

BRITISH VIRGIN ISLANDS - TRUST

Personal wealth is amassed in different ways. Whether inherited, earned through successful business venture, or through investment planning, it is prudent to consider a strategy to protect assets and wealth for the future. The trust remains one of the most effective tax and asset protection planning tools available today.

A trust is created when a person (the settlor) transfers assets to a trustee. The trustee will care for and dispose of the assets in accordance with the Trust Deed and possibly a Letter of Wishes provided by the settlor. The beneficiaries of a trust are the persons described in the Trust Deed who may benefit from the trust.

Major advantages

- By moving his/her assets to an offshore trust, the settlor can divest him/herself of ownership of the assets. These assets could be money, real property, company shares, movable or immovable assets or even intellectual property rights.
- Confidentiality and flexibility.
- In many jurisdictions a trust deed is not registered with any tax authority or government authority and is therefore a private agreement between the parties.
- Normally there is no requirement to file the accounts of a trust, nor to have them audited by an independent auditor.

Key motivations and uses

- Wealth protection for future generations
- Controlling succession of ownership for family businesses and wealth
- Fear that children or others may dispose of assets or manage them unwisely
- Tax planning
- Flexible estate planning
- Avoiding disruption on death
- A settlor wishing to protect him/herself and his/her heirs from unrest, political risks, and future claims

The British Virgin Islands (BVI)

The British Virgin Islands trust law is founded on English common law principles and based largely on the UK's Trustee Act 1925. The BVI government is committed to a modern regulatory regime and effective partnership with the private sector. The Trustee (Amendment) Act, 1993 was enacted as a result of this policy and substantially amended the Trustee Ordinance, 1961 to cater for modern day practices and evolving client needs. The United Kingdom Recognition of Trusts Act, 1987 which adopts the provisions of the Hague Convention on the recognition of trusts is also part of BVI law.

Why use the BVI to establish a trust?

Creating a BVI trust, combined with an underlying IBC, provides a vast range of benefits. The two guiding principles of the BVI legislation are protection of the trust's interests and assets and facilitation of its management and operations. The many benefits include:

- Protection of wealth and inheritance wishes.
- Protection of trust interests.

- Protection of privacy, exclusion from registration ensures confidentiality.
- Protection from forced heirship laws and community property regimes.
- Rule against perpetuities modified and provision for accumulation and maintenance.
- Provision for reservation of powers by the settlor.
- Duties and role of the protector established.
- Facilitation of user-friendly trust deeds.
- Facilitation of comprehensive investment strategies.
- Facilitation of a vast range of estate planning options.
- Facilitation of the formation of charitable and non-charitable trusts.
- Facilitation of swift, straightforward and cost-competitive operation.
- Broad powers for the trustee to invest as he wishes.

What types of trust are allowed in the BVI?

The crafted legislation of the BVI provides for the trusts to be drafted in a way that will meet a wide range of client requirements. They include:

- Revocable and non-revocable trusts
- Short-form or long-form trust deeds
- Full discretionary or fixed interest settlements
- Accumulation and maintenance settlements for minors
- Charities and protective trusts to remove future creditor risks
- Purpose Trusts

The trustee (amendment) act 1993

The main features of the Act are:

- **Perpetuities and Accumulations:**
The perpetuity period can be fixed for a term not exceeding 100 years in place of the old fashioned common law "lives in being". There area number of savings provision including a "wait and see provision".
- **Proper Law and Jurisdiction:**
If Proper Law is said to be the BVI the courts will require no other connecting factor.
- **Forced Heirship Provisions:**
Protecting dispositions from forced heirship laws in the settlor's home county.
- **Purpose Trusts:**
For any lawful purpose.
- **Control by settlor:**
A Protector may be appointed and certain powers may be reserved to the settlor.
- **Taxation and Registration:**
The trustees, trust and non-resident beneficiaries are not liable for taxes in the BVI.

- **Authorized Investments:**
The trustees have broad powers of investment.
- **Schedule of Powers:**
The Act includes a Schedule of Powers, containing those powers typically found in offshore trusts, which may be incorporated into the trust deed by reference.
- **Amendment to Trust Instrument**
Provided such power is expressed in the deed the trust may be amended or revoked by the trustee or provide a flee clause.

For more information on trusts, please contact Maria M. Bashaw, Esq at maria.bashaw@intlca.com