

UPDATE

# Navigating BVI share succession across borders

Update prepared by Eleanor Mogran, Sophie Christodoulou, and Dan Griffin (British Virgin Islands).

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Mourant acted for the Appellants in *Sheikha Amena Ahmed H A Al-Thani and another v Sheikha Aisha Mohammed Ali Abdullah Al Thani and 2 others (Virgin Islands)* alongside Stephen Moverley Smith KC of XXIV Old Buildings. The case concerned the question of whether shares in BVI companies are movable or immovable property for the purposes of determining the laws of succession that apply to such shares.

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## The Board's Decision

The Appellants' case was that the transmission of the shares owned by the deceased should be governed by BVI law as the shares should be treated as immovable property. The Respondents' case was that shares in BVI companies are moveable property in accordance with the English rules of private international law, and as the shares in this case were subject to a valid will executed under the laws of Qatar, the Qatari laws of succession should apply.

At first instance and in the Court of Appeal, it was held that shares in BVI companies are movable property, and so in this instance their transmission was governed by Qatari law.

The Appellants appealed to the Board, contending that section 245 of the BVI Business Companies Act classifies shares in BVI companies as immovable property by establishing their situs for title and jurisdiction purposes as the BVI. This classification necessitates compliance with the Wills Act 1872 for a will to be valid and govern the transfer of shares.

The question before the Board was one of statutory interpretation. The Board examined the relevant legislation, stating that an interpretation should be preferred when it promotes the purpose or object underlying the enactment. It considered the history of section 245 and its predecessor, concluding that the BVI companies legislation was enacted to promote foreign investment in the jurisdiction. Accordingly, it permits the share register of BVI companies to be located either in the BVI or overseas.

Shares in BVI companies are transferred when a party's name is entered into the share register. A general principle holds that shares are situated in the country where, under the law of the company's incorporation, they can be effectively dealt with by the owner and the company. Without a clarifying provision regarding situs, the location of the principal register of members determines where shares can be effectively dealt with between the transferee and the company. This could lead to uncertainty about the situs of BVI shares and the laws governing them.

Section 245 addresses this uncertainty by establishing that, regardless of where the register is located, the situs of BVI shares is the BVI. This was the purpose of section 245. However, the provision does not alter the rules of private international law, which classify shares as movable property. If the BVI legislature had intended to abrogate such a long-standing rule, it would have needed to use clear language to express that intention. According to the Board's interpretation, that was not the intention behind section 245.

The Board therefore upheld the Court of Appeal's decision that the registered shares in a BVI company are movable property and their distribution on succession must be done in accordance with the law of the deceased testator's domicile.

## Contacts

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**Eleanor Morgan**  
Partner | Mourant Ozannes  
British Virgin Islands  
+1 284 852 1712  
eleanor.morgan@mourant.com



**Sophie Christodoulou**  
Counsel | Mourant Ozannes  
British Virgin Islands  
+1 284 852 1702  
sophie.christodoulou@mourant.com



**Dan Griffin**  
Senior Associate | Mourant Ozannes  
British Virgin Islands  
+1 284 852 1706  
dan.griffin@mourant.com

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