

---

# **British Virgin Islands**

## Financial Assistance

### IBA Corporate and M&A Law Committee 2022

#### Contact

Anton Goldstein  
*Conyers Dill & Pearman, British Virgin Islands*  
[anton.goldstein@conyers.com](mailto:anton.goldstein@conyers.com)

Rachael Pape  
*Conyers Dill & Pearman, British Virgin Islands*  
[rachael.pape@conyers.com](mailto:rachael.pape@conyers.com)

Oliver Cross  
*Conyers Dill & Pearman, British Virgin Islands*  
[oliver.cross@conyers.com](mailto:oliver.cross@conyers.com)

---

# Contents

	Page
INTRODUCTION	2
FINANCIAL ASSISTANCE IN THE BRITISH VIRGIN ISLANDS	2

---

## INTRODUCTION

The purpose of this guide is to set out an overview of the legislation and regulatory framework which governs the concept of financial assistance within the British Virgin Islands (BVI) in accordance with the current British Virgin Islands Business Companies Act 2004, as amended (the Act).

---

## FINANCIAL ASSISTANCE IN THE BRITISH VIRGIN ISLANDS

### What is financial assistance?

While the BVI does not have a statutory definition of financial assistance, it is generally accepted that it involves assistance given by a company for the purchase of its own shares or the shares of its holding companies. In many jurisdictions, such assistance is prohibited or at least restricted to some extent by law.

### Is the provision of financial assistance allowed under BVI law?

The Act<sup>1</sup> specifically allows a company to give financial assistance to any person in connection with the acquisition of its own shares. Further, the Act does not specifically mention nor prohibit the giving of financial assistance in relation to the purchase of the shares in a holding company.

### Are there any other considerations?

A director of a company, when exercising their powers or performing their duties, shall act honestly, in good faith and in what the director believes to be in the best interests of that company.<sup>2</sup> Even though the company may by law give financial assistance, in order for the director to adequately discharge their statutory duties of adequate care, skill and diligence<sup>3</sup> and avoid any potential personal liability, they will need to satisfy themselves that the provision of financial assistance is actually in the best interests of the particular company for which they act as a director.<sup>4</sup>

### What if a BVI company forms part of a multi-jurisdictional company group?

As mentioned above, in many jurisdictions financial assistance is prohibited or at least restricted to some extent by law. As such, while there may be foreign law issues, there will not be any issues from a BVI perspective as BVI law expressly allows financial assistance.

### What are the consequences of providing financial assistance?

As BVI company law expressly allows for the provision of financial assistance, there are no adverse consequences. Nevertheless, this will only be the case if the directors have acted:

- with adequate care, skill and diligence;
- in good faith; and
- in the best interests of the company (or in the best interests of shareholders if one of the exceptions above applies).

---

<sup>1</sup> Business Companies Act 2004, s 28(2)(a)(iv))

<sup>2</sup> *Ibid*, s 120(1)

<sup>3</sup> *Ibid*, s 122

<sup>4</sup> BVI law permits fiduciary duties to be varied in some circumstances.