COLLAS CRILL

Obtaining a grant of probate in the BVI

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When a person has passed away leaving assets situated in the British Virgin Islands (BVI), such assets will generally be inaccessible until a Grant of Probate or Grant of Letters of Administration (the "Grant") has been obtained from the BVI High Court Probate Registry (the "Probate Registry"). For BVI companies, pursuant to s.245 of the BVI Business Companies Act 2004 (BCA 2004"), shares are assets deemed to be located in the BVI. Usually this means that once a shareholder of a BVI Company has died, any shares held by that shareholder will be frozen and cannot be validly transferred to their heirs until a Grant is issued by the Probate Registry. The effect of the shares not being transferred means that any assets of the Company, whether they are real estate or an investment account, will not be accessible to the heirs for their use.

Types of Grants

The transfer of the deceased shareholder's shares to their heirs can only be effected when the High Court of the BVI issues;

1. Grant of Probate;
2. Letters of Administration; or
3. a foreign Grant of Probate or Letters of Administration has been resealed by the Probate Registry.

Grant of Probate

If the deceased has left a valid Will in respect of their BVI assets, an application for a Grant of Probate should be made by the executor named in the Will. It is important to note that where the deceased is not domiciled in the BVI at the time of their death, the application must be supported by an affidavit sworn by a lawyer from the deceased's country of domicile confirming that the Will is valid under the law of the deceased's domicile.

Grant of Letters of Administration

If the deceased did not leave a Will, left a Will without appointing an executor or the executor appointed in unable to act, the Probate Registry can issue a Grant of Letters of Administration to deal with the deceased's BVI estate including shares in a BVI Company. An application is required from persons interested in the deceased's estate, namely, any beneficiaries such as a widow or children of the deceased. In the absence of a widow or children, the deceased's mother, father or siblings may make an application to the Probate Registry.

Resealing of Foreign Grant

Where the deceased left a Will covering their BVI estate, including shares in a BVI Company and a Grant of Probate has been obtained in a jurisdiction whose Grants are recognised by the BVI High Court and are eligible

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to be resealed by Probate Registry, the person who the Grant has been issued to may apply for the Grant to be resealed without the need for a fresh application to be made. The effect of this is the process is more cost effective and the processing time is quicker than that of a fresh application to obtain a new Grant.

Documents required

To apply for a Grant, the Probate Registry will need following:

- an Oath sworn by the Applicant
- an original or certified copy of the death certificate;
- an original or certified copy Will, if available;
- Affidavit of Foreign Law, if deceased is not domiciled in BVI;
- other certificates:
  - marriage certificate – if the deceased was married,
  - birth certificate of the deceased's children; or any other relative, if necessary;
- Affidavit of Delay, if necessary – see below.

If these documents are not in English a certified translations of these documents must also be provided by an official sworn translator certified by an government body or court. An Affidavit of Translation will also be required to evidence the translator's qualifications.

Timeline

Although there is no deadline for making an application for a Grant, an application that is brought 3 years after the date of the deceased's death will require an affidavit explaining the reason for the delay.

The process of obtaining a Grant from the Probate Registry typically takes 3-6 months from the date of the application being filed, but may be longer if the deceased died in a jurisdiction that has a materially different legal system than that of common law system in the BVI.

Advertising requirements

Once the application has been filed with the court, the applicant is required to advertise the application for a Grant of Probate or Letter of Administration for two consecutive weeks in a local BVI newspaper. The reason for the advertisements is to notify anyone who may have an interest in the deceased's estate to the application.

Filing fees

There are filing fees associated with the application before the court can process the application for a Grant. The fees are dependent on the value of the estate and each document filed with the court and can be upwards of US$7,000.

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The application is not subjected to inheritance tax as there are no taxes in the BVI.

Issuance of Grant

Once the Probate Registry has considered and is satisfied with the application a Grant is issued and that Grant is a public document. As such, the ownership of the shares and the potential beneficiary will be available information to the public.

Once the Court has issued an Order and Grant to the Applicant, the Applicant can submit the Order and Grant to the Registered Agent who will then transfer the name of the shares to the Applicant.

If you have any queries regarding the probate process in the BVI please contact Karen Kaulesar.

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