Changes to the BVI’s Trustee Act and Virgin Islands Special Trusts Act

The British Virgin Islands has enacted, effective 16th May 2013, certain amendments to the Trustee Act and Virgin Islands Special Trusts Act ("VISTA"), primarily designed to maintain and enhance the BVI’s popularity as an international trusts jurisdiction. A number of the amendments are likely to be of particular interest to international trust practitioners, as set out below.

The Trustee Act has been amended such that, with effect from 16th May 2013, dispositions will be subject to a perpetuity period of 360 years in place of 100 years, while a further amendment means that a BVI private trust company is now a “designated person” so that a BVI private trust company may now act as the trustee of a BVI purpose trust created on or after 1st March 2004.

VISTA has also been amended with the following changes: (i) a BVI private trust company is now a “designated trustee” meaning that a BVI private trust company may now act as the trustee of a VISTA trust; (ii) the trust instrument may provide that a protector shall not be an “interested person” (being a person who may call upon the trustee to intervene) and the trust instrument may designate any other person as an interested person; (iii) it is now only required that a designated trustee be at least one of the trustees of a VISTA trust, (iv) a VISTA trust may now be created by the exercise of a power under a BVI trust of which at least one of the trustees is a designated trustee; and (v) a trust instrument may specify a date or event upon which VISTA will or will cease to have effect.

A number of new Sections have also been added to VISTA introducing greater clarity and flexibility. It is now clear that VISTA will not restrict a trustee-shareholder from exercising its statutory rights to inspect, make copies of or take extracts from certain of the underlying company’s records, such as registers of directors, and VISTA will not restrict any provisions, under the company’s articles, entitling the trustee-shareholder to inspect, make copies or take extracts from accounts and records of the company and any companies underlying the company.

VISTA also now enables the ‘Office of Director Rules’ to provide for the remuneration of third persons and committees having the power to require the trustee to act in relation to the appointment or removal of directors. In addition, where there is an appointed enquirer, the trustee is now required to use all reasonable endeavours to ensure that he is given certain specified documents and information.

Finally, new Sections have been added to VISTA with the effect that the trust instrument may exclude or modify what would otherwise be the exclusion of any fiduciary responsibility of the trustee for the underlying company.
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