

New Probate Rules for BVI company owners

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FOR SHARES IN A BVI COMPANY HELD PERSONALLY OR VIA A NOMINEE ARRANGEMENT, such shares will be effectively frozen upon the passing away of individual shareholders. A BVI grant is required to transfer the deceased shareholder's shares.

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The New Rules apply to all pending applications on the effective date and new applications made on or after the effective date irrespective of the date of death.

The New Rules do not introduce any fundamental changes to the BVI probate process - but they do make numerous important changes to a range





of the documents and steps involved and clarify a number of significant issues. For a non-BVI domiciled deceased who died with BVI shares, the key relevant changes are:

- order of grant entitlement;
- declaration of estate value ;
- filing an estate account;
- form of advertisement; and
- new filing fee schedule.

Order of grant entitlement

Who is entitled to apply for a grant and in what order?

The order of grant entitlement was not addressed under the older rules but now is provided for expressly under Rule 28 of the New Rules.

For a non-BVI domiciled deceased who died leaving a will, probate may be granted to the person named as executor in the will according to rule 28(2) if the will is in the English language and is admissible to proof. For wills in languages other than English, rule 28(2) is not applicable even if

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an English translation of a will can be provided. For such non-English wills, whether probate may be made to a person named in a will to administer the estate depends on the actual wording used in the will.

If the wording describing the duties of that person is sufficient to constitute him executor, probate may be granted to such person under rule 28(3). Otherwise, letters of administration with a will annexed should be applied for.

For a deceased who died without leaving a valid will, the order of grant entitlement is pursuant to rule 28(5). The person entrusted with or entitled to the administration of the estate by country in which the deceased was last domiciled has the first priority to apply for a grant.

This rule however cannot be invoked for applicant relying on a non-domiciled grant. For example, a Hong Kong grant is obtained for a deceased who died domiciled outside Hong Kong. The personal representative of the Hong Kong grant cannot rely on the Hong Kong grant to apply for a grant in BVI.

Where there is no person so entrusted, persons who are entitled to benefit from the deceased's estate under the law of the country in which the deceased was last domiciled have the second priority to make a grant application. If an applicant does not fall into these two categories, he has to be appointed by the court.

Declaration of estate value

The value of the BVI estate (not the deceased's worldwide estate) is important in determining the fees payable to the BVI court as part of the grant process.

There was no specific rule on the declaration of BVI estate value under the old rules. It is now explicitly required under rule 29 to set out the gross value of the BVI estate to be covered by the grant.

Gross value means the valuation range of the BVI estate without deduction of debts, encumbrances, funeral expenses or death duties. The BVI estate value will fall into any one of these brackets:

- Below US\$50,000
- US\$50,000 – US\$250,000
- US\$250,001 – US\$500,000
- US\$500,001 – US\$1,000,000
- US\$1,000,001 – US\$5,000,000
- Over US\$5,000,000

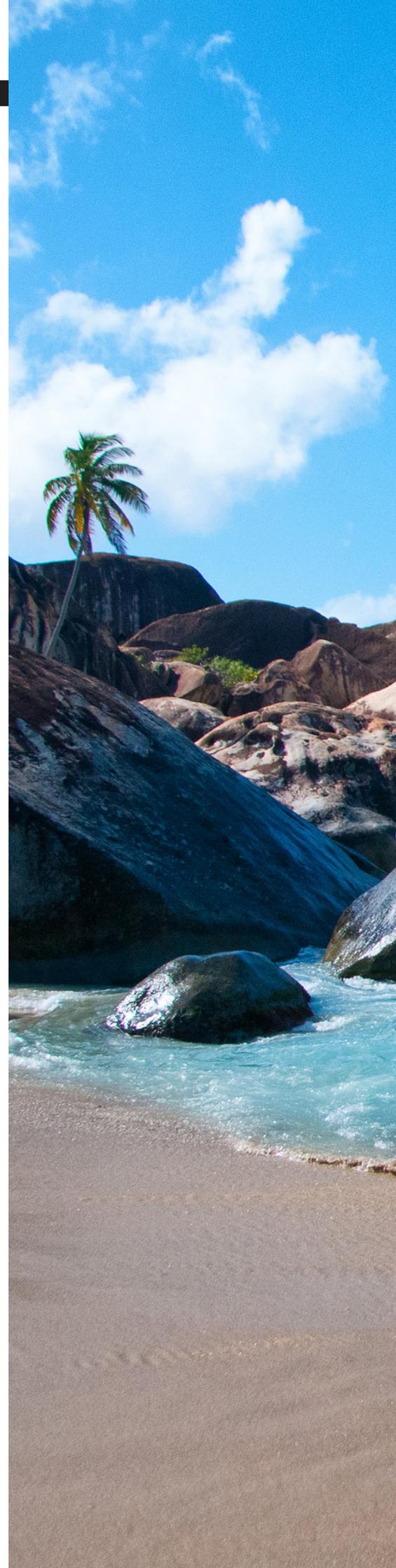
Filing an estate account

Under the old rules, the applicant undertook to file in the Registration Office within 12 calendar months from the date of the grant a statement and account of the administration of the deceased's estate. In practice, save for exceptional circumstances, such filing was rarely enforced. This practice is now reflected in the New Rules.

The new statutory form provides that the applicant will render a just and true account of the estate administration whenever required by law to do so.

Form of advertisement

The applicant is required to advertise the application on not less than two occasions in two weeks in a local BVI newspaper. While this requirement is the same as under the old rules, the form of such advertisement is now standardised. The information to be included in such advert is rather limited, only name, address and date of death of the deceased and the name and address of the applicant. No other personal information is required to be made public.





New filing fee schedule

There is a new fee schedule provided in Eastern Caribbean Supreme Court (Court Proceedings Fees) (Virgin Islands) Rules, 2017; the amount has increased and the categories of fees have been expanded as well. Part of the filing fees depends on the value of the BVI estate and there is a flat fee for an estate with a value of over US\$5,000,000. Please refer to our briefing [Increase in BVI Probate Fees](#) for detail.

Beneficial ownership register

A grant in respect of shares in a BVI company may require notification and updating in respect of the beneficial ownership register of the relevant BVI company. If a deceased shareholder is a beneficial owner of a BVI company

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for the purpose of Beneficial Ownership Secure Search System Act 2017, the natural person acting as a personal representative of the deceased's estate will become the succeeding beneficial owner.

The company is required to notify its BVI registered agent within 15 days of becoming aware of a change of any beneficial ownership information and the registered agent has a further 15 days to update its database. If the company fails to comply with the requirement without reasonable cause it is liable to a fine of maximum US\$10,000.

IF YOU WISH TO OBTAIN A GRANT IN RESPECT OF BVI COMPANY SHARES OR OTHER ASSETS AS QUICKLY AND CHEAPLY AS POSSIBLE, IT IS CRITICAL TO UNDERSTAND THE NEW RULES.

Conclusion

If you wish to obtain a grant in respect of BVI company shares or other assets as quickly and cheaply as possible, it is critical to understand the New Rules so that the necessary documents are prepared in the correct form and filed with the necessary supporting evidence.

The grant application process can take from just a few months to more than a year, depending on whether the application is well prepared. If the application does not address all potential issues in advance, the Registry will send defective notice to ask for additional information and documents. The Registry will not issue a grant unless and until all enquiries have been answered satisfactorily. ■