions (as set out in its Schedule 1) from which grants of probate can be resealed in the BVI. This list now includes grants from all states of the USA (and Washington DC), and those from Hong Kong and India.

Once resealed, grants obtained in those jurisdictions "*shall have the same force and effect, and have the same operation in the [BVI], as if it were granted by the [BVI Court].*"

Prior to the introduction of the Act, there was some confusion around what foreign grants could be resealed in the BVI. The 1937 Act allowed foreign grants to be resealed in the BVI only where the grant was issued by courts of probate in "Her Majesty's dominions".

Her Majesty's dominions included countries such as Canada, Australia and New Zealand and were defined by the 1937 Act to be limited to:

- any British protectorate;
- any [British] protected state; or
- any territory in respect of which a mandate or trusteeship is being exercised by Her Majesty’s Government in the United Kingdom or the Government of any part of Her Majesty’s dominions.

In the absence of a clear list of jurisdictions, practitioners long wrestled with whether or not a particular jurisdiction was or was not a part of "Her Majesty's dominions" and this often added to the cost, delay and complexity of the BVI probate process.

Application process

The application process for resealing a foreign grant in the BVI is set out at in the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules 2017. The following are required:

- original or certified copies of the foreign grant;
- an official copy of the will to which the grant relates (if available);
- original death certificate;
- if the deceased died domiciled outside the BVI, an affidavit of an attorney in the jurisdiction in which the deceased was domiciled at death, covering certain required matters;
- evidence of advertisement in a BVI newspaper that an application for the resealing has been made; and
- payment of the BVI Registry fees.

Additional requirements may arise on a case-by-case basis. For example, if the application to reseal a grant is made more than three years after the death of the deceased, an affidavit explaining the delay may be required.

In summary

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The coming into force of the Act brings welcome clarity and simplification to the resealing of foreign grants in the BVI. This change will likely increase the number of foreign grants being resealed in the BVI (reducing the number of new BVI grants accordingly).

However, in many cases, it will still be appropriate for those owning shares in BVI companies to consider (i) transferring those shares into a BVI trust during their lifetime (avoiding the need for a BVI grant entirely, amongst other benefits); and (ii) whether there are compelling reasons to put in place a separate BVI will to deal with the BVI assets.

If you would like to discuss any of the points covered in this briefing, please do reach out to one of the contacts listed or your usual Collas Crill contact.

Please note this guide gives a very general overview of this topic. It is not legal advice and you may not rely on it.

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