



Legitimate concerns

Marianne Cave advises BVI law firms and trust companies to review their procedures and documents in light of changes to the inheritance rights of ‘illegitimate’ children

The majority of offshore jurisdictions have long provided for equality in the legal rights and status of legitimate and ‘illegitimate’ children where trusts, estates and wills are concerned. As of 31 October 2014, the BVI joined such jurisdictions, instituting the *Status of Children Act, 2014* (the Act), which effectively nullifies the use of ‘legitimate’ or ‘illegitimate’ and ‘lawful’ or ‘unlawful’ as terms determining the status, rights, privileges and obligations of any child.

Formerly, BVI succession rules for the estates of persons who died intestate distinguished between children born in and out of wedlock, disallowing nearly all inheritance rights to an ‘illegitimate’ child.¹ The Act now remedies that situation and, where the paternity of a child is admitted or established, they will be treated in the same manner as a legitimate child under the rules of inheritance, and will benefit equally.

A BROADER INTERPRETATION

As legal and trust practitioners undertake estate planning, the Act’s broader interpretation of the words ‘heir,’ ‘issue’ and ‘children’ should be foremost in their minds to ensure that the beneficiaries are indeed those intended by the testators or settlors. Under the Act, such words are extended to apply to all children where parentage is presumed (unless there is proof to the contrary), including adopted children, artificially conceived children and children born to a couple of the opposite sex living together for a period of three years but not legally married.

Law firms and trust companies should now review their procedures and revise all documents to ensure that they incorporate these changes to the law.

Significantly, the Act is *not* retroactive; it has no effect on the estate of persons who died testate or intestate prior to commencement of the Act. Likewise, any lifetime dispositions or special powers of appointment that were executed prior to the Act’s

commencement are to be construed as if the Act had not come into operation. For example, ‘children’ who are currently receiving a trust allowance, or presently undertake a special power of appointment, will not suddenly be taken to include ‘illegitimate’, adopted or artificially conceived children.

DUTIES OF BVI EXECUTORS, ADMINISTRATORS AND TRUSTEES

For the BVI executor, administrator or trustee (‘the administrator’), the Act imposes a new burden in the distribution or administration of any estate or property after the Act comes into effect. They must now make honest and reasonable enquiries as to the existence of any person who could claim an interest in the estate or property by reason of the Act. They are not, however, obliged to pursue such enquiries further than they honestly and reasonably believe necessary.

The Act prohibits a person from making a claim against the administrator if, at the time a distribution was made, the administrator had no notice of the relationship on which the claim was based. This does not, however, prejudice the right of any person claiming an interest to follow the estate or any property representing the estate into the hands of any person, other than a purchaser. A person who feels aggrieved that their claim was disregarded may have the opportunity to go after any administrator or any beneficiary.

Bearing this in mind, the administrator’s updated procedures should include enquiries geared at revealing any person who may have a legitimate claim, and they should consider obtaining a written record of such persons. If there is any doubt as to the types of enquiries that should be made, legal advice should be obtained.



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1 Formerly, ‘illegitimate’ children had full inheritance rights only in relation to their mother and only in circumstances where there were no legitimate children