

BRITISH VIRGIN ISLANDS

VISTA TRUSTS

The Virgin Islands Special Trusts Act 2003 became law on March 1st 2004 and is designed to offer clients an attractive and innovative way to place assets in trust while allowing clients to retain greater control than might be the case with a traditional trust.

Called VISTA Trusts, these new trusts restrict the ability (and necessity) for trustees to involve themselves in the management and administration of wholly owned companies. The law permits the client, or his family, to retain participation in the control of family assets or investment companies while still providing for the benefits of a trust for estate, tax or succession planning (for which the client should seek specific advice). The trust becomes a “trust to retain” rather than a “trust for sale”.

BACKGROUND

There is an inherent difficulty where clients are advised of the benefits of using a trust to protect a family business or hold an investment portfolio. The transfer of assets to a trustee calls for the client to legally surrender control of the assets – something which many clients are reluctant to do, especially if they are from countries which do not recognise trusts. The idea of passing control to an often little known entity in a far off country is a nerve wracking experience. Whilst assuming the trustee is properly regulated (as it should be) or even part of a global financial group the idea of “losing” control is frequently unacceptable.

The trustee is however under legal constraints. The “prudent man of business rule” obliges trustees to monitor investments it may hold and intervene if necessary to protect or enhance value e.g. to prevent unduly speculative transactions. In the case of a family business a trustee may be forced to consider a disposal or a takeover bid even if this is against the immediate family’s wishes. Similarly, a trustee may feel obliged to diversify investments to spread risk; something the client and his family may totally oppose. Trustees are generally required to receive enough information on underlying assets to ensure that they carry out their duty to “protect and enhance” value. Sometimes this may involve the trustees requesting seats on a board of directors where they may have little knowledge of the business concerned. All of this may lead to potential conflict with client’s objectives as well as add to the cost of administration.

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VISTA TRUST LEGISLATION:

The VISTA law provides a format to overcome these possible difficulties. To this end it:

- prevents the trustee from intervening in or monitoring activities of the designated BVI company which, in turn, will hold the relevant assets;
- prevents trustee from exercising voting or other powers unless specifically authorised in the trust instrument;
- prohibits the sale of shares without the approval of the board;
- allows trust instrument to create rules for appointment and removal of directors (trustees cannot be directors);
- allows trust instrument to clearly specify any circumstances where the trustee can intervene e.g. evidence of fraud;

To achieve this the trust instrument must specify VISTA is to apply and the Trustee must be a BVI licensed trustee.

This is a brief overview. Individual cases will require specific drafting and careful attention to the prevailing circumstances. Rawlinson and Hunter Limited will work with the client and BVI attorneys to provide the most effective solution.

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