

**Introduction**

Trusts have played a prominent role as vehicles for estate planning, asset protection, and tax mitigation since their first appearance.

The various types of Trusts vary in complexity but they have one common fundamental feature. A "person" being either an individual or a company ("the Trustee") agrees to hold certain assets ("the Trust Fund") in its name (a) for the benefit of another person ("the Beneficiary") or (b) for a given charitable or non-charitable purpose on certain terms and with certain powers (which are usually set out in the Trust Deed).

The assets comprising the Trust fund are legally held and registered as owned by the Trustee and the latter is under a duty, enforceable by the Courts, to hold those assets and the income arising from them (a) for the benefit of the beneficiary/ies or (b) for a given charitable or non-charitable purpose.

Where an identifiable list of beneficiaries exists, the above relationship can be summarised as follows:

The Trustee has the legal interest to the Trust assets registered in its name and the beneficiary has the beneficial or equitable interest (it is the beneficial and equitable interest which is of value when one is considering asset ownership).

**BVI VISTA Trusts**

The BVI offers an alternative statutory solution expressly meant for Trusts that hold directly shares in a BVI private company under the Virgin Islands Special Trusts Act 2003 (Vista), in force since 1 March 2004.

**The uses of BVI VISTA Trusts**

1. When the above key features are in line with the wishes of the settlor.
2. When the Trustee's involvement in the affairs of an underlying structure is undesirable and inappropriate.
3. When in view of their nature the underlying assets are to comprise of speculative investments or risky investments which might otherwise be vetoed by Trustees of a non-VISTA Trust due to the nature of their duties.

### **Key Features of the BVI VISTA Trusts**

- The Trust must comprise direct shareholdings in a BVI private company
- Designated shares shall be held by the Trustee “on Trust to retain them” with such duty having precedence over any duty to preserve or enhance the value of the Trust fund. The Trustees have therefore no duty to maximise the value of the Trust assets for the benefit of a given list of beneficiaries
- The Trustee’s liabilities arising from potential losses resulting directly or indirectly from the manner in which the said company is administered and managed are substantially diminished to being nearly non-existent
- The Trustee’s responsibility is limited to their fiduciary duty to distribute the Trust assets to the beneficiaries pursuant to the terms of the Trust deed, prepare financial accounts and ensuring that the wishes of the settlor(s) are effectively carried out
- It is evident from the provisions of the law that the Trustee’s voting and other powers in respect of designated shares shall not be exercised by the Trustee so as to interfere in the management or conduct of any business of the company
- The Trust instrument may contain rules for determining the manner in which voting and other powers attributable to designated shares should be exercised by the Trustee in relation to appointment, removal, remuneration and any of the matters defined in detail in section 7(2) of the Law
- The final word in terms of whether or not to sell wholly or partially the participation in the shareholding of the BVI private company wholly owned by the Trustee of a VISTA Trust is shifted to the board of directors of the said private company
- The Trustee’s fiduciary duties can be in certain occasions extended in relation to the Trust assets if it is so wished by the settlor(s)
- At least one of the Trustees of a VISTA Trust must be a “designated Trustee” which is essentially either a BVI licenced Trust company or a BVI private Trust company
- A Trustee cannot be a director of the underlying BVI private company due to conflict of duties
- To enforce the terms of the Virgin Islands Special Trusts Act, beneficiaries, directors and other officers are offered the opportunity to apply to Court and in doing so the Court may authorise the Trustee to dispose and/or sell its participation in the designated shares where retaining them is no longer compatible with the settlor’s wishes.

**Advantages of the BVI VISTA Trusts**

- The professional costs involved with a professional Trustee safeguarding its duties as Trustee and making sure that it is prudently and properly administering and maintaining the Trust assets may sometimes prove to be prohibitively expensive
- The 'duty of prudence' imposing on Trustees the duty to always act in and for the best interests of the beneficiaries, may on certain occasions prove to be incompatible with a settlor who believes that 'risk' is actually a fundamental part of business practice. The wishes of the settlor and the duties of the Trustees towards the beneficiaries of a Trust could easily conflict
- The professional abilities and knowledge background of the Trustee may not be connected to the range of business activities carried out by the BVI company held in Trust and so the Board of Directors of the said company are best suited to take the lead in this respect.

**NOTES**

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.