

## BRITISH VIRGIN ISLANDS TRUST KEY FACTS SHEET

### TRUSTS

The trust is a well-established concept in common law originating in England during the Middle Ages. Underlying the trust is the concept of “dual ownership” – namely, that the legal title to property is vested in another. In many cases, settling assets on a trust better serves a person’s purpose than placing them in a company. When a person transfers assets to a company in return for shares, he/she retains an indirect proprietary interest in those assets through the shares in the company. When he/she transfers the same assets to a trustee, he/she can effectively divest himself/herself of direct or indirect ownership of those assets yet retain control through the terms of the trust deed. Because of this basic difference in ownership, the trust is a useful financial and tax planning instrument.

As a common law jurisdiction the British Virgin Islands is frequently selected as the proper law and administrative situs of trusts used for financial and estate planning purposes. Instruments of Settlement and Declarations of Trust frequently specify that the trust shall be governed by B.V.I. law.

### COMMON TYPES OF TRUST

BVI trusts may be discretionary or fixed interest in nature. This means that the trust assets can either be held for a class of beneficiaries with distributions being made at the discretion of the trustee (discretionary trusts) or alternatively the trust deed can set out the specific beneficial interests of each beneficiary, such as a right to the income earned by the trust assets (fixed interest trusts).

Additionally, BVI trusts can be established for charitable purposes or non-charitable purposes (the latter known as purpose trusts – as to which see below).

Where the trust assets consist only of shares in a BVI company, VISTA trusts are extremely popular.

### PURPOSE TRUSTS

Historically for a trust to be valid, with the exception of charitable trusts, it had to have identifiable beneficiaries. However, a number of offshore jurisdictions, including the BVI, have enacted legislation which enables trustees to hold property on trust to carry out or further purposes which cannot be classed as charitable.

The conditions in the legislation for purpose trusts require that:

- the purpose is specific, reasonable and possible;
- the purpose is not immoral, contrary to BVI public policy or unlawful;
- at least one trustee is a “designated person” (which usually results in the trustee being a licenced BVI trust company or a BVI Private Trust Company (“PTC”)); and
- the trust instrument must appoint an enforcer, who cannot be a trustee and who must be provided with information about the trust, including trust accounts and copies of all trust deeds.

#### **PERPETUITY PERIODS**

BVI trusts can exist for a maximum of 360 years, unless they are charitable trusts or purpose trusts, which may exist indefinitely.

#### **RESERVED POWERS**

For a number of reasons, the settlor may wish to retain a level of control over specific elements of the running of a trust for himself or another, commonly the protector (if one is appointed). The BVI was one of the first offshore jurisdictions to bring in legislation concerning reserved powers. As a result, certain powers which are usually vested in the trustee, may instead be conferred on the settlor or protector or may only be exercisable by the trustee with the prior consent of the settlor or protector. Such provisions would be included in the trust deed if required.

Without limitation, these might include powers to:

- determine the law of which jurisdiction shall govern the trust;
- change the forum of the administration of the trust;
- remove and appoint new trustees; and
- exclude and include beneficiaries.

## **PRIVATE TRUST COMPANIES**

Since 2007, it has been possible in BVI to establish a PTC, which may act as trustee of trusts without the need to obtain a trust licence in BVI. In order to qualify for this exemption, the trustee must carry on only “related trust business” or “unremunerated trust business.”

PTCs have proved a very popular alternative, especially among ultra-high-net-worth families, as an alternative to appointing a third party trust corporation as trustee of family trusts, including VISTA trusts and purpose trusts.

## **PRACTICAL USES OF BVI TRUSTS**

BVI trusts may be created for a number of reasons, including:

- as an instrument for succession planning in the event of death or incapacity.
- to mitigate against tax liabilities.
- to protect assets (e.g. from exchange controls or other government interference).
- as a confidential way of holding assets.
- to protect beneficiaries who have difficulty in managing their own affairs.
- to circumvent forced heirship rules.
- to hold shares in a family company or in corporate transactions.
- as a vehicle for philanthropic giving.

The principal statute in the B.V.I. governing the establishment and operation of trusts is the Trustee Ordinance, 1961. The ordinance has been subject to two substantive changes since its enactment.

- ❖ In 1993 the Ordinance was amended to incorporate a number of important developments in international trust practice. The 1993 amendments include:
  - A 100 years perpetuity period may be stipulated in trust instruments.
  - “Wait and see” rules to avoid a trust being found to be in violation of the rule against perpetuities.
  - Rules relating to determining and changing the proper law of a trust.
  - A prohibition on the enforceability of civil law forced heirship rules to transfers to B.V.I. Trusts.
  - Rules governing the establishment of Purpose Trusts.
  - Statutory recognition of the office of Protector.
  - Standard trustee powers which may be included by reference in a trust instrument.
- ❖ In 2004 the Virgin Islands Special Trusts Act (VISTA), 2003 came into force. VISTA introduced the following innovative changes to the local trust:
  - Trustees will be permitted to hold shares in a company without fiduciary responsibility for the management or success of the company.
  - Third parties (e.g. lenders) dealing with trusts will be able to enforce claims directly against the assets of a trust.
  - Existing protections for trusts against forced heirship claims are strengthened.
  - Settlers can prevent beneficiaries from unanimously agreeing to terminate a trust for a period of up to 20 years.
  - Existing rules governing purpose trusts are expanded.

**KEY FACTS**

B.V.I. trusts are subject to \$200 Trust Duty payable on the execution of a B.V.I. trust deed.  
 B.V.I. trusts are exempt from all local registration requirements and all B.V.I. taxes where the trust beneficiaries are not residents of the B.V.I.

### TRUST FEE SCHEDULE

#### Discretionary Trust

Acceptance fee	\$1,750.00 (one off)
Trustee fees for assets between US\$0-5m.	\$2,750.00 per annum
Trustee fees for assets between US\$5-10 m.	\$5,500.00 per annum
Any assets over US\$10m	Fees to be agreed

#### Vista Trusts

Acceptance fee	\$1,750.00 (one off)
Trustee fees for assets between US\$0-5m.	\$2,000.00 per annum
Trustee fees for assets between US\$5-10m.	\$3,750.00 per annum
Any assets over US\$10m	Fees to be agreed

#### Short Form Trusts

Acceptance fee	\$ 950.00 (one off)
Trustee fees for assets between US\$0-5m	\$1,300.00 per annum
Trustee fees for assets between US\$5m-10m	\$2,500.00 per annum
Trustee fees for assets over US\$10m	Fees to be agreed

Trust administration - time spent basis - US\$ 200/per hour

Preparation of trusts accounts. To be agreed

#### Disbursements

Trust stamp duty	\$200.00
Legal fees (for trust review)	\$1,200-1,500.00 (depending on complexity)

Please contact **FORWARD ASSOCIATES LIMITED** office for further information.  
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