

British Virgin Islands Trust Laws

CISA Trust Company (BVI) Limited

CISA Trust Company (BVI) Limited, was incorporated in the British Virgin Islands in 2010, holds a Class 1 Trust License issued under the Banks and Trust Companies Act (1990), and is authorized to provide trust services, company management services and Registered Agent/Registered Office services.

Constitution and Legal System

The British Virgin Islands is a British Overseas Territory (OT). 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 BVI Laws

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

Perpetuity Period

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

Reserved Powers

The BVI has *reserved powers* legislation,⁴ which allows the settlor to hold the following powers without invalidating the trust: power to determine the governing law of the trust; power to change the forum of administration of the trust; power to remove and appoint trustees; power to remove and appoint beneficiaries; and power to consent to the exercise of trustee powers.

Disclosure of Information to the Beneficiaries

English common law rules apply. The UK Privy Council case of Schmidt v Rosewood [2003] 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 other beneficiaries, etc.

Private Trust Companies (PTCs)

Private Trust Companies are exempt from Licensing in the BVI. 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 members. The Registered Agent of a PTC must hold

¹ The Trustee Ordinance (1961)

² The Trustee Amendment Act

³ Conveyancing and Law of Property Act (1961)

⁴ Trustee Act, Section 86(2)

a Class 1 Trust License in the BVI. 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,⁵ 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).⁶ 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 Trusts⁷ 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, including the appointment, resignation and removal of trustees, the rights and duties of trustees, the right of trustees to delegate their duties, the powers of trustees to administer or dispose of trust assets, the powers of investment of trustees, restrictions on the duration of the trust, and the power to accumulate income, the relationship between the trustees and beneficiaries, variation or termination of the trust, distribution of trust assets, the duty of trustees to account for administration.⁸ 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.⁹

The *firewall* legislation of the BVI contains a broad foreign law exclusion clause 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* rights, or contravenes foreign law or foreign judicial orders recognizing such rights.¹⁰ In addition, foreign heirship rights are disregarded when determining rights of ownership of property subject to a BVI trust,¹¹ 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.¹² Finally, foreign judgments inconsistent with the foreign law exclusions of Section 83A are contrary to the public policy of the BVI and will not be recognized or enforced in the BVI.¹³

⁵ Trustee Act, Section 84A

⁶ Virgin Islands Special Trust Act (2003), as amended by the Virgin Islands Special Trust (Amendment) Act 2013.

⁷ Hague Convention on Trusts and their Recognition (1985), through extension of the English Recognition of Trusts Act 1987.

⁸ Trustee Act, Section 83A (12).

⁹ Id., Section 83A (7).

¹⁰ Id., Section 83A (13)

¹¹ Id., Section 83A(14)

¹² Id., Section 83A(15)

¹³ Id., Section 83A(19)

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. There is no creditor limitation period to set aside transfers.¹⁴ The Statute of Elizabeth remains in force in the BVI.¹⁵

Taxation

Trusts in the BVI are exempt from taxation.

Regulatory Environment

CISA is a licensed trust company and is subject to prudential supervision by the Financial Services Commission (FSC). In addition, the company is subject to anti-money laundering legislation set forth in the Proceeds of Criminal Conduct Act (1997), the Anti-Money Laundering Regulations (2008), as amended, and the Anti Money Laundering and Terrorist Financing Code of Practice (2008), as amended.

¹⁴ Conveyancing and Law of Property Act (1961), Section 81,

¹⁵ VTB Bank vs. Micros Group Limited.