

## A Guide to the Virgin Islands Special Trusts Act, 2003 “VISTA”

**This Guide outlines the provisions of VISTA and their application to trusts established in the British Virgin Islands (“BVI”).**

### **1. Introduction - purpose of VISTA**

Section 3 of VISTA states:

“The primary purpose of this Act is to enable a trust of company shares to be established under which:

- (a) the shares may be retained indefinitely; and
- (b) the management of the company may be carried out by its directors without any power of intervention being exercised by the trustee.”

VISTA was therefore enacted to address the concerns of owners of shares in a company who wish to take advantage of the benefits of a trust, for estate or corporate planning purposes, but who are concerned about losing effective control of their shares and the company.

### **2. Mandatory requirements**

VISTA can apply to any form of trust established in the BVI, whether a family trust, public charitable or non-charitable purpose trust or a simple employee trust.

However, the following mandatory requirements must be met in order for VISTA to apply:

- (a) the trust must hold shares in a BVI Business Company (the “**VISTA Company**”), in respect of which a valid “direction” to apply VISTA has been made;
- (b) the trust must be administered by a sole corporate trustee that has a licence to conduct trust business in the BVI;
- (c) the trust must not have been created by the trustee of another trust;
- (d) the shares in the VISTA Company must not have been added to the trust by the trustee of another trust; and
- (e) the VISTA Company must not:

- (i) be a licenced entity in the BVI under the Banks and Trusts Companies Act 1990, the Insurance Act 1994 or the Company Management Act 1990;
- (ii) be registered, or recognised as a fund, or be licensed as a manager or administrator of mutual funds under the BVI Mutual Funds Act 1996; or
- (iii) be authorised to act as an insurance manager under the BVI Insurance Act 1994.

### **3. Trustee restrictions**

VISTA contains a number of restrictions on the trustee's ability to interfere in the management and control of a VISTA Company.

The principal restrictions are that:

- (a) the trustee is prohibited from being or becoming a director of a VISTA Company; and
- (b) the trustee may be prohibited from exercising voting or other powers in respect of the shares of a VISTA Company so as to interfere in the management or conduct of any business of the company (this could include decisions as to the payment or non-payment of dividends).

VISTA also contains a number of restrictions on the trustee's ability to sell or dispose of the shares in a VISTA Company.

The principal restrictions are that:

- (a) Subject to the terms of the trust, the trustee may be completely prohibited from disposing of the shares, and for these purposes disposal not only includes a sale of the shares but also the exercise of voting powers leading or capable of leading to the liquidation of the company or the cancellation of the shares or any rights attached to them; or
- (b) the disposal of shares by the trustee, whether by sale or otherwise, can be made subject to the prior consent of the directors of the VISTA Company and/or any other third party.

### **4. Board control**

VISTA contains provision for detailed rules called Office of Director Rules (“**ODRs**”) by which the appointment, removal and remuneration of the directors of a VISTA Company can be controlled by the creator of the trust (the “**Settlor**”).

Through the use of suitably drafted ODRs, a Settlor can retain the ability to appoint and remove the directors of the VISTA Company free from interference from the trustee.

ODRs can be drafted to allow maximum flexibility and to provide that the directors of the VISTA Company will be determined from time to time by a person called the “Appointor” (which may include the Settlor), or be drafted in a more prescriptive fashion specifying in great detail who will be appointed or removed as director of the company, and in what circumstances the ODRs survive the death of the Settlor.

ODRs provide a vital safeguard that the Settlor will not be removed by the trustee once the shares in the VISTA Company are placed in trust.

## **5. Beneficiary protections and restrictions**

VISTA contains provisions under which the trust deed may specify circumstances in which the beneficiaries of the trust may call on the trustee to intervene in the affairs of a VISTA Company. These are referred to as “permitted grounds for complaint”.

A typical permitted ground for complaint would permit the trustee to intervene where the directors of the VISTA Company have misappropriated company assets or are causing the company to trade in a way inconsistent with an agreed business plan.

Where a trustee is satisfied that a permitted ground for complaint has been made out, the trustee may intervene in the affairs of the company and remove the director(s).

VISTA also contains provisions that can exclude the rule in *Saunders v. Vautier* under which (subject to certain conditions) the beneficiaries of a trust can collectively bring the trust to an end.

The rule in *Saunders v. Vautier* can be excluded for a period of 20 years, which is important if the trust contains a small number of beneficiaries, and the Settlor is concerned that the trust not be brought to a premature end.

## **6. Summary – practical application of VISTA**

VISTA can be applied to trusts in varied circumstances, and has been successfully combined with a contract to create a short form will substitute for owners of shares in BVI Business Companies (see our website for further details about our “Share Trust”), and has been incorporated into more complex trusts designed for generational tax and estate planning (see our website for further details about our “Advanced Trust”). However throughout the basic key benefits remain the same: the effective retention of control of the relevant BVI Business Company coupled with appropriate restrictions on the ability of the trustee to remove or appoint the directors of the company or dispose of the shares.

## **7. Further Information**

**If you would like further information on the subject matter of this Guide please contact Zac Lucas at [zac.lucas@harneys.com](mailto:zac.lucas@harneys.com) or Sheila George at [sheila.george@harneys.com](mailto:sheila.george@harneys.com) or your usual contact at Harneys. Alternatively, you can visit our website at [www.harneys.com](http://www.harneys.com)**

*This Guide is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice.*

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