

## Estate in the BVI and other Offshore Jurisdictions: Your Family Business

### 于英属维尔京群岛及其他离岸司法权区的遗产：您的家族事业

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Many high-net-worth individuals have used companies incorporated in offshore financial centres, such as the British Virgin Islands (“BVI”) to hold their assets and business. When they plan their estate or distribute the estate of their deceased family members, they often adopt a family-oriented approach: the passing of the family assets and business to the next generation.

There are many ways to achieve this strategically:

- Amending the articles of the asset-holding companies;
- Obtaining a grant of representation in the relevant offshore jurisdiction; and
- Contesting a will to prevent any assets or business falling in the hands of a non-family member.

These options are available at different stages of a person’s estate arrangement.

#### A. Planning ahead: amending the articles of the asset-holding companies

Having the appropriate provisions in the articles of the asset-holding companies can simplify the passing of the asset-holding company to the next generation upon the untimely demise of the family head, doing away with the need to apply to the BVI court for a grant of representation.

For example, the articles can provide for the issuance of, say, three classes of shares: Class A, Class B and ordinary shares. Class A shares are issued to the parents, Class B to the children and ordinary shares to other investors. The articles can further provide that upon the death of one or more parents, their shares as well as their management powers will automatically transmit to the children.

不少高净值人士均会利用于英属维尔京群岛等离岸金融中心注册成立的公司持有资产及业务。他们就其遗产订立计划或分发离世家属的遗产时，经常会采用家族导向手法，即家族资产及业务由下一代承继。

达成此目标的策略性方法众多：

- 修订资产控股公司的细则；
- 于相关离岸司法权区获得遗产承办授予书；及
- 对遗嘱提出异议，以防任何资产或业务落入非家族成员的控制之中。

这些选项在遗产安排不同阶段中出现。

#### A. 预先计划：修订资产控股公司的细则

于资产控股公司细则中纳入合适条文，可简化当家者过早离世后代继承资产控股公司的过程，免却向英属维尔京群岛法院申请遗产承办授予书。

例如，细则可规定发行三个类别的股份：A 类别、B 类别及普通股。A 类别股份发行予家长；B 类别股份发行予子女；而普通股则发行予其他投资者。细则亦可规定，于一名或以上家长离世后，其股份及管理权力将自动转让予子女。

## B. Making a Will

When the estate of the family consists of more than just shares in companies or where shares are held in a BVI company with other shareholders, a Will could help you in ensuring that all of the properties within the estate will be appropriately managed and distributed pursuant to your will.

A Will is a written instrument validly and legally executed pursuant to which a person may make dispositions of his or her estate to take effect after death. A Will determines how your estate will be distributed and who will assume responsibility for your spouse, children and other persons or entities whom you wish to benefit. A suitably drafted and validly executed Will can provide you with the peace of mind of knowing that your family business, members and other causes you wish to support will be left with your nominated person whom you trust to manage your estate.

Where assets involve shares in a BVI company, it is important to note that probate will need to be sought in the BVI. It may therefore simplify and expedite estate administration to have a specific Will to cover solely the BVI assets in an estate.

## C. Distributing the estate: obtaining a Grant in offshore jurisdictions

When a family member passes away, his or her executors or administrators often face the need to apply for a Grant of representation in order to manage and distribute the estate. As mentioned earlier, where the estate includes shares in a BVI company, a Grant will need to be sought in the BVI.

There are three main types of applications for a Grant of representation:

1. An application for a grant of probate which is made where the deceased has left a will and appointed an executor;
2. An application for letters of administration with will annexed which is made where the deceased has left a will but failed to appoint an executor; and
3. An application for letters of administration which is made where the deceased has died intestate (i.e. without leaving a will).

## D. Contesting a Will

Family members who are disinherited by persons outside of the family are conceivably disappointed. They may be able to contest a will with a view to safeguarding the integrity of the family business. Below are some of the common grounds for launching such a challenge:

- Want of due execution
- Lack of testamentary capacity
- Undue influence
- Fraud
- Forgery

## B. 订立遗嘱

当家族遗产不只涉及公司股份，或股份透过英属维尔京群岛公司与其他股东持有时，遗嘱有助确保遗产的所有财产得以按照意愿，受妥善管理及分发。

遗嘱为有效合法签立的文书。订立遗嘱者可透过遗嘱，于离世后处置遗产。遗嘱厘定遗产何以分发及何人为您的配偶、子女及您属意受惠的其他人士或实体承担责任。妥为草拟及有效签立的遗嘱可让您安心，确保您信任交托管理遗产的代名人将与您的家族业务、成员及其他您支持的事业同行。

务请注意，如资产涉及英属维尔京群岛公司的股份，则须于英属维尔京群岛寻求进行遗产承办。故此，订立仅涵盖遗产中英属维尔京群岛资产的特定遗嘱，将有助简化及加快遗产管理过程。

## C. 分发遗产：于离岸司法权区获得授予书

当家族成员离世，其遗产执行人或管理人通常须申请遗产承办授予书，以管理及分发遗产。如上所述，如遗产涉及英属维尔京群岛公司股份，则须于英属维尔京群岛申请遗产承办授予书。

遗产承办授予书申请主要分为三类：

1. 在离世者有订立遗嘱及委任执行人的情况下提出的遗产承办授予书申请；
2. 在离世者有订立遗嘱但无委任执行人的情况下提出的附带遗嘱之遗产管理书申请；及
3. 在离世者并无订立遗嘱的情况下提出的遗产管理书申请。

## D. 对遗嘱提出异议

如被外人士剥夺继承权，家族成员必然非常失望。他们可对遗嘱提出异议，以保障家族事业完整。以下为提出有关异议的部分常见理据：

- 未有妥为签立
- 无订立遗嘱能力
- 不当影响
- 诈骗
- 伪造文书

The proceedings are often complicated, involving the application of a specific set of rules, fact-sensitive arguments, review of a large amount of historic documents and the use of expert evidence.

### E. Duties of an administrator to an estate

In determining any dispute as to representation of an estate, it is well-established that the fundamental duty of personal representatives is to administer the estate and to distribute it in accordance with the will or under the rules of intestacy. In carrying out these duties, an administrator must be cognisant that he or she is acting in a fiduciary capacity.

### Conclusion

It would be worthwhile considering the need for the continuation for the family business and legacy well in advance. It is imperative to plan ahead and ensure that your family business could be well protected to ensure family business' continuation and harmony.

*This article was first published in the October 2022 edition of [Asian Legal Business](#).*

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有关诉讼通常情节复杂，牵涉应用指定规则、与事实有密切关连的争辩、审阅大量过往文件及利用专家证据。

### E. 遗产管理人的责任

就裁定任何遗产承办争议而言，公认的原则是，遗产代理人的基本职责为管理遗产以及根据遗嘱或无遗嘱规则分发遗产。履行有关职责时，遗产管理人必须知悉其以受托人身分行事。

### 结语

家族事业及遗产的延续需要，值得提前考虑。务请事先规划，让家族事业得到完善保障，确保其延续与和谐。

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