

公报文章

Resealing of Foreign Grants of Probate in the British Virgin Islands

在英属维尔京群岛对外国遗嘱认证授予书再加盖印章

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Where a person has died and left assets in the British Virgin Islands (BVI), it is not possible to deal with those assets without first obtaining a grant of representation from the relevant local Court. The rule applies to all forms of property (including shares and intangible property) in respect of where the deceased died, where they resided during their lifetime, and whether or not they left a will.

This means that where an individual held shares in a company incorporated in the BVI, the grant of representation will be required in order to deal with those company shares. Generally, until such a grant is obtained, the shares will effectively be frozen as they cannot be transferred, their voting powers cannot be exercised, and dividends paid on the shares cannot be distributed.

A grant of representation can take two forms, being either:

- (i) a BVI grant of probate/letters of administration; or
- (ii) the resealing of a foreign grant of representation so that such foreign grant once sealed has the same legal effect if it were a BVI grant of probate.

This article focuses on the resealing of foreign grants of representation in the BVI given the recently enacted Probate (Resealing) Act 2021 which came into force on 9 July 2021 (the 2021 Act).

Effect of resealing

The effect of resealing a foreign grant in the BVI is such that it “shall have the like force and effect, and have the same operation in the [BVI] as if granted by [the BVI Court]”.¹

倘若一个人过世后在英属维尔京群岛（下称“BVI”）留有资产，那么在处理这些资产之前必须先取得相关地方法院出具的授予承办书。该规则适用于已故人士去世地和生前居住地的所有形式的财产（包括股份和无形财产），且不论有无订立遗嘱。

这表示，如果一个人持有在 BVI 注册成立之公司的股份，则处理这些股份需要取得授予承办书。一般情况下，在取得授予承办书之前，相关股份实际上会被冻结，因为这些股份无法转让，随附的投票权不能行使，且就该等股份支付的股息也无法分配。

授予承办书有两种形式：

- (i) BVI 遗嘱认证授予书/遗产管理书；或
- (ii) 将外国授予承办书再加盖印章，一经加盖，该外国授予承办书即具有与 BVI 遗嘱认证授予书相同的法律效力。

鉴于近期颁布的 2021 年《遗嘱认证（再加盖印章）法案》(Probate (Resealing) Act 2021)（已于 2021 年 7 月 9 日生效，下称“2021 年法案”），本文将重点讨论在 BVI 对外国授予承办书再加盖印章的情况。

再加盖印章的效力

在 BVI 对外国授予书再加盖印章后，该外国授予书“在 [BVI] 将与 [BVI 法院] 发出的授予书具有同等的效力和效果，以及相同的处理方式”。¹

¹ Section 3(2) of the Probates (Resealing) Act, 2021 2021 年《遗嘱认证（再加盖印章）法案》第 3(2) 条

The 2021 Act repeals and replaces the Probate (Resealing) Act (Cap. 6C) 1937 (the 1937 Act). The 1937 Act only permitted the resealing of grants issued by any British court having jurisdiction out of “[Her] Majesty’s dominions” which was limited to countries such as the United Kingdom, Canada, Australia, New Zealand and British Overseas Territories. The BVI has taken a welcome step to enact new legislation whereby the 2021 Act expands the list of relevant jurisdictions to 67 jurisdictions whose grants of representations may be resealed in the BVI. Significantly, Hong Kong and the USA are now included, in addition to all Commonwealth countries.

Eligibility

If the deceased shareholder of a BVI company left a will covering their BVI shares, or if the shareholder died without a will (intestate) and a grant of probate or letters of administration has been made in one of the 67 jurisdictions listed under the 2021 Act, the person who has obtained the foreign grant may apply to the BVI Probate Registry to have the foreign grant resealed in the BVI without the need for a fresh application for probate. This is a more straightforward and expedited procedure compared to the process of obtaining a new BVI grant of probate.

Application Process

The resealing procedure is a simplified process which is set out in the BVI’s Supreme Court (Non-Contentious Probate and Administration of Estates) Rules, 2017 which provide, inter alia, that the applicant must provide the following in support of the resealing application:

- original death certificate;
- original or official certified copy of the foreign grant;
- an affidavit of foreign law provided by a lawyer practising in the jurisdiction where the deceased was domiciled at death;
- certified copy certificates of marriage or birth certificates may be required;
- if any of the above documents are not in English, certified translations must also be provided by a suitably qualified translator;
- BVI newspaper advertisement; and
- BVI Court fees.

Conclusion

The recent enactment of the 2021 Act is welcome news for individuals who can now take advantage of a streamlined and quicker procedure in the BVI to obtain formal recognition of a foreign grant for a deceased shareholder of a BVI company who died domiciled in the USA and Commonwealth countries, significantly Hong Kong.

For further information, please contact your usual Conyers

2021 年法案废除并取代了 1937 年《遗嘱认证（再加盖印章）法（第6C章）》（下称“1937 年法案”）。1937 年法案仅允许对“[女皇] 陛下领地”（这仅限于英国、加拿大、澳大利亚、新西兰以及英国海外领土等国家）有管辖权的任何英国法院出具的授予承办书再加盖印章。BVI 颁布新立法是可喜的举措，2021 年法案将相关司法管辖区的范围扩大至 67 个，这些司法管辖区发出的授予承办书均可在 BVI 再加盖印章。值得注意的是，除所有英联邦国家外，香港和美国亦已被纳入其中。

资格

若一间 BVI 公司的已故股东生前订立的遗嘱涉及其 BVI 股份，或股东在未设立遗嘱（无遗嘱）的情况下去世，而 2021 年法案列出的 67 个司法管辖区中的任何一个出具了遗嘱认证授予书或遗产管理书，则取得该外国授予书的人士可向 BVI 遗嘱认证登记处申请对该外国授予书再加盖印章，而无需重新申请遗嘱认证。相比重新申请 BVI 遗嘱认证授予书，此程序更为简明、快捷。

申请程序

再加盖印章程序是 2017 年《BVI 最高法院（无争议遗嘱认证和遗产管理）规则》（Supreme Court (Non-Contentious Probate and Administration of Estates) Rules, 2017) 载列的一个简化程序，其中规定，申请人在申请再加盖印章时必须提供下列文件：

- 死亡证明原件；
- 外国授予书的原件或经官方核证的副本；
- 在已故人士去世时居住地的司法管辖区执业的律师提供的外国法律宣誓书；
- 经核证的结婚证或出生证明副本（可能需要）；
- 若上述任何文件并非以英文书写，则亦须有合资格翻译人员提供的经核证译本；
- BVI 报纸广告；及
- BVI 法庭费用。

结论

近期颁布的 2021 年法案是一些人士喜闻乐见的好消息，因为就生前居于美国和英联邦国家（尤其是香港）的 BVI 公司已故股东出具的外国授予书，现在可以在 BVI 通过更为简化、快捷的程序获得正式认可。

欲了解更多资讯，请联络阁下于康德明的日常联络人或下列

contact or the contact listed below.

律师。

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