

## BVI recognition of foreign oral will

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On 2 October 2020, the High Court of Justice in the Virgin Islands delivered a decision in respect of the BVI Estate of a member of the Qatari Royal family regarding the validity of an oral will. The Honourable Justice Ellis found in favour of Ogier's clients (instructed by Maurice Turner Gardner), and determined, by way of a preliminary issue, that the Defendants were estopped from contending the will of the Deceased was invalid and unenforceable. The Honourable Justice Ellis thereby recognised the oral will of a Sharia court.

### | Background

The Deceased, a Qatari national and domicile, passed away in late November 2014. In June 1990 and in accordance with Qatari law, the Deceased attended the Qatari Supreme Personal Status Court in order to formulate his will (the **Will**) which revoked a prior will made in 1988. The Will was executed after his marriage to the First Defendant and before the birth of the Second Defendant. Under the Will, the Claimants are entitled to 20% of the Deceased's estate.

In June 2015, the Defendants commenced proceedings in Qatar, seeking that the Will be declared invalid as it had been revoked. The Defendants also made a parallel application for grant of letters of administration from the Probate Court of BVI without disclosing the existence of the Will or Qatari proceedings. The Probate Court of BVI granted letters of administration in October 2015 and the Qatari court, after several appeals, held the Will was and remained valid and enforceable in early 2018.

The Claimants commenced the present BVI proceedings in August 2019 seeking, among other orders, revocation of the BVI grant, probate of the Will in solemn form and the appointment of an independent administrator of the Deceased's BVI estate.

The Claimants contend the estate is composed of a substantial London property, several BVI companies, antiquities, artworks and jewels to be worth over US\$1 billion while the Defendants maintain the estate to be worth US\$15 million and that only one BVI company forms part of the

## Key points of judgment

In coming to its decision in favour of the Claimants "*...that the judgment of the Qatari Court of Appeal would be conclusive for the purposes of determining the validity of the Will in so far as it disposes of the movable property located in the Virgin [I]slands which (in the absence of a plausible and maintainable argument) would include the registered shares of the Virgin Islands company*", the following points were considered in particular:

- The parties were in agreement in regard to the general principles of estoppel, the validity of the Will under the laws of Qatar and that the Qatari Court of Appeal had found the Will to be valid.
- As for recognition of a foreign will, in the absence of an applicable statutory framework in the Virgin Islands, the BVI Court would rely on English common law principles of private international law, stating:
  - "*...common law principles prescribe that where a foreign domiciled person dies owning assets situated in the Virgin Islands, Virgin Islands law will govern the succession and administration of immovable property situated in the Virgin Islands but the law of his foreign domicile will govern succession issues and the administration of the estate generally*"; and
  - "*These common law principles also prescribe that where a testator dies domiciled [abroad], in construing the formal validity of any testamentary instrument, the Virgin Islands probate court will apply different laws to moveable property from that which it applies to immovable property...in so far as [the] immovable estate is concerned, a will is deemed to be valid if it is executed in accordance with the law of the country where the immovable estate is situated...On the other hand, a will is valid to pass movable state if it is executed in accordance with the law of the testator's last domicile.*"
- The general principle that must be considered first is whether the court of domicile has made any decision about the estate of the deceased, if so, then it will hold itself bound by that finding. Therefore, albeit the Qatari Court of Appeal had not determined the validity of the Will in the Virgin Islands, Ellis J determined there was no need to have regard to the requirements of validity of wills under the laws of the Virgin Islands as "*...in pronouncing on [the Will's] formal validity under the laws of Qatar, the Qatari Court of Appeal effectively determined the validity under Virgin Islands law through the application of common law principles of private international law. And there can be no doubt that in the absence of any local legislation or case law to direct its approach, the Virgin Islands court will look to these*

*common law principles which was extended to the Virgin Islands by the Common Law (Declaration of Application) Act, 1705..."*.

This judgment provides further clarity to the BVI Court's approach to the recognition of foreign wills and the treatment of moveable and immovable dispositions.

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