

IN BVI WE TRUST

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The British Virgin Islands (“BVI”) is widely known as one of the world’s foremost locations for the establishment of international business companies, which play a key role in the facilitation of international investment flows. In addition to this, the BVI is also a popular jurisdiction for the establishment of trusts for asset protection and succession planning purposes.

Key to the BVI’s success as a trust jurisdiction is the clarity and quality of its trust legislation and the integrity and effectiveness of the judicial system. The BVI benefits from a legal system that is rooted in English common law, meaning that its trust law is based predominantly on English trust law principles. That said, the BVI’s lawmakers have also made a number of innovations such as the introduction of the VISTA trust, which is a succession planning vehicle that is unique to the BVI.

In the event of a dispute, there is a specialist Commercial Court which is equipped to handle trust matters, as well as the Eastern Caribbean Court of Appeal. Parties also have ultimate recourse to the Privy Council in the United Kingdom if a final appeal is required. The BVI trust sector is very sophisticated, with a large number of experienced and technically skilled professional firms and trust practitioners within the corporate, legal, tax and accounting fields.

BVI trusts are recognized by many countries and used by high net worth families and entrepreneurs from all around the world to protect their assets, guard against political uncertainty, maintain privacy and ensure the continuity and orderly succession of their business and financial interests from one generation to the next.

While it is not possible to cover all the distinguishing features of BVI trusts in these notes, below are some of the highlights of what the BVI offers.



CORNERSTONES OF SUCCESS

- ♦ BVI trusts are extremely flexible and cost-effective and can be used to benefit both charitable and non-charitable purposes.
- ♦ BVI trusts preserve the confidentiality and privacy of the trust's settlor and beneficiaries, since the trust documents are not public (however, beneficiaries of a trust may be entitled to receive financial and other information relating to the trust, and as part of the exchange of international tax information, the BVI trustees might have to disclose certain information about trusts they administer or for which they maintain financial accounts).
- ♦ BVI trusts can last a number of generations and can protect the assets in them from creditors and forced heirship, from beneficiaries who have difficulty in managing their own affairs or who pose a risk to the family's assets, and also from exchange controls or other government interference.
- ♦ BVI trusts can be used for succession purposes, avoiding the costs of the probate process and ensuring that beneficiaries are well-maintained in the case of death or incapacity of the settlor.
- ♦ Generally, there are no estate, gift, income or capital gains taxes in the BVI; therefore, BVI trusts may enjoy tax and fiscal neutrality, provided that the beneficiaries do not reside in the BVI and the trust does not conduct any business or own any land in the jurisdiction.

THE BVI TRUST MENU

Discretionary, fixed-interest, and accumulation and maintenance trusts

- Discretionary trusts provide maximum flexibility, as the trustee is given wide powers in terms of the distribution of the income and capital of the trust to beneficiaries, and is able to decide to whom, when and how distributions are made, as per the terms of the trust deed. This type of trust is useful where the future needs of the beneficiaries cannot be determined at the time of creation of the trust. However, because the trustees have discretion regarding the distribution of trust assets, beneficiaries do not have a specific entitlement to any particular portion of the trust fund; they only have a right to be considered when the trustee is deciding how and when to exercise their discretion.
- Fixed-interest trusts limit the discretion of the trustee when distributing the assets (e.g. by pre-determining the fixed portion of the trust fund to which each beneficiary is entitled). They can be adopted for tax planning purposes due to the transfer of the ownership of the trust assets to the trustee, particularly if they are irrevocable and if the trust assets are sitting in a jurisdiction other than the settlor's domicile, residency or nationality.
- Accumulation and maintenance trusts are particularly useful if the settlor intends to preserve the trust assets, by accumulating income over a certain period that will accrue to the trust capital, for the benefit of a group of beneficiaries (e.g. children and grandchildren). The trust capital and/or the income will generally be used over time to ensure the education and maintenance of beneficiaries up to a specified age.
- The trustee of these types of BVI trusts must act as a "prudent businessman" in relation to investments of trusts assets, monitoring their performance and taking action to ensure that the trust fund is being preserved. This gives the settlor a level of comfort when transferring the legal ownership of their assets to a professional trustee.

VISTA Trusts

- The BVI's Virgin Islands Special Trusts Act, 2003 ("VISTA") can be a valuable and effective succession planning tool.
- VISTA trusts allow the owner of a corporate business to place the shares of the company into a trust structure, thereby creating a mechanism for orderly succession of ownership of the business following the owner's death or incapacity, without placing the day-to-day management of the business in the hands of a trustee, which may not have the specific knowledge and experience of running that business. The directors of the business continue to make the key decisions relating to the company, while the BVI trustee holds the shares in the company in trust indefinitely.
- VISTA trusts can be revocable, a feature which often gives the settlor a measure of comfort. The settlor is also able to set

out "permitted grounds of complaint" and "office of director rules" which determine how and under what circumstances the trustee can intervene in the company's affairs and request information from the directors regarding the management and financial situation of the assets of the underlying company.

Private Trust Companies

Many wealthy families use trusts as part of their international asset protection and tax planning, and usually appoint a third-party institutional trustee to act as the trustee of the assets settled in a trust. However, some families prefer, for various reasons, to establish a private trust company which acts as the Trustee of the family trust. Similarly, in the corporate environment, a number of multinational companies employ trusts for purposes that range from employee benefit programmes to off-balance sheet transactions and prefer to entrust the management of these trusts to a corporate trustee which is owned by the multinational company and which provides services exclusively to them.

In 2007, the BVI government responded to the needs of both international families and multinationals with its Private Trust Company (PTC) regime which has been amended and enhanced on several occasions since then, with the last update occurring in May 2013. A PTC is a BVI company that is limited by shares or guarantee, which carries on trust business for specified groups of individuals and entities where, generally speaking, the parties are related and the trustee is not compensated for its services. The company must contain a statement in its memorandum of association that it is a private trust company and it must also include "(PTC)" in its name. A company that meets these and the other applicable requirements, is exempt from obtaining a trust license under the BVI Banks and Trust Companies Act, 1990 and can act as the sole trustee of a BVI purpose or VISTA trust.

THE FUTURE FOR BVI AND ITS TRUSTS

There have been significant changes in the global financial services industry in the last decade, and the BVI has constantly evolved in response. We have developed and implemented international standards to maintain the country's status as a top tier international financial centre, creating flexible vehicles that can operate in different countries and offering several valuable ancillary services for reasonable costs in comparison to other jurisdictions.

BVI trust legislation in particular has been updated and refined to offer innovative and user-friendly solutions, thus helping the BVI to remain at the forefront of trust structuring and international business today and beyond. ■