



ICLG

The International Comparative Legal Guide to:

Private Client 2018

7th Edition

A practical cross-border insight into private client work

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Nine general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 28 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance and STEP for their continued and valued participation in the guide.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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British Virgin Islands

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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

This is not applicable in the British Virgin Islands.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

1.4 If residence is relevant, how is it defined for taxation purposes?

This is not applicable in the British Virgin Islands.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

1.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable in the British Virgin Islands.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

2 General Taxation Regime

2.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

There are no gift or estate taxes in the British Virgin Islands.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

There is no income tax or capital gains tax in the British Virgin Islands.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Whilst there is no income tax in the British Virgin Islands, payroll tax and social security is charged on every self-employed person or employer who carries on business in the British Virgin Islands.

The rate of the payroll tax is 10% for small employers and up to 14% of remuneration for large employers. 8% of the total remuneration may be reclaimed from the employee. The rest is chargeable to the employer.

Social security is payable at 4.5% of remuneration by the employer and 4% by the employee. Both contributions are subject to a cap.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

In terms of individuals bringing their personal possessions with them if they are immigrating to live in the British Virgin Islands for more than six months, each adult has a personal allowance of up to **US\$1,000** of personal and used household effects exempt from duty. There are a range of duties and a number of exemptions, generally in order to encourage investment in certain industries considered to be of benefit to the British Virgin Islands, such as materials imported for school construction or for necessities. Generally speaking, import duty ranges from 5% to 20% of the sum of the market value of the possession and the insurance and shipping costs of delivery to its destination in the British Virgin Islands. Certain items such as perfume, precious metals, electrical appliances and motor vehicles incur higher rates of import duty.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

There are no anti-avoidance provisions that apply to the offshore arrangements of persons who have become established in the British Virgin Islands.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

No, there is not.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

No, there are none.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

There are no estate or gift taxes in the British Virgin Islands.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

There is no income tax in the British Virgin Islands.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

There are no other relevant taxes.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Dutiable items that are classified as personal and used household effects of a person immigrating for more than six months to the British Virgin Islands are exempt from duty as to the first US\$1,000, provided they are immigrating to the British Virgin Islands for more than six months. Tourists and other visitors not intending to stay for more than six months may bring personal effects and baggage compatible with their intended length of stay without paying duty. Returning residents will not be charged duty on baggage and personal effects if they have left the territory for over 72 hours and are exempt from paying duty on purchases up to the value of US\$50/adult and US\$10/child.

Baggage and personal (and household, if immigrating) effects may arrive unaccompanied but will only be exempt from duty if they are imported either three months prior to or post the passenger's arrival. All other imports will, generally speaking, attract duty at a rate of 5% to 20%, although many foodstuffs are zero-rated and a number of exemptions apply. Perfume, precious metals, electrical appliances and motor vehicles, amongst others, attract higher rates of duty.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

Stamp duty is payable at 12% of the sale price or appraised value, whichever is the higher, on the transfer of residential property. For foreigners, annual land tax of US\$50 is payable for land under half an acre. For land over half an acre, a US\$150 charge plus US\$50 for each additional acre is payable annually.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

5.3 How are branches of foreign corporations taxed in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

There are no income taxes or capital gains taxes in the British Virgin Islands. The British Virgin Islands has entered into a number of tax information exchange agreements.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

There are no income taxes or capital gains taxes in the British Virgin Islands.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

There are no estate or gift taxes in the British Virgin Islands.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

There are no estate or gift taxes in the British Virgin Islands.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

The British Virgin Islands' laws on succession largely follow the English law approach. Accordingly, under British Virgin Islands law, the applicable law governing succession to movables (and for determining both the essential and formal validity of a will) of a deceased person is that of his last domicile; the applicable law governing succession to immovables (and the essential validity of a gift of such in a will) is the law of the jurisdiction that the immovable property is situated. The British Virgin Islands' test for establishing a person's domicile is the same as the English law test: the domicile of the individual's father at the date of birth (if the parents were married at the time and, if not, from the mother – domicile of origin) which continues to apply unless replaced by migrating to a different country (or, in the case of a federal country, state) with the positive intention of making that different country (or, in the case of a federal country, state) the permanent home (domicile of choice) and having made a clean break with the domicile held by the individual immediately prior to the change.

Having established domicile as a matter of British Virgin Islands law, movable property (including shares in a British Virgin Islands company) follows the succession laws of the testator's last domicile (see question 7.2 in relation to the laws of succession in relation to real estate).

It may be helpful to have a will disposing exclusively of such British Virgin Islands *situs* moveable property and, if so, it is advisable for that will to be governed by British Virgin Islands law but essential that it complies with the formal validity requirements for wills under the laws of the deceased's last domicile. As it is the domicile at death that 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-British Virgin Islands *situs* assets.

The domestic requirements for formal validity of a will (i.e. those applicable to persons dying domiciled in the British Virgin Islands at death) are set out in the Wills Act; summarised, the will has to be in writing, signed by the testator in the presence of two witnesses present at the same time and in his presence who also sign. The testator must intend by his signature to give effect to the will. Concerning essential validity, the testator has to have the necessary testamentary and mental capacity, he has to know and approve the contents of the will, he must not be subject to any undue influence and there must be no component of fraud and no component of forgery. Testamentary or mental capacity requires the testator to be of sound mind, memory and understanding. He must therefore be capable of forming the testamentary intentions, his memory must be sound to recall the persons who ought to be considered as his likely beneficiaries and he has to be able to understand the ties of those people to him by blood or friendship and their claims on these or other grounds on his testamentary generosity. Undue influence follows the English test, that is, "influence" does not mean that the

testator was persuaded to make his will in a certain way for reasons that other people might consider foolish or inappropriate. Undue influence in this context means coercion to the extent that the will does not reflect the actual intentions of the testator. To seek to declare a will is essentially invalid on grounds of fraud or forgery requires a very high degree of proof.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

Regardless of the domicile of the deceased, if the deceased owns real estate, whether in the British Virgin Islands or elsewhere, British Virgin Islands law will apply the laws of succession of the jurisdiction where the property is located to the question of the succession to that property (*lex situs*).

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

Yes, trusts are recognised in the British Virgin Islands.

8.2 How are trusts taxed in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3). There is trust duty of US\$200 on trust instruments.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

The British Virgin Islands has specific statutory provisions that cover conflicts of laws concerning trusts. That legislation also addresses, and declines to give effect to, attempts to set aside a trust merely on the grounds that the terms of the trust may defeat a forced heirship claim arising under foreign law of a disappointed heir of the settlor. There are no forced heirship rules under British Virgin Islands law.

8.4 Are foundations recognised in your jurisdiction?

Foundations, in the sense generally understood in civil law countries, do not exist as such in the British Virgin Islands. A foundation from a civil law country that largely resembles a company or corporation in that it has separate legal personality, can own property and sue and be sued, is likely to be recognised in the British Virgin Islands as a legal person similar to a foreign company. Some charitable trusts and charitable companies are named "foundation" in the British Virgin Islands, but they are either a trust or a company if they are governed by British Virgin Islands law. They are not foundations as understood in civil law jurisdictions.

8.5 How are foundations taxed in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3).

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Foundations, as they are understood in civil law jurisdictions, cannot be created as such in the British Virgin Islands.

9 Matrimonial Issues

9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

There is no domestic concept of civil partnership under British Virgin Islands law. There is no domestic concept of same-sex marriage under British Virgin Islands law. The question of recognition of such arrangements validly contracted under foreign law is a matter of British Virgin Islands private international law and may turn on a question of British Virgin Islands public policy and, in that sense, is as yet undetermined.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

There is no community of property regime in the British Virgin Islands but the British Virgin Islands courts have a wide discretion, as in England and Wales, to divide property of divorcing spouses.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

There is no legislation in the British Virgin Islands that authorises or upholds such agreements but recent United Kingdom Supreme Court authority, acknowledging that pre-nuptial agreements may have relevance to the exercise of discretion to divide the property of divorcing spouses in some circumstances, has strongly persuasive effect in the British Virgin Islands. As regards recognition of such arrangements validly contracted by foreign parties under applicable foreign law, there is no objection to their recognition in principle and any foreign judgment giving effect to such arrangement may be enforced in relation to property, such as shares in a British Virgin Islands business company, that is situated in the British Virgin Islands if the usual conditions for enforcing such judgments are met.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

As in England, the court will first consider the best interests of any children of a marriage and thereafter the responsibilities, needs, financial and other resources, actual and potential earning power of the parties.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Those visiting the British Virgin Islands as tourists may be granted entry for up to one month, provided they are in possession of ongoing or return tickets, adequate means of support and have prearranged accommodation. Certain country nationals will require a visa. Those wishing to visit for longer may apply for an extension.

Besides the system of entry under a work permit which allows for entry to the British Virgin Islands, entry may be gained if the person has permanent residency status (as a holder of a Certificate of Residence), has Belonger status, or is employed by specific employers (such as within the diplomatic corps and the like). The Chief Immigration Officer may also grant discretionary leave

to enter in all other cases. The process for obtaining a Certificate of Residence, Belonger status or discretionary leave to enter is a complicated and lengthy process and specialist legal advice should be sought.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

The only special categories for entry relate to persons employed in certain jobs with the diplomatic corps and their accompanying families, and those serving and on duty in the Territory in Her Majesty's Armed Forces.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

The Governor may grant a certificate of naturalisation to a person who meets the requirements set out in the British Nationality Act, so that they may become a British Overseas Territories Citizen. In summary, the requirements for naturalisation are: being of good character; having sufficient knowledge of English; having sufficient ties to the Territory (whether by employment or intention to principally reside); and having resided for a sufficient length of time in the British Virgin Islands prior to their application. The applicant must be free of any restriction under the immigration laws on the maximum length of his or her stay in the British Virgin Islands, so therefore must either have been issued a Certificate of Residence or have Belonger status.

A person with Belonger status is deemed to belong to the British Virgin Islands. Generally speaking, status is conferred on successful application if the applicant is of good character, is over 18 years old, has been ordinarily resident in the British Virgin Islands for 10 years prior to applying, has held a Certificate of Residence for no less than 12 months prior to applying and satisfies the Immigration Board that he or she intends to make the British Virgin Islands his or her permanent home. The Governor may, in exceptional circumstances, waive those requirements provided the applicant is of good character and has been ordinarily resident for seven years or has made significant and consistent contributions to the British Virgin Islands over a period of 50 years. Belonger status can also be conferred through marriage, birth or descent.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

There is no direct taxation in the British Virgin Islands (save as specified in question 2.3). However, there may be indirect taxation implications as a result of obtaining nationality (for example, a reduced rate of stamp duty on the purchase of land).

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

No, there are not.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

The British Virgin Islands has signed 28 TIEAs to date which

include Aruba, Australia, Canada, China, Curacao, the Czech Republic, Denmark, Faroe Islands, Finland, France, Germany, Greenland, the States of Guernsey, Iceland, India, Ireland, the Isle of Man, Japan, the Netherlands, New Zealand, Norway, Poland, Portugal, St Maarten, South Korea, Sweden, the United Kingdom and the United States.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

The British Virgin Islands has signed intergovernmental agreements with the United States and the United Kingdom to improve

international tax compliance. The jurisdiction is an “early adopter” of the OECD Common Reporting Standard and has enacted relevant local legislation.

The British Virgin Islands has also enacted the Proceeds of Criminal Conduct Act and the Anti-Money Laundering And Terrorist Financing Code of Practice, which do contain certain reporting requirements.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

No, there are not.



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MAPLES

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Maples and Calder is known worldwide for the quality of its lawyers. This extensive experience, the depth of the team and a collegiate approach are main characteristics of the firm, enabling it to provide the highest quality legal advice on a wide range of transactions.

Maples and Calder offices are located in the British Virgin Islands, Cayman Islands, Dubai, Dublin, Hong Kong, London and Singapore. The service provided is enhanced by the strong relationships the firm has developed. For fiduciary and fund services requirements, the firm provides a seamless “one stop shop” capability through its affiliate, MaplesFS.

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