

# Movable or Immovable: Classification of BVI Shares for Succession and Administration

In *Sheikha Amena Ahmed H A Al-Thani and another v Sheikha Aisha Mohammed Ali Abdullah Al Thani and 2 others* [2024] UKPC 35, the Judicial Committee of the Privy Council ("JCPC") considered an appeal regarding the classification of shares in a British Virgin Islands ("BVI") company following the death of a Qatar national domiciled in Qatar. The primary issue was whether the Eastern Caribbean Court of Appeal ("ECCoA") erred in concluding that section 245 of the BVI Business Companies Act, 2004 ("BCA") classifies company shares in the BVI as movable property for succession purposes.

## Background

On 3 June 1990, the deceased made a declaration regarding the inheritance of his estate before a judge in Qatar, which was recorded on 11 June 1990. The appellants, the deceased's widow, daughter, and son, sought to revoke this declaration in the Qatari courts in June 2015. Subsequently, proceedings were initiated in the BVI for a grant of letters of administration for the deceased's BVI estate in June 2015. In October 2015, the appellants obtained letters of administration without disclosing the will or the Qatari proceedings. The Qatari Court of Appeal upheld the will's validity on 29 January 2018, and the Court of Cassation refused to accept an appeal on 22 May 2018 from that decision.

## Legal Proceedings in the BVI

On 21 August 2019, the deceased's sister, niece, and a long-term friend, initiated legal proceedings in the BVI seeking orders (i) to revoke the letters of administration granted to the appellants by the BVI Court, (ii) obtain probate of the Qatari will, and (iii) obtain a grant of new letters of administration to an independent administrator.

Ellis J of the BVI High Court ruled on 12 January 2021, that the Qatari judgment was conclusive regarding the will's validity and enforceability in the BVI for the deceased's movable property and the appellants were estopped from arguing otherwise. The ECCoA upheld this decision on 23 March 2022, confirming that (i) the appellants were subject to issue estoppel, barring them from contending the will's invalidity in the BVI, (ii) the court applied common law principles on the validity and enforceability of foreign wills in the BVI, and (iii) BVI law determines the succession and administration of immovable property located in the BVI, while the law of the deceased's foreign domicile determines the succession and administration of movable property in the BVI. Interestingly, when considering the application of s. 245 of the BCA, which states that shares in companies incorporated in the BVI are sited in the BVI, the Court of Appeal concluded that s. 245 BCA dictated that shares in BVI companies are immovable property and BVI law therefore determines the succession and administration of moveable property. This was a departure from the

common law position that identifies shares as moveable property.

### The Matter Before the JCPC

The JCPC considered the decision of the ECCoA and specifically the ruling that registered shares of a BVI company are movable property.

The appellants argued that section 245 deems shares in a BVI company as immovable property, with the result that the formal validity of a will transmitting such shares must meet the requirements of the Wills Act.

The JCPC, after considering the rules of statutory interpretation, interpreted section 245 as fixing the situs of the shares for title and jurisdiction purposes only, not transforming their nature into immovable property for succession purposes. The JCPC stated, *"A requirement to treat shares in a company incorporated in the BVI as immovable, which the appellants say is implicit in section 245, would be a radical change to the rules of private international law which otherwise would apply in the BVI. It would have the effect that owners of shares in a BVI company who are domiciled outside the BVI would have to make a separate will, which was valid under the Wills Act of the BVI, to transmit those shares on death and could not rely on a testamentary instrument which was valid under the law of the domicile to do so. This would amount to a trap for the foreign investor. In the Board's view it is inconceivable that section 245, which was designed to create greater legal certainty in matters of title and the jurisdiction of the BVI courts, was intended to have such an effect."*

Ultimately, the JCPC dismissed the appeal, agreeing with the lower courts' decisions that shares in a BVI company are movable property and that the Qatari will, valid under Qatari law, governs their transmission.

### Conclusion

The decision reaffirms the BVI's adherence to international private law principles regarding the transfer of property upon death. The JCPC's ruling confirms that shares in a BVI company are considered movable property and that the law of the deceased's domicile continues to govern their succession and administration. This outcome is significant as it maintains legal certainty.

It is important to note here however that, while a will made in the country of the deceased's domicile is conclusive for succession purposes, applicants must still comply with BVI law requirements when it comes to administering shares in a BVI company. Specifically, the executors or administrators must obtain a BVI grant of probate or letters of administration prior to dealing shares in a BVI company.

### Further Assistance

Should you have any queries regarding this update or wish to apply for a grant of probate or letters of administrations in the BVI, please contact your usual Maples Group contact or any of the contributors below.

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