

O'Neal Webster is successful in landmark case on grants ad colligenda bona

GRANTS AD COLLIGENDA BONA - safeguarding estate assets at risk pending administration

A Grant ad Colligenda Bona is a temporary grant that may be issued by a court pending the issue of a full grant in relation to the estate of a deceased person. In the normal course, when a person passes away, the executor of his will or if there is no will, one of his heirs, will apply to a court for a grant of probate (generally, if there is a will) or a grant of letters of administration (generally, if there is no will). This grant will allow the executor or heir to take control of and administer the estate of the deceased person. This process usually takes 6 – 8 weeks in the BVI.

But what happens if the deceased was involved in litigation at the time of his death and which requires steps to be taken to ensure that the deceased's claim is preserved or if the deceased left a business for which decisions need to be taken immediately? This is where the court can use its general power to make an order for a grant ad colligenda bona. The grant allows the grantee to take control of the deceased's estate and preserve it pending the issue of a general grant i.e, a grant of probate or letters of administration.

The grant ad colligenda bona can be particularly valuable when a person entitled to the general grant resides overseas or is temporarily incapacitated and where vital measures must be taken, for example to preserve the running of the deceased's business.

O'Neal Webster was able to successfully put this tool to use for the benefit of its client in a recent case: In the Estate of Liao. The case involved a dispute among the beneficiaries of the estate of the deceased father relating to control of the estate of the deceased. The father controlled various BVI companies that in turn controlled various operating companies

In a landmark judgment, the Court held that a grant ad colligenda can be granted under British Virgin Islands common law in circumstances where there is a necessity for pressing administration, before a general grant can be obtained.

The facts of the case (the Estate of Liao)

This landmark matter involves a dispute among the potential beneficiaries of an estate for control of three BVI companies. O'Neal Webster was retained to represent the claims of the widow and one of the sons of the deceased, whose estate comprised three BVI companies. These BVI companies are the parent companies for various companies in Taiwan and Hong Kong which are directly engaged in chemical production and trading in China and Hong Kong. The BVI companies are part of the Taiwan-based, Loyal Group which has operations in Taiwan, Hong Kong, China and Poland.

Since the BVI companies are the parent companies of the underlying trading entities, control of the BVI companies would mean control of most, if not all, of the Loyal Group.

After the death of the father one of his sons unlawfully took steps to liquidate and dissolve one of the underlying companies in Taiwan of which one of the BVI companies is a majority shareholder. These steps were taken by the son without the consent of the board of directors of the BVI company or of the beneficiaries of the deceased's BVI estate. In order to protect the assets (the BVI companies) from being appropriated by one of the deceased's son, O'Neal Webster took the novel approach of advising its clients to obtain a special grant of probate – a limited grant ad colligenda bona. This allowed the widow to have interim control of the BVI companies pending trial to determine which heir should be permitted to obtain the full grant. The decision of the court represents the BVI's first written judgment dealing with an application for a limited grant ad colligenda bona.

The Court ruled not only that the common law grant ad colligenda was available in the BVI but also found in favour of O'Neal Webster's clients declaring that the widow was entitled to apply for the full grant of administration despite vigorous opposition by one of the deceased's sons.

O'Neal Webster is a leading offshore law firm practising BVI law and providing superior legal services to clients globally. For further information, please contact Paul Webster Q.C. (pwebster@onealwebster.com) or Nadine Whyte (nwhyte@onealwebster.com).

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