

What are trusts?

Trusts are a long established system of, exactly as it is called, a system of trust. A system of **trusting** others to look after your assets for the benefit of others. It relies on a great deal of trust, since the legal interest or title in your assets will be transferred to the trustee.

A person who transfers property into a trust is called a “**Settlor**”. The persons who enjoy the income or capital from a trust are called “**Beneficiaries**”. The person to whom the great deal of trust is given, is called the “**Trustee**”.

In more modern times, the laws governing trusts allow for more flexibility, such as the BVI, where the Settlor is allowed to also benefit from the assets transferred to a trust, without the Settlor having the legal ownership of those assets, so that the Trustee will continue to have day to day control over the assets. Alternatively, a trust can be completely independent of the person who established it (i.e. - the Settlor).

Tax Perspectives

Tax advice should always be obtained from a lawyer in the both your jurisdiction of residence and domicile (i.e. – onshore tax lawyers) prior to establishing a trust.

Under the Trustee Act of the BVI, the income of any trust established under the laws of the BVI (“**trust**”), in the hands of a Trustee is exempt from income tax payable in the BVI and the beneficiaries of any trust who are not persons resident in the BVI shall likewise be exempt from payment of income tax in the BVI in respect of any moneys received by them from the Trustee of any trust. No estate tax, inheritance tax, succession tax, gift tax, rate, duty, levy or other charge is payable in the BVI by beneficiaries who are not resident in the BVI in respect of any distribution to them by the trustee of any trust.

Types of trusts

There are several types of trusts that one may establish under the laws of the BVI (some of these types may overlap in any one trust structure):

- (1) **A Discretionary Trust** – Subject to guidelines and the powers in the trust deed, and perhaps the supervision of a protector, and information in a letter of wishes, the Trustee of a discretionary trust will have the **discretion** to distribute the benefits or income (or capital) of the trust to a named class of beneficiaries. No Beneficiary is entitled to income as of right. The income may be retained in the trust by the Trustee. Capital may be gifted to nominated individuals or to a class of beneficiaries at the discretion of the Trustees.
- (2) **A Life Interest Trust** - (Sometimes referred to as interest in possession trusts and in Scotland known as life renter trusts). Here a nominated beneficiary (called a “life tenant” or “life renter” in Scotland) has an interest in the income from the assets in the

trust or has the use of trust assets. This right may be **for life** or some shorter period (such as up and until the nominated beneficiary attains a certain age). The capital may pass onto another beneficiary or beneficiaries, for example, where income is left to a wife for her life, and upon her death, the income is to pass to the children.

- (3) **A Charitable Trust** – A trust that is set up for exclusively charitable purposes.
- (4) **A Purpose Trust** – (Also called a “Non-Charitable Purpose Trust”) a trust that may be created for any purpose or purposes provided that, the following apply:
- (a) the purpose or purposes are specific, reasonable and possible;
 - (b) the purpose or purposes are not immoral, contrary to public policy or unlawful;
 - (c) at least one trustee of the trust is a designated person¹;
 - (d) the trust instrument appoints a person as enforcer of the trust, and provides for the appointment of another enforcer on any occasion on which there is no enforcer, or no enforcer able and willing to act;
 - (e) the enforcer appointed by the trust instrument is a party to the trust instrument or gives his consent in writing, addressed to the trustee who is a designated person, to act as enforcer of the trust.

A Purpose Trust, along with all other BVI trusts, may exist for a perpetual period, which under the laws of the BVI is up to 360 years.

- (5) **A VISTA Trust** – Established pursuant to the Virgin Island Special Trusts Act, 2003, which forms the trust’s name and acronym “**VISTA**”. The main attractive features of a VISTA Trust are (a) the trust fund is made up of shares (such as shares in a family company), (b) the Trustee is relieved of the duty to intervene in or be involved in the company’s affairs or management, unless an “intervention call” is made, which grounds are set out in the trust deed, (c) Trustee is not liable for the consequences of retaining the shares in the trust, and (d) the Trustee may not sell the shares without the director’s approval.

¹ Pursuant to section 84A(1) of the Trustee Act, a “**designated person**” means: (a) a legal practitioner practising in the BVI; (b) an accountant practising in the BVI who qualifies as an auditor for the purposes of the Regulatory Code or any financial services legislation of the BVI; (c) a licensee under the Banks and Trust Companies Act, 1990, (such as trust company situated in the BVI) or (d) a private trust company within the meaning of paragraph 1 of Part I of the Schedule to the Financial Services (Exemptions) Regulations, 2007, which a family may set up to act as the trustee itself; or (e) such other person as the Minister of Finance may, by Order, designate.

Private Trust Companies

A company in the BVI which offers trustee services to trusts, **must be licensed (and is regulated)** by the BVI Financial Services Commission under the Bank and Trust Companies Act, 1990 (the “**BTC Act**”). Therefore, using a BVI licensed trust company should offer a level of **security and comfort**.

On the other hand, if using a foreign corporate trustee who is unknown to you is not appealing, you may set up your own private trust company to offer trustee services to a trust.

A BVI private trust company (“**PTC**”), is exempted from the requirement to be licensed by the BVI Financial Services Commission under the BTC Act, in order to carry on trustee services, including acting as the sole or joint trustee of a VISTA Trust (described above).

However, to avail of the exemption, a PTC company may be formed on the basis that it must only conduct: (a) unremunerated trust business or (b) “**related trust business**” - meaning trust business that is provided to either a single qualifying trust or a group of related qualifying trusts. A “qualifying trust” means a trust where each beneficiary of the trust is (a) a connected person (i.e.- a family relationship, whether through consanguinity, marriage or adoption) (b) a charity, or (c) the settlor.

Restrictions - The PTC may not carry on any business that is not trust business, solicit trust business from members of the public, or carry on any trust business other than either unremunerated trust business or related trust business, as the case may be.

How we can help?

This Memorandum covers some aspects of trusts. If you are interested in providing for your family through the use of trusts, please feel free to contact us. We would be happy to assist you.

For more information of advice on trusts please contact us at bvi@sinclairsoffshore.com . *The foregoing is for general information purposes only and is not intended to replace or substitute legal advice. This guide is provided to clients of Sinclairs (BVI) and is not to be circulated or published without prior written permission.*