

ALERT
(International Version)
(No. 6 of 2013)

**SIGNIFICANT CHANGES TO VISTA TRUSTS TAKE EFFECT
IN THE BRITISH VIRGIN ISLANDS**

14 June 2013
by Jamal S. Smith
jamal.smith@thorntonsmith.com

A Proclamation bringing into force the Virgin Islands Special Trusts (Amendment) Act, 2013 takes effect from 15 May 2013, which amends the Virgin Islands Special Trusts Act ("VISTA"). The amendments allow for co-trusteeship where one of the trustees is a designated trustee such as a person holding a trust license under the Banks and Trust Companies Act, 1990 but more significantly this now includes a private trust company to allow a family-controlled trust, for example, to establish VISTA trusts.

The person who gives directions for the application of the provisions of VISTA to a trust at a future date would not also become the trustee of the trust. The amendments allow a trust to specify a future date or triggering event on which the provisions of VISTA will apply so as to avoid this state of affairs.

In the case of trustee-shareholders in particular, it is now clear that they will not be prohibited from exercising their rights as shareholders under the BVI Business Companies Act, 2004 to inspect, make copies of or take extracts from documents such as registers of members or registers of directors. Therefore, a trustee-shareholder can now inspect, make copies or take extracts from accounts and records of companies and underlying companies in accordance with the provisions of the companies' articles of association. In the exercise of their functions, trustees are sometimes obligated to follow the directions of certain persons but it is now clear that those third persons, including an appointed enquirer, can be paid out of the trust fund if the trust rules so allows.

There is also no longer a time limit in relation when a beneficiary may call for or direct a transfer of designated shares or to modify or terminate the trust relative to the shares if this power is specifically excluded in the trust instrument.

Finally, a VISTA trust instrument can be drafted to disapply the general limitations on the duties of trustees which provides that the trustee of a designated share has no fiduciary responsibility or duty in relation to the assets, or with respect to the conduct of the affairs of the company, except in circumstances where the trustee is acting or required to act on a call to intervene. Therefore, the settlor of a VISTA trust may wish a trustee to perform fiduciary duties or exercise a duty of care in respect of the assets of the company and would now be able to disapply or modify the statutory provisions relating to the duties of trustees. However, the drafting of the VISTA trust in these circumstances requires a specific statement of disapplication and proper care must be taken in preparing the VISTA trust instrument in these circumstances.

www.thorntonsmith.com

###

If you would like more information about trusts in the British Virgin Islands, you may contact Jamal S. Smith.

ABOUT US: THORNTON SMITH is a full service law firm based in the British Virgin Islands that provides practical solutions for complex legal and business transactions with a suite of value-added services to clients. With a genuinely intimate connection to the local community, the firm represents anyone interested in doing business in or from the British Virgin Islands.