

# CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with geometric patterns and a few small, cylindrical bollards.

## **British Virgin Islands VISTA Trusts**

## Preface

This Publication has been prepared for the assistance of those who are considering the formation of VISTA trusts in the British Virgin Islands (“**BVI**”). It is not intended to be exhaustive nor a substitute for proper legal advice but provides a basic guide to the trust concept and an outline of trust law and trust administration in the BVI for clients of Conyers Dill & Pearman.

We recommend that our clients seek legal advice in the BVI on their specific proposals before taking steps to implement them.

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## 1. INTRODUCTION

On 1st March 2004, the Virgin Islands Special Trusts Act 2003 (“**VISTA**”) came into force which created a new type of BVI statutory trust known as the VISTA trust. The VISTA Act was amended in May 2013.

VISTA is an innovative trust specifically designed to hold shares in a BVI incorporated company under which the trustee may be disengaged, notwithstanding that his trust shareholding gives him a controlling interest in the company, from management responsibility in relation the company’s affairs. It therefore allows the company and its business to be retained and run as its directors see fit.

The effect of VISTA is to remove the trustee’s duty to monitor and intervene in the conduct of the directors and the management of the trust’s underlying BVI company.

VISTA trusts may continue indefinitely and the regime can apply to discretionary trusts, fixed interest trusts, charitable or purpose trusts subject to satisfying the statutory criteria.

## 2. THE PRUDENT INVESTOR

The “prudent man of business rule” provides that a trustee has the duty to take due care and to act prudently when making decisions concerning the investments comprised in a trust fund, including a regular monitoring of their performance. Trustees are therefore under a duty to monitor the activities of a trust’s underlying company and act in the best interests of the beneficiaries to safeguard the value of the trust assets. Thus, this creates a conflict between the trustee who may wish to take a conservative investment approach and may also intervene to prevent the company entering into risky or speculative corporate deals, and the settlor and company owner who may wish to take entrepreneurial risks in order to maximize profit for the company.

Although bespoke drafting techniques may be used to deal with the conflicting positions encountered due to the prudent investor problem as above, VISTA introduced a more effective statutory framework to resolve such difficulties when BVI trusts are established to hold BVI company shares with the principle aim as succession vehicles for family businesses.

## 3. KEY FEATURES

- The VISTA regime does not apply generally to all trusts established in BVI, but must be specifically stated in the trust instrument to apply.
- VISTA applies to shares in a BVI company (or companies) only (the “designated shares”). There are certain BVI companies, such as those licensed under the Banks and Trust Companies Act or under the Insurance Act whose shares are ineligible.
- The trustee’s obligation to oversee the underlying company and to intervene in its running can be completely removed or just partially limited.
- The trustee’s duty in relation to the voting of shares and appointment and removal of directors can be clearly defined in the “Office of Director Rules” and the trustee must act in accordance with these rules.

- The trustee may retain the designated shares indefinitely or only dispose of them with the consent of the directors of the company or other persons named in the trust deed.
- The trustee may still have a supervisory role to play as the trust deed may specify certain circumstances in which a beneficiary or other named people may require the trustee to intervene in the management of the company under an "Intervention Call". This fail-safe mechanism gives the settlor comfort that the trustee can intervene in certain circumstances, but once the specific situation to which the Intervention Call related is over, the trustee must return to his role of non-intervention;
- Both the beneficiaries of the trust and the directors of the underlying company have the power to apply to the court if the trustees breach their obligation of non-intervention. Additionally, they and other specific persons may apply to the court to have the terms of VISTA enforced or for permission for the designated shares to be sold if retaining them is no longer in accordance with the wishes of the settlor; and
- The rule in *Saunders v Vautier*, which may lead to the beneficiaries of a trust being able to wind it up, can be specifically disapplied for up to 20 years.
- BVI trusts which are not VISTA trusts may be converted into VISTA trusts provided they satisfy the VISTA criteria.
- Whilst the default position for VISTA trusts is that the trustee has no direct fiduciary responsibility over the BVI company shares held in trust (unless acting on an intervention call), it is possible to introduce specific fiduciary duties on the trustee in respect of the designated shares.

Additionally, at least one of the trustees of a VISTA trust must be a BVI company licensed under the Banks and Trust Companies Act, or a BVI private trust company. Individuals or non-BVI companies may be co-trustees of VISTA trusts. For more information, please refer to Conyers Dill & Pearman's Publication "British Virgin Islands Private Trust Companies".

#### 4. PLANNING USES

- Effective succession planning and avoids a settlor having to give up control of the assets held in the BVI company and retain the company in trust indefinitely and be free to enter into speculative transactions and ventures.
- Preservation of family wealth and continuity of family businesses.
- The BVI company held in a VISTA trusts may in turn hold risky, wasting or unconventional assets.

*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*