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The trusted solution in wealth structuring

VISTA trusts

A Virgin Islands Special Trust ("VISTA") is a form of trust particular to the British Virgin Islands ("BVI") that can provide sought after comfort in some situations.

Restrictions of traditional trust

Traditionally a trust places a fiduciary duty on the trustee to ensure that a company, which the trust owns, operates under the "prudent investor rule".

This rule requires the trustees to oversee the management of a company it owns, to ensure it operates in a prudent way. Not only should the trustee be consulted on matters in relation to the running of the company, it is part of the trustee's fiduciary duty to guard against the company risking its assets. This often requires trustees to oversee and ensure an underlying company is conservative in its dealings.

This is not always what the settlor desires when settling shares in a company on trust. The resulting vigilance by a trustee can also incur additional costs in both time and money.

In some situations, albeit rarely, this rule can even oblige the trustee to sell the shares it owns in a company, if it is considered to be in the best interest of the beneficiaries of the trust (such as if it is a non-income producing company). This obligation can exist even if this is against the wishes of the settlor.

Benefits of VISTA trusts

Principally the VISTA trust removes the trustee's obligation from the prudent investor rule.

The settlor can outline in the "office of director rules" how and in what circumstances the trustee should use its voting powers to interfere in the management of a company. Powers such as removing and appointing directors and determining their remuneration can be stipulated in accordance with the settlor's wishes.

Whilst this only applies to a BVI company whose shares are so VISTA designated, such a company may hold non BVI and non-VISTA shares which will then be covered under this VISTA exemption.

It is possible to step in and out of the VISTA provisions if the trust deed is drafted appropriately. This can be advantageous if there are occasions when the settlor wants the trustees to have more involvement.

A standard VISTA trust can be established for a period of up to 360 years, which assists with dynastic planning.

It is also possible to add shares from an existing BVI trust to a VISTA trust, so that they become subject to VISTA legislation.

Saunders v Vautier rule

This rule permits the beneficiaries of a trust (if they all agree, are adults and under no disability) to join together and bring the trust to an end.

A VISTA trust may prohibit the application of this rule for a period of up to 20 years, thus allowing the settlor to ensure that the trust continues for at least this long. There are other ways to ensure that a VISTA trust continues for a longer period, such as having a wide class of beneficiaries including minors that would make the Saunders v Vautier rule extremely difficult to achieve.

Examples when VISTA trusts are used

- for people with family owned businesses (especially for a sole director/shareholder) who wishes to run their company independently as well as benefiting from a trust's estate planning ability;
- for people unfamiliar with the concept of trusts, as it allows them to have some comfort when transferring assets to a third party that they can continue to manage the underlying assets without their involvement;
- where it is desirable to limit a trustee's involvement in the underlying company;
- for high risk companies with ultimate trust ownership

Requirements to settle a VISTA trust

- a VISTA Trust must be established;
- the trust assets must be shares in a BVI company, which must be transferred into the name of the trustee;
- a BVI licensed trust company or a BVI Private Trust Company must act as one of the trustees or the sole trustee;
- the proper law of the trust must be that of the BVI.

Nerine provides VISTA trusts through its offices in the British Virgin Islands. If you have any questions regarding the above information or wish to form a BVI VISTA trust please contact us.