

BVI Legislative review – Probates (Resealing Act) 2021 and the Administration of Small Estates Act 2021

Earlier this year, the British Virgin Islands (the **BVI**) Government embarked on legislative reform to repeal the Probates (Resealing) Act (Cap 60) and amend the Administration of Small Estates Act (Cap 4) respectively, both of which have recently come into force. These changes significantly impact the BVI probate landscape and are considered in turn below.

The Probates (Resealing) Act 2021

The Probates (Resealing) Act 2021 (the Act), which came into force on 9 July 2021, repeals the Probates (Resealing) Act (Cap 60), while introducing welcome changes and further flexibility to the probate process in the BVI.

The Act provides that where a grant of probate or letters of administration (the **Grant**) has been obtained in a “recognised jurisdiction” (which now includes a total of sixty-seven jurisdictions) either on or before the Act has come into force, a copy of such Grant may be resealed by the High Court of the BVI (the **Court**). Once the Grant has been resealed, it is deemed to have the same effect as a grant of probate which has been issued by the High Court by way of a completely new application.

Previously, the Court would only allow a Grant to be resealed if it was extracted from, in essence, the UK, a British Overseas Territory, a Crown Dominion, or a Commonwealth jurisdiction where the monarchy is still head of state.

This limitation in jurisdictions resulted in Grants obtained from most jurisdictions across the globe being incapable of being resealed by the Court and therefore, fresh applications for a Grant in respect of a deceased’s BVI estate would need to be submitted. The Act therefore introduces significant changes in recognition of the need for a modernised and streamlined process, during a time which can be increasingly difficult for individuals dealing with the loss of a loved one. The recognised jurisdictions include virtually all common law jurisdictions around the world, including in particular, the USA and Hong Kong.

It is important to note however, that there are conditions which must be satisfied prior to the grant of probate being resealed, although they will not be relevant to most clients. If stamp duty is payable in respect of a deceased’s BVI estate (for example if a deceased owned land in the British Virgin Islands), evidence as to the domicile of the deceased may be requested by the Court. Additionally, where there has been an application by a creditor before the Grant has been resealed, the Court may request that security be given for the payment of debts due from the estate of the deceased, to creditors residing in the British Virgin Islands.

By way of reminder however, if a jurisdiction is not included as one of the sixty-seven recognised jurisdictions, then a Grant from such jurisdiction may not be resealed and a full application for a Grant would need to be submitted. In such circumstances, the probate process can be made much simpler where the deceased held a BVI Will.

The Administration of Small Estates (Amendment) Act 2021

A further change to the BVI probate process is the introduction of the Administration of Small Estates (Amendment) Act 2021 (the **Amendment Act**), which also came into force on 9 July 2021, amending the Administration of Small Estates Act (Cap 4).

Under the previous legislation, an estate would only qualify as a “small estate” if it was valued at no more than US\$240. Any such estate would allow the formal grant application process to be dispensed with, which significantly reduced the costs and time spent obtaining a Grant. It is worth noting that the sum of US\$240 was established in 1944 and has long been out of step with reality, as we would expect that the value of any small estate in the BVI today would be far greater than US\$240. The Amendment Act has increased this value from US\$240 to US\$25,000. The amendment is a welcome one, as the historically maintained lower value resulted in very few estates being classified as “small estates”.

Additionally, the Administration of Small Estates Act (Cap 4) applies where the deceased had a valid Will in place whether the deceased was domiciled in the Virgin Islands or in another jurisdiction (which was the position previously). However, if the deceased died intestate, it is now a requirement under the Amendment Act for the deceased to have been domiciled in the Virgin Islands in order for the deceased's estate to qualify as a small estate, otherwise a full application for letters of administration will need to be submitted. Therefore, while this is another welcomed change to the BVI probate process, it further reinforces the importance of having a Will and the pitfalls which may be avoided by doing so.

For more information on BVI grants of probate, resealing or how to obtain a BVI will, please contact the authors of this guide or your usual Harneys contact.

Legislative Review Probates (Resealing) Act 2021

The main distinction between the Probates (Resealing) Act (Cap 60) and the Probates (Resealing) Act 2021 may be found in Section 3 (1).

Section 3 (1): enables grants of probate obtained from recognised jurisdictions to be resealed. All recognised jurisdictions are included in the Schedule to the Act which includes a total of 67 countries. The position in the Probates (Resealing) Act (Cap 60) was that a grant could only be resealed if it was extracted from:

- Any part of Her Majesty's Dominions
- A British Court in a foreign Country

In practice, this was understood as the UK and its crown dependencies and overseas territories, plus any Commonwealth jurisdiction which still had the monarchy as its head of state. The new Act expands that list to the other Commonwealth jurisdictions, plus non-Commonwealth jurisdictions that use the common law rather than civil law. Importantly this includes the USA and Hong Kong. Applicants from most civil law jurisdictions will continue to need a full BVI Grant.

The remainder of the Act is essentially the same as the Probates (Resealing) Act (Cap 60) and differs only in structure.

Legislative Review: Administration of Small Estates (Amendment) Act 2021

The Administration of Small Estates (Amendment) Act 2021 introduces the following changes to the Administration of Small Estates Act (Cap. 4):

- At Section 2, the definition of a small estate has been amended to include estates no greater than US\$25,000, a significant increase from US\$240.
- Section 3 (1) has been amended to require the deceased to have been domiciled in the Virgin Islands where letters of administration are being applied for in the case of an intestate estate.
- Section 7 changes the application fee for a small estate from US\$1.20 to US\$25.

Finally, the penalty for a false statement in making an application for a grant of probate or letters of administration where the deceased's estate qualifies as a small estate has been increased from US\$120 or imprisonment for a term of no more than six months to US\$5,000 or imprisonment of no more than 12 months.



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