

## An Introduction to the VISTA Trust

A VISTA TRUST IS A FORM OF PURPOSE TRUST WHICH IS ONLY AVAILABLE IN THE BRITISH VIRGIN ISLANDS AND HAS THE SOLE PURPOSE OF HOLDING BVI COMPANY SHARES. THE VIRGIN ISLAND SPECIAL TRUSTS ACT 2003 (VISTA) WAS ENACTED TO ELIMINATE THE CONFLICT BETWEEN THE DUTIES OF THE TRUSTEE AND THE NEEDS OF AN OPERATING BUSINESS.

### INTRODUCTION

A VISTA trust will offer greater flexibility as the trust deed may be tailored to meet a particular transaction.

Whilst the trust has always been regarded as one of the best succession vehicles, the use of the trust to cater for the succession of shares in companies has, historically, been impeded by a rule of English trust law which is designed to preserve the value of trust investments. This rule, which is known as the prudent man of business rule, requires the trustee to manage trust assets in such a way which may involve the sale or diversification of trust assets. This may not be what the Settlor had in mind when he established the trust.

The VISTA law trust eliminates the requirement for the trustees to involve themselves in monitoring the directors and leaves the directors free to manage the assets of the company in the way they feel best. The directors are then free to undertake transactions which are, possibly, of a higher risk than a trustee would normally accept or are speculative in nature.

### KEY FEATURES

The act only applies to trusts established under the VISTA Act.

Subject to certain provisions in the trust deed, the trustee cannot exercise its voting or other powers so as to interfere with the management or conduct of any business of the company, such management is left entirely to the directors.

The trustee is instructed by the trust instrument as to their voting powers in relation to appointment, removal and remuneration of the directors.

The rule of *Saunders v Vautier* can be expressly excluded from the trust instrument (for a maximum of 20 years) thereby removing the ability of the adult beneficiaries to bring the trust to an end.

- The rule of perpetuities does not apply to VISTA trusts and as such the trust may remain in existence indefinitely.
- The principal duty of the trustee is to retain the shares outlined in the trust instrument, this duty has precedence over any duty to preserve or enhance the value of the trust fund.
- The legislation establishes certain provisions for the existence of an enforcer or protector, as an "interested person" who can request the intervention of the trustee in the company affairs under the "office of director rules".
- The trust instrument can either name a specific company or apply to BVI companies in general.
- The elimination of an inherent conflict between the prudence required of trustees and the entrepreneurial flare and quick decision taking required to run a successful business.

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One use of the trust, in terms of estate planning, could be for the continuation of a family business. The Settlor can prescribe in the trust instrument who the directors of the company will be upon his death. This ability will ensure that the Settlor's vision continues under the management of his hand-picked successors, and not that of the trustee.

The trust also ensures that the assets remain intact in the case of any litigation against a Settlor or beneficiary, as the assets remain outside of their legal ownership and may not be attacked by a third party.

### FOR MORE INFORMATION PLEASE CONTACT:

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