



Legal Briefings

BVI VISTA Trusts: Key Features, Legal Mechanisms, Establishment Requirements and Common Uses

I. What is a VISTA Trust?

A VISTA trust is a special type of trust established pursuant to the Virgin Islands Special Trusts Act, 2003 (as amended) ("**VISTA**"), being a trust regime specifically designed for holding shares in British Virgin Islands ("**BVI**") companies. VISTA came into force on 1 March 2004, primarily to address the structural impediments faced by traditional BVI trusts when holding shares in family businesses. It is important to note that the direct assets of a VISTA trust are, and can only be, the shares in the underlying BVI company. The design of the VISTA trust regime is therefore centered upon this kind of asset class.

II. Overview and Legislative Background of VISTA Trusts

To appreciate the value of the VISTA regime, we must first understand a fundamental tension inherent in the traditional trust structure under common law. English trust law has long recognized a fiduciary standard known as the "prudent person of business rule". This standard requires a trustee to supervise and manage trust property as a prudent business person would manage their own affairs. This means that, under a traditional trust, the trustee owes a duty to diversify investments, avoid speculation, and continuously monitor investment performance. Where the principal assets of the trust comprise a controlling shareholding in a family business, a trustee may, by virtue of its duty to diversify risk and pursue stable returns, be compelled to dispose of the family business shares or, out of concern for compliance, to prevent the company from engaging in speculative or hazardous investment activities.

This directly conflicts with the settlor's desire to preserve the family business as a legacy asset to be held over the long term. The VISTA trust resolves this conflict by establishing, at the legislative level, a safe harbour that permits the trustee to adopt a "passive holding" role.

III. What are the Key Distinctions Between VISTA Trusts and Traditional BVI Trusts?

As noted above, the VISTA trust alters the role of the trustee as conceived under traditional trust law. In a traditional BVI trust structure, the trustee enjoys broad powers of administration over the trust assets, including the duty to actively supervise the conduct of the underlying BVI company's business, to intervene where necessary, and to dispose of trust assets in the best interests of the beneficiaries. Under the VISTA

trust regime, the trustee's role is transformed from that of an active manager to that of a custodian of the trust assets, with the trustee owing, in principle, no fiduciary responsibility or duty of care in respect of the affairs of the BVI company whose shares are held in the trust.

The VISTA regime applies only where the trust deed expressly directs that it shall apply, and it affects only the administrative duties of the trustee, leaving the beneficial provisions unaffected. VISTA may therefore be combined with various forms of beneficial arrangements, including discretionary trusts, life interest trusts, purpose trusts, and reserved powers trusts.

Compared with traditional trusts, VISTA trusts are more closely aligned with the expectations of modern entrepreneurs regarding family wealth succession and the manner in which trust assets are to be managed.

IV. What are the Core Legal Mechanisms of VISTA Trusts?

1. [Primacy of the Duty to Retain Shares](#). The VISTA regime establishes a statutory rule within the trustee's duty framework that takes precedence over other obligations. Specifically, the trustee must treat the "continued retention of the BVI company shares" as its core duty, and the performance of this duty is expressly accorded priority over any other general duty to preserve or enhance the value of the trust property. In other words, even if, from a purely commercial perspective, a sale of part of the shareholding would optimise asset allocation or generate higher returns, the trustee has no power to dispose of the trust shares on such grounds, unless the trust deed expressly reserves a specific power of disposal to the trustee by way of explicit provision.
2. [Non-Intervention by Trustee](#). Except as otherwise provided in the trust deed, the trustee must not exercise voting rights or any other powers to intervene in the management of the company or the conduct of its business. The trustee owes no fiduciary duty or duty of care in respect of the assets of the company or the conduct of its affairs. The operation and management of the company rest entirely with its board of directors.
3. [Office of Director Rules](#). The trust deed may contain detailed "Office of Director Rules", which set out precisely how the trustee is to exercise voting rights to appoint and remove directors and to determine directors' remuneration. The settlor may, through such rules, control the composition and operation of the company's board of directors, and the trustee must strictly adhere to these rules when exercising its voting rights.
4. [Intervention Call](#). While, as explained above, the trustee of a VISTA trust may not, broadly speaking, actively intervene in the management of the BVI company, the regime does not entirely preclude trustee intervention. The trustee is obliged to investigate a complaint and, if satisfied that it is well-founded, to take appropriate action only where an "interested person" makes an intervention request based on "permitted grounds for complaint" as set out in the trust deed. The scope of interested persons is determined in accordance with the provisions of the trust deed and may include

beneficiaries of the trust, a protector with supervisory powers, an enforcer of a purpose trust, and an "appointed enquirer" designated by the settlor through a special authorisation mechanism.

V. What are the Essential Requirements for Establishing a VISTA Trust?

1. Core Parties

Like traditional trusts, a VISTA trust comprises three core parties: the settlor, the trustee, and the beneficiaries. It is noteworthy that the trustee of a VISTA trust may be either a (i) BVI licensed trust company, or (ii) a private trust company ("**PTC**"). While VISTA trusts typically appoint a licensed trust company as trustee to satisfy the trustee requirements under the VISTA legislation, following the enactment of the BVI Financial Services (Exemptions) Regulations, 2007 (as amended) (the "**PTC Regulations**"), the use of a PTC has become an increasingly common choice in VISTA trust structures. The PTC Regulations exempts a PTC from the requirement to obtain a trust license under the BVI's Banks and Trust Companies Act, 1990 (as amended) (the "**BTCA**"). The key advantages of a PTC are:

- (i) lower costs compared with engaging a professional licensed trust company; and
- (ii) the ability for the settlor to enhance control over the trust by establishing a PTC. For example, the settlor and his/her family members may serve on the board of directors of the PTC, thereby participating substantively in decision-making at the trustee level and achieving comprehensive control over the governance of the trust.

Additionally, the settlor may appoint a protector of the trust. The protector primarily serves a supervisory and safeguarding role in respect of the trustee's administration of the trust, and the trust deed may even confer upon the protector the power to appoint and remove trustees. As regards beneficiaries, a question often raised by settlors when establishing a trust is whether they themselves may also be a beneficiary. The answer is yes, provided that the settlor is not the sole beneficiary of the trust.

2. Trust Deed

The core document of a VISTA trust is the trust deed entered into between the settlor and the trustee, which sets out matters including the manner in which the trust assets are to be administered, the classes of beneficiaries or the mode of beneficial entitlement, and the manner in which the trustee may be appointed and removed. A trust deed of VISTA trust must be in writing and must state that this trust is a VISTA trust. The trust deed may also be created by will.

VI. What are the Key Advantages of VISTA Trusts?

1. Retention of Control. The settlor may, by virtue of the legal mechanisms of the VISTA trust, retain a

certain degree of control over the trust. By serving as a director of the BVI company to be settled into the trust or by designating the composition of the board through Office of Director Rules, the settlor may, following the transfer of the BVI company shares into the trust, continue to retain effective control over the operation of the company. The VISTA trust builds upon this foundation by providing, through dedicated legislation, a response to the particular needs of family business succession.

2. [Asset Protection](#). The BVI Trustee Act (2020 Revision) contains comprehensive "firewall" provisions, which also apply to VISTA trusts and serve to protect the trust from the impact of foreign laws (such as forced heirship rules, or claims arising from marriage or civil partnership). All matters relating to the validity, interpretation, and administration of the trust are governed exclusively by BVI law.
3. [Avoidance of BVI Probate](#). Once the shares of a BVI company are validly settled into a VISTA trust, they are held by a trustee, meaning they are no longer considered part of the settlor's personal estate upon his/her death, and will pass directly to the beneficiaries in accordance with the provisions of the trust deed, without the need for BVI probate proceedings, thereby avoiding the protracted and complex process of probate.
4. [Holding High-Risk Assets](#). As the prudent person of business rule does not apply to VISTA trusts, the trust may hold shares in companies engaged in high-risk activities without the trustee being required to diversify investments or to intervene on prudential grounds, and the trustee is thereby absolved of potential legal liability arising from holding such assets.
5. [Exclusion of the Rule in "Saunders v Vautier"](#). VISTA permits the exclusion of the rule in Saunders v Vautier (the common law rule whereby beneficiaries, if all sui juris and absolutely entitled, may unanimously agree to terminate the trust) for a period of up to 20 years, providing additional safeguards for long-term family asset planning. Furthermore, the statutory perpetuity period for a VISTA trust is up to 360 years, rendering it suitable for multi-generational succession planning.
6. [Tax Treatment](#). As with traditional BVI trusts, VISTA trusts are not subject to BVI capital gains tax, inheritance tax, or income tax. It should be noted, however, that whether trust distributions to beneficiaries are subject to tax will require case-by-case consideration by reference to the particular tax residence status of the beneficiary.

VII. What are the Common Uses of VISTA Trusts?

As noted above, the assets of a VISTA trust are shares in a BVI company. However, through appropriate structuring of the shareholding chain, a settlor may, via a VISTA trust, indirectly hold equity interests in other offshore companies, thereby achieving global asset structuring. Accordingly, in light of the principal advantages of VISTA trusts outlined above, such trusts are broadly suited to the following applications:

- (1) intergenerational succession of family business shareholdings, enabling shares to be held in

trust so as to avoid probate;

- (2) holding high-risk investment portfolios, where the non-intervention principle applicable to the trustee effectively reduces the friction costs that might otherwise arise from a trustee pursuing overly conservative investment strategies; and
- (3) serving as the top-tier holding structure within a listing structure. Through the establishment of a trust structure, the VISTA trust holds a BVI company which, in turn, acts as a holding company through successive layers to hold the shares of an underlying entity intended for listing.

VIII. Conclusion

The VISTA trust, through legislative innovation, achieves a delicate balance between the fiduciary duties of the trustee and the settlor's desire to retain control. For modern entrepreneurs who wish to pass on their family business as a core legacy asset across generations while retaining decision-making authority over its operations, the VISTA trust offers a solution that combines legal certainty with operational flexibility.

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the matters discussed in this Briefing, please contact us. We would be delighted to assist.

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