

- Documents required by executors
- Trust Corporations (Probate and Administration) Act

## *Guide for Hong Kong Clients on Obtaining BVI Grants of Probate*

*Because BVI companies are widely used in Hong Kong for various purposes, it is important for clients to understand the nuances and intricacies of obtaining grants of probate and administration in the BVI. Contrary to popular belief, grants of probate and administration obtained in Hong Kong cannot be resealed in the BVI. As a result, if one intends to take control over a deceased's shareholding in a BVI company for distribution amongst beneficiaries, a fresh grant will need to be applied for in the BVI.*

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If a deceased left a valid will disposing of BVI assets, and dies domiciled in Hong Kong, the appointed executors will need to provide the following documents to apply for grant of probate:

1. Original Will of the deceased, or where the original Will is being used in another legal proceeding and cannot be removed, a court certified copy of the will;
2. Original death certificate, or a certified copy issued by the Births and Deaths Registry in Hong Kong;
3. Original document proving relationship between the executor and the deceased, issued by the relevant government body of Hong Kong;
4. Where a "trust corporation" within the meaning of the Trust Corporations (Probate and Administration) Act has been appointed as executor, a sealed copy of the resolution appointing a director of the company to swear affidavits on its behalf will be required;
5. Original of the Memorandum and Articles of Association of each BVI company in which the deceased owned shares, or a true copy certified by a solicitor of Hong Kong;

6. Original share certificate(s) evidencing the deceased's ownership of shares in the BVI companies, or a true copy certified by a solicitor of Hong Kong.

All documents will be returned after the grant is obtained. Clients often wonder why the bar for documentation is so stringent compared to Hong Kong. The reason is that in the eyes of the BVI probate registry, Hong Kong is a foreign jurisdiction, and therefore it is reluctant to rely on documents originating from Hong Kong unless it is issued by the relevant governmental body or the courts of Hong Kong. As a result of these stringent rules, all documents executed by clients in Hong Kong to support the application for grant of probate are required to be signed in duplicate, notarised, and apostilled by the Hong Kong Court, before they are accepted by the BVI probate registry.

Once Harneys receives the documents above, we will draft the follow affidavits for the applicants:

1. Application for Probate;
2. Affidavit in Support of Application for Probate;
3. Declaration on Oath of the Value of the Estate;
4. Affidavit of Attesting Witness;
5. Affidavit of Understanding and Approval of the Will;
6. Affidavit of Delay;
7. Any relevant Renouncements;
8. Affidavit of Hong Kong Law;
9. Affidavit of Search, which confirms that no other application for probate of the estate has or is being made;
10. Advertisement to be placed in two consecutive issues of a BVI newspaper;
11. Draft Order and Draft Grant of Probate.

Any valid will would have been executed before witnesses, and affidavits will have to be sworn by those witnesses in support of the application for probate. If the will is in English, but was signed by the testator in Chinese, which is common in Hong Kong, a further affidavit of understanding of approval of the will is required. Further, if the application is being made more than three years after the death of the deceased, the applicant will be required to provide reason for delay in an affidavit. In our experience, an acceptable reason for delay includes the intention to obtain probate in Hong Kong first before applying for probate in other jurisdictions.

It is also useful to note that if there is more than one executor appointed pursuant to the will, and only one executor is applying for the grant of probate in the BVI, the other non-applying executors will be required to provide an affidavit renouncing their rights to apply.

Clients often wonder why an affidavit on Hong Kong law is required, when the application for grant of probate is being made in the BVI. The reason is that the BVI court needs to ensure the will is valid pursuant to the laws of Hong Kong (even though it deals with BVI assets). Because pursuant to BVI law, the distribution of estate must

be done in accordance with laws of the domicile of the deceased, the foreign law affidavit provides assurance to the BVI probate registry that the distributions contemplated by the will are aligned with Hong Kong law.

The time it takes to obtain grant of probate from the BVI probate registry is usually between three to five months from the date on which documents are filed; however, if there are incomplete documents or if the BVI probate registry requests for further information to be provided, the process may be longer.

For more information please contact:

**Ian Mann**

+852 3195 7236

ian.mann@harneys.com

Hong Kong

**Adrienne Chan**

+852 3195 7229

adrienne.chan@harneys.com

Hong Kong

[www.harneys.com](http://www.harneys.com)

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