

Trust Laws of the British Virgin Islands

Constitution and Legal System

The British Virgin Islands is a British Overseas Territory. The legal system of the BVI is based on English common law, and appeals from local and regional courts ultimately lie with the Privy Council in the United Kingdom.

Applicable Trust Laws

The trust laws of the BVI are set-forth in the Trustee Ordinance (1961),¹ and the various Trustee Amendment Acts,² referred to herein as the Trustee Act. The fraudulent transfer legislation is set-forth in the Conveyancing and Law of Property Act (1961).³

Trust Period

Trust instruments can provide a maximum trust period of 360 years for trusts settled after 15 May 2013, and for trusts settled before May 15, 2013, a maximum trust period of 100 years applies.

Reserved Powers

The Trustee Ordinance provides that the reservation by the settlor of certain rights and powers, including rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.⁴ The *reserved powers* which may be held, without invalidating the trust, are defined to include the power to determine the governing law of the trust, the power to change the forum of administration of the trust, the power to remove and appoint trustees, the power to remove and appoint beneficiaries, and power to consent to the exercise of trustee powers.⁵

Disclosure of Information to the Beneficiaries

English common law rules apply in the BVI to the disclosure of information to Beneficiaries. The leading case, *Schmidt v Rosewood*,⁶ established that a beneficiaries right to information should not turn on whether the beneficiary has a proprietary interest in the trust, and should include discretionary beneficiaries as well as objects of powers of appointment depending on a number of factors, including the nature of the beneficiary's interest in the trust, the reasons for the request, the effect of disclosure on the other beneficiaries, etc.

Private Trust Companies (PTCs)

Private Trust Companies are exempt from Licensing in the BVI.⁷ PTCs allow family members to serve on the board of the PTC, thus retaining a high degree of control over trusts administered by the PTC. PTCs conducting "related" trust business can only provide trust services to a family group, and are not authorized to provide trust services to non-family

¹ The Trustee Ordinance (1961)

² The Trustee (Amendment) Acts, 1993, 2003 and 2013

³ Conveyancing and Law of Property Act (1961)

⁴ Trustee Act, Article 2(4).

⁵ Trustee Act, Section 86(2)

⁶ *Schmidt vs. Rosewood* (2003) UKPC 26

⁷ Financial Services (Exemptions) Regulations 2007 as amended in 2013

members. The Registered Agent of a PTC must hold a Class 1 Trust License in the BVI and the PTC must be a BVI company. PTC shares are typically held by a Purpose Trust to avoid succession issues and probate on the death of the shareholder of the PTC.

Purpose Trusts

BVI legislation authorizes Purpose Trusts,⁸ which do not have beneficiaries as their objects but instead have purposes. Purpose Trusts are typically used to hold the shares of a PTC. Since Purpose Trusts have no beneficiaries, an Enforcer must be appointed with powers to enforce the trust instrument. Purpose Trusts are exempt from the rule against perpetuities. At least one trustee must be a “designated person”, such as a BVI licensed trust company or a lawyer or accountant licensed to practice within the BVI.

VISTA Trusts

The VISTA Trust legislation was created by the Special Trust Act (2003).⁹ VISTA trusts are designed to hold underlying BVI companies where the trustees have no responsibility for the management of the underlying BVI company. The responsibility for managing the underlying BVI company lies with the directors of the BVI company, who would usually be family members or their advisors. In order for the VISTA legislation to apply, the trust instrument must contain a VISTA enabling clause, the underlying company must be a BVI company, the trustees must not be directors of the underlying BVI company, and at least one of the trustees must be a licensed BVI trust company. VISA trusts are typically used to hold operating companies.

Firewall Provisions

The BVI is party to the Hague Convention on Trusts¹⁰ and their Recognition. The Trustee Act contains a governing law provision, taken from Article 8 of the Hague Convention, that requires all matters regarding the validity, construction, effect or administration of a trust are to be governed by the proper law of the trust.¹¹ However, the validity of a disposition of immovable property or tangible movable property, and the capacity to make a disposition, shall be determined according to the law of the state where the property is located.¹²

The *firewall* legislation of the BVI also contains a broad foreign law exclusion provision that precludes foreign law from invalidating trusts governed under BVI law where foreign law does not recognize trusts, or the trust defeats rights conferred by foreign law by reason of a *personal relationship* with the settlor or by way of *heirship*, or contravenes foreign law or foreign judicial orders recognizing such rights.¹³ In addition, foreign heirship rights are disregarded when determining rights of ownership of property subject to a BVI trust,¹⁴ and persons claiming foreign heirship rights are deemed not to be creditors for the purposes of section 81 of the Conveyancing and Law of Property Ordinance.¹⁵ Finally, foreign judgments

⁸ Trustee Act, Section 84A

⁹ Virgin Islands Special Trust Act (2003), as amended by the Virgin Islands Special Trust (Amendment) Act 2013.

¹⁰ Hague Convention on Trusts and their Recognition (1985), through extension of the English Recognition of Trusts Act 1987.

¹¹ Trustee Act, Section 83A (12).

¹² Id., Section 83A (7).

¹³ Id., Section 83A (13)

¹⁴ Id., Section 83A(14)

¹⁵ Id., Section 83A(15)

inconsistent with the foreign law exclusions of the Trustee Act are contrary to the public policy and will not be recognized or enforced in the BVI.¹⁶

Asset Protection

The BVI has no *per se* asset protection legislation. Transfers made with the intention to defraud creditors are voidable at the instance of the creditor, except transfers to bona fide purchasers for value without notice.¹⁷ There is no creditor limitation period to set aside transfers. The Fraudulent Conveyances Act,¹⁸ referred to as The *Statute of Elizabeth*, remains in force in the BVI.¹⁹

Licensing and Supervision

Trust companies in the BVI are subject to licensing and prudential supervision by the Financial Services Commission.

¹⁶ *Id.*, Section 83A(19)

¹⁷ Conveyancing and Law of Property Act (1961), Section 81,

¹⁸ 13 Eliz I c. 5. (1571)

¹⁹ VTB Bank vs. Micross Group Limited, (2020) ECSC 40.