Amendments to the BVI Trust Regime
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On the 15th May 2013 the BVI enacted the first substantive changes to its trust regime in ten years. The amendments modernise the jurisdiction’s four primary pieces of trust legislation namely the Trustee Act 1961; The Bank and Trust Companies Act, 1990; the Trust Corporation (Probate and Administration) Act, 1947 and the Virgin Islands Special Trust Act, 2004 (VISTA).

VISTA

Background

The main thrust of the amendments were centred on the VISTA legislation, introduced on 1 March 2004. VISTA disengages the traditional duty of a trustee to monitor and intervene in the running of an underlying company thus enabling a settlor to maintain control of the company, through the Office of Director Rules (ODRs), whilst enjoying the succession advantages of a trust arrangement.

VISTA has achieved significant traction in succession planning for family businesses and individuals from a civil law background (together with those from the BRIC economies) who appreciate the retention of control available in a VISTA structure.

Practitioners have increasingly seen the application of VISTA in a commercial context. In particular, VISTA has proved to be a popular tool when establishing structures involving unusual or new asset classes in both balance sheet and off-balance sheet transactions.

VISTA purpose trusts are often combined with Private Trust Companies (PTC) to establish a family structure providing maximum flexibility and control for a settlor wishing to preserve family assets for the next generation.

Amendments:

The principal amendments are as follows:

1. Perhaps the most significant amendment to VISTA is the change in the definition of “Designated Trustee”. The previous definition was considered restrictive and has been changed to include trustee licence holders and PTCs. Further, co-trusteeship is permitted (provided one trustee is a BVI trust licence holder or a PTC). Pursuant to the Financial Services (Exemptions) Regulations, 2007 PTCs are exempt from the usual licensing requirements under the Bank and Trust Companies Act, 1990. It will therefore be possible for trust companies without a BVI licence to be involved in the administration of VISTA structures. It is hoped that this amendment will act as an incentive for foreign service providers to create VISTA trusts.

2. The changes provide increased flexibility as to when the provisions of VISTA may apply to shares in a BVI business company. The amendments allow designations to be revoked, suspended or ‘triggered’ at a later date.

3. One important change is to allow shares in traditional BVI law governed trusts, where one trustee is a designated trustee, to be added to a VISTA trust. This allows for non
VISTA trusts to move within the VISTA regime more readily. Previous legislation made such a reclassification complex.

4. VISTA trustees are now given an express right to certain documents and accounts of the underlying BVI business company. This enhances trustee-shareholders entitlements and is a welcome development.

5. It is now possible to allow for the ODRs, as detailed in the trust instrument, in accordance with the wishes of the settlor to extend trustee duties in relation to the appointment and removal of directors.

6. “Appointed Enquirers” are now permitted to be remunerated and the trustee obliged to provide them with trust documents and information.

7. Section 15 of VISTA may be amended to allow for a settlor to impose fiduciary duties upon the trustee in respect of the assets of the company. This allows for modification of the trustee duty of care and lead to opportunities to establish trust instruments with bespoke trustee duties.

**Amendments to the Trustee Act**

The main amendments to the Trustee Act are:

1. The perpetuity period has been extended from 100 years to a period not exceeding 360 years. This is in line with the current maximum period in certain other jurisdictions. This extended period will cover all trusts, including those governed by VISTA. Purpose trusts continue to be exempt from the rule against perpetuities. This amendment will only impact upon those trusts instruments taking effect after 15 May 2013.

2. The purpose trust legislation introduced in 2003 has been amended so as to allow a BVI PTC to be a designated trustee of a purpose trust. The amendment to section 84A is to be welcomed as it allows for greater flexibility in structuring family arrangements and should lead to BVI purpose trusts becoming more popular.

3. Section 101 of the Trustee Act which, if incorporated in the trust instrument, provides for the relationship between creditors and trustees and has been extended beyond ‘money’ to include loans of ‘trust assets’.

4. Trust duty payable on chargeable trust instruments increased from $100 to $200 with effect from 15 May 2013. In addition the penalty regime increased from $200 to $400.

**Amendments to the Trust Corporation (Probate and Administration) Act**

The Act enables a company that qualifies as a ‘trust corporation’ to manage and settle estates in the BVI. Under s.2 of the Act such a trust corporation must have a place of business in the Territory, be empowered by its M&As to undertake trust business as well as satisfying capital requirements (the current capital threshold is $600,000).

The Act has now been amended to allow a company which holds a class 1 trust licence (in accordance with the BTCA, 1990) to qualify as a ‘trust corporation’ under the Act. This removes the capital requirement test on the basis that a class 1 trust licence holder is sufficiently regulated. A company not holding such a licence needs to satisfy a revised capital requirement of $1,000,000.
The intention of this change is to allow class 1 licenced trust companies to provide executorship services.

**Conclusion**

The amendments offer greater flexibility to the Territory's trust regime. The enactments will strengthen the VISTA regime and ensure it remains an important tool for the international wealth planner. Further, the increase in the potential application of PTCs will enable BVI trusts to be promoted more readily outside of the BVI. The changes should be welcomed.

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