



NEWHAVEN BVI

The VISTA Trust

The Virgin Islands Special Trusts Act 2003 came into force on 1st March 2004. This Act introduces the new VISTA Trust (named after the Act) which establishes an entirely new, flexible and innovative set of rules for a BVI Trust, applicable in certain given circumstances. The essence of the new Act is as follows:

The purpose of the new legislation is to remove or reduce the difficulties that the application of the "prudent man of business" rule creates, which requires a trustee of shares in a family business to take such care as an ordinary prudent man would take when making investments for persons for whom he felt a moral obligation to provide, and therefore trustees would be obligated to:

- 1. Keep a watch on the performance of the directors of the company and to intervene where necessary;**
- 2. Maximise the financial advantage of the shareholding;**
- 3. Diversify the financial risk, including if necessary a sale of the company.**

The British Virgin Islands has recognised that the imposition of the above obligations may often conflict with the wishes of the typical owner of a family business and raise serious difficulties for the trustee.

The Objects and Reasons published with VISTA, indicates that it was designed to facilitate the growing International need for a satisfactory legal framework in regards to succession planning of family owned corporate business. The aim is to enable the owner to establish a trust of his company that frees the Trustee from management responsibility in favour of the directors of the company, and permits the company and its business to be retained as long as the directors think fit. This is achieved by

- 1. Removing the trustee's monitoring and intervention obligations**
- 2. The settler being allowed to bestow on the trustee a role more suited to a trustee's abilities**
- 3. Laying down rules within trust instruments for the appointment and removal of directors**
- 4. Establishing the rights of both beneficiaries and directors to apply to the courts if the trustee fails to comply with the requirements of non intervention or the requirements for director appointment and removal**
- 5. Prohibiting the sale of shares without the directors' approval**

The VISTA Trust is intended to be very flexible and must therefore be tailor made to fit each trust client. It is essential that full and complete instructions are received from Settlers and that these instructions are clearly set out in the provisions of the Trust Deed and expressed in any letter of wishes provided to the trustee.

VISTA will, however, only apply to:

- 1. Trusts in respect of which an express declaration to that effect is included;**
- 2. Trusts completed after this legislation came into force, and**
- 3. In respect of shares in British Virgin Islands companies incorporated either under the BVI Business Companies Act (or recognised as previous International Business Companies and automatically re-registered under the BVI Business Companies Act), or the Companies Act.**



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It should be noted that:

- 1. An existing trust cannot be converted to a VISTA Trust; the existing trust must be terminated, the assets of the trust appointed out and a new VISTA Trust established. This could cause a tax liability for one or more beneficiaries.**
- 2. A BVI Licensee (i.e a Newhaven Trustees (BVI) Ltd must be appointed as the sole Trustee.**
- 3. Under the Act, the assets of the VISTA Trust must comprise shares in a BVI company; please note that it would not be appropriate for Newhaven to be appointed a director of that BVI company; the shares in the BVI company are held on a "trust to retain" basis, and this takes precedence over any duty of the trustee to preserve or enhance their value.**
- 4. In setting up a VISTA Trust, as with any trust, the parties should seek expert tax opinion.**

The Act furthers the historical development of Trusts. It demonstrates that the BVI remains in the forefront of jurisdictions able to introduce innovative measures which meet the legitimate needs of international clientele. It is intended to provide opportunities for those persons who would otherwise wish to establish a trust to hold shares in their companies, but who until now have felt disinclined to do so as a result of the rigidity of the "prudent man of business" rule.

For further information on the Act please contact Janice Skelton (jskelton@newhavenbvi.net).