

VIRGIN ISLANDS

PROBATES (RESEALING) ACT, 2021

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Probates (Resealing) Act, 2021

Virgin Islands

I Assent

Governor
, 2021

VIRGIN ISLANDS

No. of 2021

A BILL for

An Act to provide for the resealing of probates and letters of administration granted by a court of probate in a recognised jurisdiction in respect of the estate of deceased persons and for other matters connected therewith.

[Gazetted _____, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. (1) This Act may be cited as the Probates (Resealing) Act, 2021.

- (2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires

“Court” means the High Court;

“court of probate” means any court or authority, by whatever name designated, that has jurisdiction in matters of probate;

“probate or letters of administration” include confirmation in Scotland and any instrument having the same effect which, under the laws of the Virgin Islands, is given to probate or letters of administration; and

“recognised jurisdiction” means any of the jurisdictions specified in the Schedule.

Schedule

Resealing of probate or letters of administration.

3. (1) Where a court of probate in a recognised jurisdiction has, either before or after the coming into force of this Act, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Court, be sealed with the seal of the Court.

Court

(2) Where probate or letters of administration is sealed with a seal of the Court pursuant to subsection (1), the probate or letters of administration so sealed shall have the like force and effect, and have the same operation in the Virgin Islands, as if it were granted by the Court.

Conditions precedent to sealing.

4. (1) The Court shall, before sealing a probate or letters of administration under this Act, be satisfied that stamp duty has been paid in respect of so much, if any, of the estate as is liable to stamp duty in the Virgin Islands.

(2) For the purposes of subsection (1) –

(a) the Court may require such evidence, if any, as it thinks fit as to the domicile of the deceased person; and

(b) “stamp duty” includes any duty payable on the value of the estate and effects for which probate or letters of administration is granted.

Security for payment of debt.

5. The Court may, if it considers it fit on the application of a creditor, require, before sealing a probate or letters of administration, that adequate security be given for the payment of debts due from the estate of the deceased person to creditors residing in the Virgin Islands.

Effect of duplicate of probate or letters of administration.

6. For the purposes of this Act, a duplicate of any probate or letters of administration sealed with the seal of the Court granting the probate or letters of administration, or a copy thereof certified as correct by or under the authority of the Court granting the probate or letters of administration, shall have the same effect as the original.

Rules of Court.

7. Rules of Court may make provision for regulating the procedure and practice, including fees and costs in the Court, on and incidental to an application for sealing a probate or letters of administration granted under this Act.

Amendment of

8. The Minister responsible for the administration of this Act may, by Order published

Schedule. in the *Gazette*, amend the Schedule.

Repeal. 9. The Probates (Resealing) Act is repealed.
Cap. 60

SCHEDULE

[Sections 2]

List of Recognised Jurisdictions

1. Alberta
2. Anguilla
3. Antigua and Barbuda
4. Australia (including each of the Provinces thereof)
5. Bahamas
6. Barbados
7. Belize
8. Bermuda
9. Botswana
10. British Antarctic Territory
11. British Columbia
12. British Sovereign Base Areas in Cyprus
13. Brunei
14. Canada (including each of the Provinces thereof, except Quebec)
15. Cayman Islands
16. Christmas Islands (Australia)
17. Cocos (Keeling) Islands
18. Cyprus (Republic)
19. Dominica
20. England and Wales
21. Falkland Islands
22. Falkland Islands Dependencies
23. Fiji
24. Gambia
25. Ghana
26. Gibraltar
27. Grenada
28. Guernsey
29. Guyana
30. Hong Kong (including The Hong Kong Special Administrative Region of the People's Republic of China)
31. Isle of Man
32. India
33. Jamaica
34. Jersey
35. Kenya
36. Kiribati
37. Lesotho
38. Malawi
39. Malaysia
40. Montserrat

41. Nevis
42. New Guinea Territory
43. New Zealand
44. Nigeria
45. Norfolk Island
46. Northern Ireland
47. Papua New Guinea
48. St. Helena
49. St. Kitts
50. St. Lucia
51. St. Vincent
52. Scotland
53. Seychelles
54. Sierra Leone
55. Singapore
56. Solomon Islands
57. South Africa
58. Sri Lanka
59. Swaziland
60. Tanzania
61. Trinidad and Tobago
62. Turks and Caicos Islands
63. Tuvalu
64. Uganda
65. United States of America (including the District of Columbia)
66. Zambia
67. Zimbabwe

Passed by the House of Assembly this day of , 2021.

Speaker

Clerk of the House of Assembly

OBJECTS AND REASONS

The Probates (Resealing) Act (Cap. 60) (“the Act”) was enacted in December 1937 and provides a simplified procedure to follow in circumstances in which grants of probate or letters of administration issued by foreign courts may be resealed by the courts in the Virgin Islands. The resealed grants essentially have the same effect as if they were granted by the courts in the Virgin Islands. The Act, however, only applies to grants issued by courts of probate in Her Majesty’s dominions – that is to say, a British protectorate or protected state and any territory in respect of which a mandate or trusteeship is being exercised by Her Majesty’s Government in the United Kingdom or the Government of any part of Her Majesty’s dominions (section 2 of the Act). This effectively restricts the jurisdictions whose court-issued grants of probate or letters of administration may be resealed in the Virgin Islands.

It is the view that the ability to reseat grants of probate and letters of administration should be extended in respect of numerous other jurisdictions that have equivalent processes of issuing and resealing grants. A careful research has shown that many Commonwealth countries are moving or have already moved away from the restrictive approach adopted under the Act with respect to the issuing of grants and the resealing thereof. It is therefore proposed to expand the scope of the Act in terms of jurisdictions whose grants of probate or letters of administration may be resealed by courts in the Virgin Islands.

This proposal has necessitated the complete review of the Act and the need, consequently, to repeal and replace the Act. The provisions of the Act have been better streamlined to ensure certainty; in addition a new Schedule has been created to list jurisdictions that are recognised for purposes of resealing in the Virgin Islands grants issued by courts in those jurisdictions. The list includes all Commonwealth countries and territories, including Hong Kong and the United States of America.

In order to accommodate changed circumstances, the Bill empowers the Minister with responsibility for the administration of the subject matter of the Bill (upon enactment) to amend the Schedule as and when the need arises. That amendment may take the form of adding to or deleting from the list, as may be considered appropriate.

In addition to providing a mechanism for the resealing of grants issued by courts of probate of recognised jurisdictions, the Bill also outlines the conditions precedent to such resealing. It also empowers the High Court to require the giving of security for the payment of debts before sealing any probate or letters of administration. Furthermore, the Bill recognises the duplicate of any seal issued, or a copy of a seal certified, by the High Court to have the same effect as the original.

The Bill, when enacted, would provide further incentive for persons from the recognised jurisdictions to establish BVI business companies, with the knowledge that they can reseat grants in the Virgin Islands with respect to probates or letters of administration issued in those jurisdictions.

Minister of Finance