

# Private Client Law in the British Virgin Islands

## Taxation

### Tax Year and Payment Dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The British Virgin Islands (BVI) currently has no form of income, corporate or capital gains tax, and any estate duty, inheritance tax, wealth tax, gift or withholding tax. There is no official tax year.

### Domicile and Residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

#### Domicile

Not applicable (see *Question 1*).

#### Residence

Not applicable (see *Question 1*).

### Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

A very small sum is levied on each departure from the BVI, at airports and other terminals. This is called "departure tax" and is charged on all persons leaving the BVI, whether they intend to return or not. However, there is no exit tax for leaving the BVI to take up residence elsewhere and there are no fiscal consequences of leaving the BVI.

## Temporary Residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

Not applicable (see *Question 1*).

## Taxes on the Gains and Income of Foreign Nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Not applicable (see *Question 1*).

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

Not applicable (see *Question 1*).

## Inheritance Tax and Lifetime Gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Not applicable (see *Question 1*).

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Not applicable (see *Question 1*).

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

Not applicable (see *Question 1*).

10. Are there any other taxes on death or on lifetime gifts?

Not applicable (see *Question 1*).

Can a cross-border transfer of assets on death or by way of a gift trigger exit taxation similar to the exit tax levied when a person leaves your jurisdiction (see *Question 3*)?

## Taxes on Buying Real Estate and Other Assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

### Purchase and gift taxes

BVI stamp duty is payable (at different rates depending on whether the purchaser is a foreign national or a BVI national) on the purchase of real estate in the BVI.

### VAT

### Wealth taxes

Not applicable (see *Question 1*).

### Other

Land tax is payable on an annual basis, and the rate payable is based on the acreage of the land purchased. The annual rates of land tax vary between foreign nationals and BVI nationals:

- BVI nationals pay US\$3 for the first acre and US\$1 for each subsequent acre.
- Foreign nationals pay US\$50 for the first half acre, US\$150 for the second half acre and US\$50 for each subsequent half acre.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Not applicable (see *Questions 1 and 11*).

## Taxes on Overseas Real Estate and Other Assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Not applicable (see *Question 1*).

## International Tax Treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

The BVI is a party to a number of Tax Information Exchange Agreements (TIEAs). It is also a party to a small number of double taxation treaties, including a limited treaty with the UK, which covers UK income tax (and any taxes of a similar nature to income tax introduced by either country after the date on which the treaty was signed).

## Wills and Estate Administration

## Governing Law and Formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

The law applicable to the succession of a deceased person's:

- Immovable property is the law of the jurisdiction where that property is situated.
- Movable property is the law of the deceased's domicile.

The validity of a will disposing of such property depends on whether it complies with applicable laws as above, therefore:

- If the assets are immovable property in the BVI, the will must comply with the formalities specified by BVI law. It is advisable in such case to have a will that is also governed by BVI law.
- For movable assets (including shares in a BVI company), formal validity is determined by the law of the deceased's last domicile. It may be helpful to have a will disposing exclusively of such assets. If so, it is:
  - advisable for the will to be governed by BVI law (if possible under the laws of the testator's last domicile);
  - essential for the will to comply with the formal validity requirements for wills under the laws of the deceased's last domicile.

As it stands, the domicile at death is critical. It is also essential to keep the will under review: a change in domicile after the date of execution of the will may make it invalid. It is also vital to ensure that any such will is not inadvertently revoked by an over-inclusive revocation clause in a subsequent will disposing of non-BVI situs assets. A BVI trust may be a better solution in many cases as it avoids these and other problems (see *Questions 25 and 30*).

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

The domestic requirements for the validity of a will (that is, for testators whose last domicile is the BVI and in respect of BVI-situated immovable property) are set out in the Wills Act, Cap 81. According to these requirements:

- The will must be in writing.
- The will must be signed by the testator in the presence of two witnesses present at the same time, who must also sign in the testator's presence.
- The testator must intend by his or her signature to give effect to the will.

These requirements do not vary depending on the nationality or residence of the testator, but BVI private international law rules provide for the determination of the formal validity of a will according to the testator's last domicile (see *Question 15*).

The HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention) has not yet been given effect in domestic law, although it has been extended to the BVI as a matter of public international law.

## Redirecting Entitlements

17. What rules apply if beneficiaries redirect their entitlements?

Beneficiaries of full age and capacity are free to redirect their entitlements.

## Validity of Foreign Wills and Foreign Grants of Probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

### Validity of foreign wills

See *Question 15*.

### Validity of foreign grants of probate

A BVI grant of probate (or letters of administration) is required for valid dealings with title to BVI-situated property of deceased persons, such as in relation to shares in a BVI company (or a fixed equitable interest in shares, such as under a bare trust or nomineehip of such shares).

Foreign grants from certain countries (the UK and most members of the Commonwealth, but no longer Hong Kong) can be resealed in the BVI under the provisions of the Probates (Resealing) Act Cap 60. This is a faster and more cost-effective process than making an application for a fresh grant.

## Death of Foreign Nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

The law governing succession is the law of the deceased's domicile as at the date of their death, except in relation to immovable property (see *Question 15*). If a foreign national dies in the BVI, it will be necessary to establish his or her domicile.

In summary, an individual's domicile is inherited at birth (from the father if the parents were married at the time and from the mother if not) and remains such unless and until it is validly changed by, typically, the assumption of residence in a different country or in the case of a federal country, different state, in which the individual intends to reside permanently or indefinitely, having made a clean break with the domicile held by the individual immediately prior to the change.

## Administering the Estate

20. Who is responsible for administering the estate and in whom does it initially vest?

### Responsibility for administering

The right of, and responsibility for, administering a deceased person's BVI-situated estate falls on the personal representative(s) (PRs) appointed under a BVI grant of representation or, under a foreign grant re-sealed by the High Court, and in no other person. PRs are either:

- Executors (if appointed by will).
- Administrators (if not appointed by will).

The order of priority of entitlement to a grant of probate, in relation to the estates of persons dying domiciled in the BVI, is set out in Rule 10 of the Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules 2017 and those governing grants of letters of administration are set out in Rule 14. The order of priority of entitlement to a grant of either type in relation to the estates of persons dying domiciled outside of the BVI, is set out in Rule 28.

The powers and duties of BVI personal representatives (whether under a domestic or re-sealed foreign grant) are determined exclusively by the law of the BVI and include:

- Ascertaining the BVI-situated estate and worldwide liabilities.
- Getting in the deceased's BVI-situated estate.
- Paying or making due provision for the estate's worldwide liabilities out of the BVI-situated estate (it is possible, to obtain protection by appropriate advertisement under section 28 of the Trustee Act 1961).
- Distributing the remaining assets to those beneficially entitled to them under and in accordance with applicable succession law (which may be a system of law other than that of the BVI).

## Vesting

Legal title to the deceased's assets vests in the personal representatives. However, assets held as joint tenants with a right of survivorship do not form part of the deceased's estate for these purposes and do not vest in the personal representatives (see *Question 39*).

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

### **Establishing title and gathering in assets**

A grant of probate or letters of administration (or a BVI re-sealed foreign grant) is required in order to establish title to the estate and allow the personal representative (PR) to collect in the assets, unless assets will vest separately (for example, by way of survivorship).

### **Procedure for paying taxes**

Not applicable (see *Question 1*).

### **Distributing the estate**

The PRs are responsible for distributing the estate (see *Question 20*).

22. Are there any time limits / restrictions / valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

The grant or re-seal must be applied for within three years of death and an affidavit of reasons for any delay must be filed with any application for a grant outside of this period. Grants are regularly made to applicants outside of the period when the Registrar is satisfied with the reasons, subject to the objections of those entitled in a lesser degree of priority.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

Any person with an interest can challenge the validity of a will. The principal grounds for such a challenge are:

- Lack of testamentary capacity.
- Lack of knowledge and approval of the will's contents.
- Duress.

- Undue influence.
- Forgery.
- Invalid execution.

The High Court has wide powers, including the power to require the personal representatives (PRs) to furnish accounts, pay money into court or approve specific transactions.

A beneficiary can also apply to the High Court to remove any PR found guilty of neglect or misconduct in the administration of the estate. The High Court can appoint a replacement.

## Succession Regimes

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

There is complete freedom of testamentary disposition for persons dying domiciled in the BVI.

For the position regarding the use of BVI trusts to overcome foreign forced heirship issues, see *Question 25*.

## Forced Heirship Regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

### Avoiding the regime

There is no forced heirship regime in the BVI (see *Question 24*).

In relation to lifetime transfers into trusts established under BVI law, there is a comprehensive set of conflict of laws rules (set out in section 83A of the Trustee Act 1961). These are designed to provide certainty and to prevent a challenge to the validity of the trust on forced heirship grounds. Therefore, trusts governed by the laws of the BVI or dispositions of property held on these trusts cannot be held void, voidable, liable to be set aside or defective, and the capacity of the settlor cannot be questioned simply because the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust. Furthermore, the trust or disposition avoids or defeats rights, claims or interests conferred by foreign law on any person because of a personal relationship to the settlor or by way of heirship rights, or contravenes any rule of foreign law, any foreign judicial or administrative order or action that recognises, protects or enforces such rights, claims or interests.

An heirship right under foreign law does not affect the ownership of property or constitute the heir a creditor for the purposes of section 81 of the Conveyancing and Law of Property Act, Cap 220 or, the



Act against Fraudulent Deeds, Gifts, Alienations etc. (the Statute of Elizabeth), to the extent, if any, that it applies in the BVI.

A foreign judgment will not be recognised, enforced or give rise to an estoppel if it is inconsistent with these provisions.

### **Assets received by beneficiaries in other jurisdictions**

Not applicable (see *Question 24*).

### **Mandatory or variable**

Not applicable (see *Question 24*).

### **Real estate or other assets owned by foreign nationals**

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

See *Question 15*.

27. Do your courts apply the doctrine of renvoi in relation to succession to immovable property?

Succession to immovable property is determined by the law of the jurisdiction in which the property is situated (see *Question 15*).

The doctrine of renvoi will be applicable in relation to succession to immovable property to the same extent as under English common law conflict of law principles.

## **Intestacy**

28. What different succession rules, if any, apply to the intestate?

The general principles determining the law governing succession are the same as for intestate and testate succession (see *Question 15*).

The succession rules applicable on intestacy in relation to persons dying domiciled in the BVI are set out in the Intestate Estates Act, Cap 34. These rules can be summarised as follows:

- **Surviving spouse.** If the deceased leaves a surviving spouse, the spouse always receives:
  - the personal chattels;
  - 10% of the net value of the residuary estate (or US\$240 if greater) together with interest at 5% per annum.
- **Surviving spouse and no issue.** If the deceased leaves a surviving spouse and no issue, the balance of the residuary estate will be held on trust for the surviving spouse for life.
- **Surviving spouse and issue.** If the deceased dies leaving a surviving spouse and issue, then:
  - one half of the balance of the residuary estate will be held on trust for the surviving spouse for life;
  - the other half of the residuary estate will be held on statutory trusts for the deceased's surviving issue.

However, if these statutory trusts fail during the lifetime of the spouse, the property will be held on trust for the spouse for the remainder of his or her lifetime.

- **Issue but no surviving spouse.** If the deceased dies leaving issue but no surviving spouse, the residuary estate is held on statutory trusts for the deceased's surviving children.
- **No issue but one or both parents.** Subject to the interest of any surviving spouse, the residuary estate will be held on trust for the deceased's parents equally, or for the surviving parent.
- **No issue or parents.** If the deceased leaves no issue or parents, subject to the interests of any surviving spouse, the residuary estate is held on trust for the following relatives in the following order of priority:
  - on statutory trusts for the deceased's brothers and sisters of the whole blood;
  - on statutory trusts for the deceased's half-brothers and half-sisters;
  - on statutory trusts for the deceased's surviving grandparent or grandparents equally;
  - on statutory trusts for the deceased's uncles and aunts of the whole blood;
  - on statutory trusts for the deceased's uncles and aunts of the half blood.
  - **No issue, no parents and no relatives.** In these circumstances, the entire estate will pass to the surviving spouse or, if there is no surviving spouse, to the Crown.

The formation of a statutory trust under the Intestates Estates Act means that:

- The property is held on trust for sale for the relevant class of relatives and their children and more remote issue in equal shares per stirpes (that is, in shares according to the family branch) on attaining the age of 18 years.
- Statutory provisions relating to maintenance and accumulation apply.
- Hotchpot provisions (that is, where amounts already received are taken into consideration when calculating the final amount due to the beneficiaries under the terms of the trust) may apply.

- If these trusts fail, the property passes as if those concerned had died before the deceased. Therefore, the entitlements of a child, sibling, uncle or aunt who has predeceased the intestate pass to his or her own children (or more remote issue) on attaining majority.
29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

It is not possible for beneficiaries to challenge the adequacy of the provision made for them under the intestacy rules.

## Trusts

30. Are trusts (or an alternative structure) recognised in your jurisdiction? How are trusts recognised under civil/common law and under your national tax laws?

### Civil/common law

#### Type of trust and taxation.

All the types of trusts that are possible under English law can be established under BVI law, including:

- Discretionary trusts.
- Interest in possession trusts.
- Reserved powers trusts.
- Charitable trusts.

In addition, statutory non-charitable purpose trusts can also be established which, not being exclusively charitable trusts, may benefit persons and/or further purposes, whether charitable or not. Non-charitable purpose trusts must have enforcers who (rather than any persons named as beneficiaries) have exclusive standing to enforce the trust.

The majority of trusts established under BVI law are private discretionary settlements. The Virgin Islands Special Trust Act 2003 (VISTA) creates a separate regime which allows trusts of BVI shares to be created which remove or modify a trustee's duty of diversification of investment and of monitoring and intervention in the BVI company and, by extension, any company held below the BVI company. The regime further allows for rules to be imposed on the trustee requiring it to make appointments to the board of the company in accordance with directions given to it. The VISTA trust therefore allows, for example, a family business to be held in trust for as long as the settlor may desire, allowing also for continued family management of the business, without the trustee having any duty or power to dispose of the company in order to avoid loss to the beneficiaries or to make a profit for them (the "prudent man of business" rule may be ousted or modified as desired).

## Residence of trusts.

## Tax Laws

### Type of trust and taxation.

### Residence of trusts.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

The HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention) has been extended by the UK government to the BVI and forms part of BVI domestic law by reason of the UK Recognition of Trusts Act 1987 (Overseas Territories) Order 1989 SI 1989/673. A detailed discussion of this area of law and its effect are beyond the scope of this chapter. However, in general, most trusts governed by foreign laws created for the benefit of foreign persons will be recognised by the BVI courts.

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

Not applicable (see *Question 1*).

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

### Purpose trusts

The Trustee Act 1961 allows for the creation of non-charitable purpose trusts, provided the following conditions are satisfied:

- The trust's purposes must be specific, reasonable and possible.
- The purposes must not be immoral, contrary to public policy or unlawful.

- At least one trustee of the trust must be a "designated person": this normally involves the appointment of a licensed BVI trust company or a BVI private trust company as one of the trustees of the trust.
- The trust instrument must appoint a person as enforcer and must provide for the appointment of a further enforcer on any occasion where there is no enforcer, or no enforcer willing or able to act. The enforcer appointed by the trust instrument must be a party to it, or give his or her consent in writing addressed to the trustee to act as the enforcer of the trust.

### **Perpetuities and accumulations**

The BVI has a statutory perpetuity period of up to 360 years. Perpetual charitable and non-charitable purpose trusts may be created, and the income of a BVI trust can be accumulated for the full perpetuity period.

### **Beneficiaries' rights to information**

Statutory provisions regulate the provision of information by trustees of the Virgin Islands Special Trusts Act 2003 (VISTA) trusts to beneficiaries or enquirers.

The principles upon which other beneficiaries are entitled to information, and the principles covering the restriction of the beneficiaries' right to information by the trust instrument, are the same as under English law.

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

Section 83A of the Trustee Act 1961 is designed to protect BVI trusts (and dispositions to the trustees of such trusts) against claims that are based on marital relationships. The legislation provides that a foreign judgment will not be recognised, enforced or give rise to an estoppel insofar as it purports to vary or set aside a trust validly created by a living person under BVI law, or deprive the trustee or any beneficiary of any rights, where that judgment arises out of a personal relationship, defined to include marriage.

As far as domestic law is concerned, section 40 of the Matrimonial Proceedings and Property Act 1995 (which will apply to persons who have been resident in the BVI for a continuous period of two years immediately preceding the presentation of a divorce petition) allows claims to be brought against those who have transferred, or who are about to transfer, matrimonial property with the intention of defeating claims to financial provision.

Civil partnerships are not presently recognised in the BVI. However, the definition of "personal relationship" in section 83A and, in particular, paragraph (c), is thought to be wide enough to cover claims made by civil partners and same-sex spouses under foreign law.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

A discretionary BVI trust can provide substantial protection against a beneficiary's creditors (since the interest of a merely discretionary object is non-transmissible and will therefore not vest in a trustee in bankruptcy). However, the BVI does not have legislation specifically designed to facilitate the creation of asset protection trusts that will protect the disposition into trust from the settlor's creditors. Any such disposition will be impeachable under BVI legislation (deriving from the English Statute of Elizabeth). The time limit for bringing claims is 12 years from the date of any prejudice to creditors.

## Charities

36. Are charities recognised in your jurisdiction?

Four categories of charitable purpose are permissible:

- The relief of need or distress caused by poverty, ill health, youth or old age.
- The advancement of religion.
- The advancement of education.
- Other purposes that are of benefit to the community as a whole.

The scope of the public benefit test varies according to which of the four heads the trust purpose falls under. A trust does not fail to qualify as a trust for charitable purposes only because those purposes may in part benefit the public or a section of the public outside the BVI.

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

Charities can be established as:

- Companies, usually limited by guarantee so that its members will not be entitled to any profits or surplus on dissolution.
- Unincorporated associations, assuming that the rules provide for a cy-près distribution (that is, as near as possible to the testator's or donor's intentions when these cannot be precisely followed) on dissolution rather than a distribution to members beneficially.

- Trusts.

The Non-Profit Organisations Act 2012 provides the framework for regulating charities and other non-profit organisations which operate predominantly in the BVI. However, the Non-Profit Organisations Act does not apply to:

- Entities licensed under the Banks and Trust Companies Act 1990.
- Purpose trusts where the trustee is licensed under the Banks and Trust Companies Act.

The Non-Profit Organisations Act applies to organisations engaged in the promotion of charitable, religious, cultural, educational, social or paternal purposes, or other activities or programmes for the benefit of the public, or a section of the public. Relevant organisations must register with the Non-Profit Organisation Registration Board through the Registrar of Non-Profit Organisations.

38. What are the benefits for individuals when setting up charitable organisations?

Are charitable donations deductible for tax purposes?

There are no tax benefits as there are no direct taxes (see Question 1).

## **Ownership and Familial Relationships**

### **Co-ownership**

39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

Assets can be owned as joint tenants with the right of survivorship (that is, the surviving joint tenant becomes the absolute owner of the property on the death of his or her joint tenant).

The property is not part of the deceased co-owner's estate for succession purposes and does not therefore need to be administered as part of his or her estate.

Property can also be owned jointly as tenants in common. On death, the share of a tenant in common in the property does form part of their estate for succession purposes and must be dealt with as part of the administration of their estate.

There are no direct taxes (see *Question 1*).

## **Familial Relationships**

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitants/civil partners in real estate or other assets protected by law?

The BVI does not have community of property or any matrimonial property regime. However, the family courts do have wide powers to make orders for the division of property between the parties on divorce.

Civil partners are not recognised. Co-habitants can acquire rights as beneficial owners but they have no rights to the other's assets on separation.

41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex relationships are not recognised.

42. How are the following terms defined in law:

### **Married**

Marriage is the union of a man and a woman and will generally have the same meaning as under English common law.

### **Divorced**

Divorce means the dissolution of a marriage other than on death.

### **Adopted**

Where a person is adopted, all rights, duties, obligations and liabilities of his or her parents or guardians in relation to his or her future custody, maintenance and education are extinguished, and vest in, or are enforceable against, his or her adoptive parents as if they were his or her actual parents.

### **Legitimate**



A child is regarded as legitimate if his or her parents were married to each other when he or she was born, under the provisions of the Legitimacy Act, Cap 271. The Legitimacy Act also provides that someone whose parents were not married to each other when he or she was born is legitimated on their subsequent marriage, if the child's father was domiciled in the BVI at the time of the marriage (unless either parent was married to someone else when he or she was born).

The Status of Children Act 2014 provides for the equal status of children born within and outside of marriage.

### **Civil partnership**

There is no concept of a civil partnership.

### **Minority**

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

The age of majority is 18 years. There is no general bar on a minor's owning assets (other than BVI land) but because it may be difficult to acquire good title from a minor, it is not sensible generally for commercially valuable assets to be put into the name of minors since it may impede their transferability. Assets can be held by trustees on a minor's behalf, either on express lifetime or testamentary trusts or on the statutory trusts which arise on intestacy (see *Question 28*).

### **Capacity and Power of Attorney**

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

The provisions of the Mental Health Act 2014 apply to persons who are incapable of managing and/or administering their property and affairs by reason of mental disorder.

In relation to powers of attorney, the authority given to an attorney will cease on the donor's death or incapacity. With the exception of certain provisions under the Conveyancing and Law of Property Ordinance, Cap 220, BVI law contains no provisions enabling enduring powers of attorney to be made.

The person who has been appointed as guardian or curator of a mentally incapable person in a foreign country pursuant to a power of attorney valid under that law is likely to be able to make an application under the Mental Health Act.

## Proposals for Reform

45. Are there any proposals to reform private client law in your jurisdiction?

BVI private client law is under constant review, with input from the:

- Society of Trusts and Estate Practitioners.
- BVI Bar Association.
- Governmental committees.
- Financial Services Commission.

It is anticipated that a law giving effect in domestic law to the HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention) may be enacted with retrospective effect as regards existing wills that have not yet taken effect.

## Authors

### Ray Davern

+44 20 7466 1625

ray.davern@maples.com

### Alex Way

+44 20 7466 1674

alex.way@maples.com

Reproduced from Practical Law with the permission of the publishers. For further information, visit [www.practicallaw.com](http://www.practicallaw.com)