Guide to BVI Trusts

A trust is a legal relationship created when a person (the ***settlor***) places assets under the control of another person (the ***trustee***) for the benefit of specified persons (the ***beneficiaries***) or for specified purposes. The trustee is the legal owner of the assets put into the trust and is required to manage those assets for the benefit of the beneficiaries or to further the specific purposes set out in the trust deed.

Reasons to use a trust

1. Trust for specified persons

- asset protection, for example against claims from creditors or in divorce proceedings;
- to manage assets for young, incapacitated or irresponsible beneficiaries;
- to optimise the tax treatment of the assets placed in trust;
- to circumvent forced heirship rules;
- to achieve multi-generational succession planning goals.

2. Trust for specified purposes

- for charitable purposes;
- for non-charitable purposes (unique to offshore jurisdictions).

Common types of trust

A BVI trust may be *discretionary* in nature, meaning that the trust assets are held for a class of beneficiaries with distributions of income and capital being made at the discretion of the trustees.

Alternatively, a trust may be *fixed interest*, meaning that each beneficiary is entitled to a certain interest, for example the right to receive a set share of the income generated by the trust assets for a set period and then to receive a set share of the capital on attaining a specified age.

Additionally, BVI trusts can be established for charitable purposes or non-charitable purposes.

The Virgin Islands Special Trust Act (***VISTA***) provides for the creation of VISTA trusts which afford particular advantages (see further below).

Why a BVI trust?

The British Virgin Islands are a British Overseas Territory enjoying self-government in a stable political environment. The BVI is a well-respected, sophisticated legal jurisdiction and has built a strong reputation as a leading financial centre. International business represents over 50% of the economic activity of the Islands (tourism being the other major industry) and has led to the development of a comprehensive infrastructure of legal, accounting and banking services.

The BVI is the recognised leader in offshore corporate activity with the largest companies' registry in the offshore world. The BVI Business Companies Act forms the basis and impetus for this growth and the jurisdiction is recognised for offering quick, flexible and cost effective structuring solutions.

The general principles of BVI trust law are derived from English trust law, and progressive and innovative legislation has built on those traditional trust law principles and created a modern and flexible jurisdiction in which to establish and administer a trust. The VISTA trust concept (which allows greater control over trust assets to be retained by the settlor or another) together with legislation facilitating private trust companies and non-charitable purpose trusts make the BVI a market leader and a preferred trust jurisdiction.

Particular advantages of BVI trust law

1. Perpetuity periods

   Other legal jurisdictions limit the length of time a trust can be in existence. BVI trusts can continue for up to 360 years, with the exception of charitable or other purpose trusts which may continue indefinitely.

2. Reserved powers

   For a number of reasons, a settlor may wish to retain a certain level of control over specific elements of the administration of a trust. The BVI was one of the first offshore jurisdictions to bring in legislation allowing powers to be reserved in favour of the settlor or another. As a result, certain powers which would usually be vested in the trustee (generally a third party professional offshore trust company) can instead be conferred on a '***protector***', who can be the settlor or such other family member, friend or advisor as the settlor choses to appoint.

   The powers held by the 'protector' might include:

   - power to determine the law governing the trust;
   - power to remove and appoint trustees;
   - power to exclude or include beneficiaries in the class of potential beneficiaries;
   - power to approve or refuse distributions of income and capital.

   The settlor might also retain powers of investment.

3. VISTA trusts

   Generally, trustees are duty-bound to act in the best interests of the beneficiaries and to safeguard and enhance the value of the trust assets. The principal effect of the VISTA regime, which can only apply to BVI trusts which own BVI company shares, is to remove the duty of trustees to monitor and intervene in the conduct of the directors and in the running of the BVI company/ies held in trust. In practice, therefore, decisions about how the underlying assets are managed would be made by the directors of the BVI company/ies.

   For more detailed information, please see Harneys' guide on VISTA Trusts.

4. Private Trust Companies (***PTCs***)

   Since 2007, it has been possible in the BVI to establish a PTC to act as trustee. PTCs have proved to be very popular, especially among ultra-high-net-worth families, as an alternative to appointing a third party trust corporation as trustee of family trusts. Typically, the directors of the PTC are the settlor and other family members or trusted advisors and these persons, in their capacity as directors of the PTC, have effective ownership and control over the assets held in the trust.

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