HARNEYS
British Virgin Islands

guide

BVI Trusts: An Overview

INTRODUCTION

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 beneficiaries or a specific purpose. The trustee is obliged to deal with those assets, not for his own benefit, but for the benefit of the beneficiaries or to further the specific purpose set out in the trust deed.

The British Virgin Islands is a well respected and sophisticated jurisdiction for the establishment of trusts. The general principles of BVI trust law are derived from those of English trust law and they have been supplemented by statute to offer a variety of flexible and user-friendly trust structuring options.

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 (for more information see our separate guide on VISTA trusts).

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:

(i) the purpose is specific, reasonable and possible;

(ii) the purpose is not immoral, contrary to BVI public policy or unlawful;

(iii) 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

(iv) 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:

(i) determine the law of which jurisdiction shall govern the trust;

(ii) change the forum of the administration of the trust;

(iii) remove and appoint new trustees; and

(iv) 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” (for more information see separate guide on PTCs).

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:

(i) as an instrument for succession planning in the event of death or incapacity.

(ii) to mitigate against tax liabilities.

(iii) to protect assets (e.g. from exchange controls or other government interference).

(iv) as a confidential way of holding assets.

(v) to protect beneficiaries who have difficulty in managing their own affairs.

(vi) to circumvent forced heirship rules.

(vii) to hold shares in a family company or in corporate transactions.

(viii) as a vehicle for philanthropic giving.

FURTHER INFORMATION

For more information on BVI trusts please contact:

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May 2013