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A Summary of Recent Legislative Developments in the BVI: Trusts, Succession, Data Protection and Consumer Protection

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On 9 July 2021, a number of important pieces of legislation were brought into force in the BVI on the same day. Those enactments have made significant changes to the law in their respective areas, namely trusts, probate, data protection and consumer protection.

Below is a summary of the main changes that each of the new Acts has made to the existing legal position.

Trustee (Amendment) Act 2021

The Trustee (Amendment) Act 2021 has made various amendments to the Trustee Act 1961: the main legislative provision governing BVI trusts. The general purpose of those amendments is to modernise and strengthen the BVI's trust offering, in order to maintain the territory's position as one of the premier jurisdictions for private clients. The main amendments are:

- Providing the Court with a new power to vary certain trusts without the consent of the beneficiaries.
- Placing the rule in *Re Hastings-Bass* on a statutory footing, and strengthening that rule by formulating it in the way that it was formulated prior to the UK Supreme Court decision in *Pitt v Holt; Re Futter*. The new section applies to any fiduciary power, such that it appears to be capable of applying outside of the trustee context (e.g. to directors).
- Increasing the powers that a settlor may reserve to himself in a trust instrument, without (among other things) invalidating the trust or preventing the trust taking effect according to its terms.
- Strengthening the existing "firewall provisions" which protect BVI trusts and trustees against forced heirship and matrimonial claims in foreign countries

The new Act is based on recommendations made by the Trust and Succession Law Review Committee.

A copy of the Trustee (Amendment) Act 2021, can be downloaded [here](#).

Probate (Resealing) Act 2021

Prior to this new Act, it was only possible to reseal grants issued in a very limited number of jurisdictions (namely, the UK, Canada, Australia, New Zealand and the British OTs). The 2021 Act expands the list of relevant jurisdictions to 67, and includes within the list key jurisdictions such as Hong Kong, the USA and all Commonwealth countries.

A detailed explanation as to the meaning and effect of the new Act (produced by Robert Lindley – Conyers' Head of Private Client and Trust in the BVI and Cayman) can be downloaded [here](#).

A copy of the Probate (Resealing Act) 2021 can be downloaded [here](#).

Data Protection Act 2021

The new Act is the first piece of specific data protection legislation to be enacted in the BVI. It is intended to provide the sorts of data protection that is common place in many other countries, including the UK and the member states of the EU.

The objects of the new Act are to safeguard data processed by public bodies and private bodies and to promote transparency and accountability in the processing of personal data. In order to (among other things) monitor compliance with the new Act and investigate alleged violation of data protection principles, the 2021 Act provides for the establishment of the Office of Information Commissioner.

As with other jurisdictions, the new Act is likely to have an immediate impact on local businesses, who will be expected to comply with the detailed provisions of the Act and respond to (no doubt) a large number of requests for personal data, or face possible civil or (potentially) criminal liability.

A copy of the Data Protection Act 2021, can be downloaded [here](#).

Consumer Protection Act 2020

Although this new Act is unlikely to be of much interest to those not working or residing in the BVI, the Consumer Protection Act 2020 (which was enacted in 2020, but only came into force on 09 July 2021) is an extremely welcome piece of legislation to those living in the BVI. For the first time, the BVI now has an Act that provides the sorts of consumer rights and protections that have been in place elsewhere (such as in the UK) for decades. Among other things, the Act contains:

- Provisions detailing the standard that goods or services supplied under a consumer agreement must now meet;
- A prohibition on unfair trade practices, such as false, misleading or deceptive representations;
- The meaning, regulation and control of unfair terms in consumer agreements;
- Detailed provisions in relation to the meaning of defective products and the liability arising from any damage suffered as a result of the same; and
- The prohibition on the supply of goods that fail to meet certain basic safety requirements.
- In addition to civil liability (which appears to be enforceable in a number of different ways, including by action before the BVI Courts, or via a complaint to Virgin Islands Trade Commission), the 2020 Act also imposes criminal liability, with corresponding fines, in relation to the breach of certain provisions.

A copy of the Consumer Protection Act 2020, can be downloaded [here](#).

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