

# Managing the property and affairs of incapacitated persons in the British Virgin Islands

**Briefing Summary:** In the complex world of offshore asset management, ensuring the security of one's interests becomes even more critical when the owner is incapacitated. This article explores how the BVI Mental Health Act, 2014 (the "MHA") provides a legal framework for protecting, managing, and administering offshore assets when the owner is unable to do so himself/herself due to mental incapacity.

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## Court powers under the BVI Mental Health Act

Under Part IX of the MHA, the BVI court has broad powers to make provisions for the management of a person's property and affairs if they are deemed a "patient." Section 32(2) of the MHA defines a patient as an individual whom the court, based on medical evidence, determines to be incapable of managing and administering their property and affairs.

The court has previously exercised these powers in cases where, for example, individuals suffered from severe dementia or a disabling stroke that left them bedridden and unable to communicate. There are, however, no strict categories of conditions that qualify under the MHA – rather, the key consideration is whether there is sufficient medical evidence which establishes that the individual cannot manage their own affairs.

Once the court is satisfied that an individual qualifies as a patient under the MHA, it has broad discretion to take necessary actions in their best interest. These actions may include:

- providing for the maintenance or other financial needs of the patient or their family;
- ensuring financial support for dependents or individuals the patient would likely have provided for if they were not incapacitated; or
- administering the patient's financial affairs, including managing debts and obligations, even if they are not legally enforceable.

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## Appointment of a receiver

One of the most significant powers granted under the MHA is the ability to appoint a receiver to manage the patient's affairs. The receiver can be a professional (such as a lawyer or professional receiver) or any other suitable individual whom the court deems appropriate (including family members or legal representatives of the patient).

The court may grant the receiver wide-ranging authority, including the power to:

- control and manage the patient's property;
- sell, exchange, charge, or otherwise dispose of the patient's assets;
- acquire property on behalf of the patient;
- settle or gift the patient's property to individuals or for specific purposes;
- execute a will on behalf of the patient;
- operate any business or professional practice the patient previously ran;
- dissolve partnerships where the patient was a member;
- fulfil contractual obligations entered into by the patient;
- initiate or defend legal proceedings on behalf of the patient;
- pay debts or allocate funds for the patient's maintenance and that of their dependents; or
- exercise powers vested in the patient, including those held as a guardian or trustee.

The receiver is empowered to act in the patient's best interests, ensuring their financial affairs remain well-managed despite their incapacity.

## Managing shares in a BVI company

If the patient owns shares in a BVI company, the MHA allows for individuals who have been legally appointed in another jurisdiction to manage the affairs of a patient (the "**Foreign Appointee**") to seek the assistance of the BVI court in respect of matters regarding the patient's interest in the BVI company. At the request of the Foreign Appointee the court may:

- direct that the patient's shares in a BVI company be transferred to the Foreign Appointee; or
- make provisions regarding the receipt of dividends from the BVI company.

## Conclusion

The BVI MHA is an important piece of legislation that can help ensure the proper administration of offshore assets when individuals become incapacitated. Through court-appointed receivers and discretionary powers, the MHA provides robust safeguards to manage and protect the financial interests of those unable to do so themselves.

At Carey Olsen, we have successfully obtained relief for patients under the MHA and can provide BVI legal advice on the management of offshore assets for incapacitated individuals. If you require assistance, we would be happy to guide you through the legal process.

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