

MOSSACK FONSECA & CO.

MEMORANDUM ON VISTA TRUST SERVICES

I. BENEFITS FROM A VISTA TRUST

Since it is formally recognized by many jurisdictions, a trust generally serves as a mechanism to achieve asset protection that includes the following:

a) **Inheritance:** A trust has the advantage of the Settlor who is able to ensure that upon his death the property devolves according to the trust instrument, and not necessarily in accordance with the terms of his will (if any) or to the forced heirship rules of the country of his domicile (if any). A trust provides uninterrupted ownership and easy inheritance transfers. The Virgin Islands Special Trusts Act (VISTA TRUSTS ACT) has been enacted specially to facilitate the succession planning of family corporate business. Careful succession planning is often required to safeguard against the risk that a business will fall victim to conflicts between the successors of the client. Nowadays, foundations and trusts are regarded as the best fiduciary vehicle for succession planning, since they can be moulded to meet the peculiar needs of any family business. This Memorandum is a summary of the main features of the VISTA TRUSTS.

b) **Protection of Assets:** This trust ensures that assets remain intact in case of litigation against the settlor and/or beneficial owner, since the settlor / beneficial owner will have no assets that may be attached by third parties.

c) **Flexibility:** A Vista trust is most appropriate for the purpose of holding non-trading assets and can be combined with an offshore company to hold a variety of assets. Trading assets may be held within such a company, whose shares are commonly held as trust assets. Under certain scenarios, trusts are also used as vehicles for tax planning structures.

In the British Virgin Islands (BVI), trusts can be established either by virtue of the Trustee Ordinance, 1961 (Chapter 260), as amended by The Trustee Amendment Act, 1993 and The Trustee Amendment Act, 2003; or by virtue of the Virgin Islands Special Trusts Act, 2003 (VISTA TRUSTS).

II. ELEMENTS OF THE VISTA TRUST

The elements of a trust are: 1) **The Settlor**; 2) **The Trustee**; 3) **The Beneficiaries**; 4) **The Trust Assets**; 5) **The Protector**.

A Trust can be established in two ways in the British Virgin Islands:

- i) by Settlement. This is the trust instrument in which the Settlor transfers assets to the Trustee to be held according to the terms of the instrument;
- ii) by a Declaration of Trust. This is a trust that is created by trustees and formed by assets that are entrusted subsequently and placed in trust by the person who wishes to use that trust. Through this document, the Trustees declare that they hold certain property on specified trusts. It is used when the person transferring the assets into the trust does not wish to be named as Settlor in the trust.

III. VISTA TRUST

A trust is based on the separation of the legal ownership of the Trust Assets (which is left with the Trustees) for the beneficial ownership (which remains with the beneficiaries). Once such an arrangement is entered into the Settlor is no longer the legal owner of the Trust Assets (nonetheless in certain trust structures the Settlor retains the power to revoke the Trust which will allow the Settlor to recover ownership and control of the trust assets free from the Trust).

The use of the trust to cater for the succession planning of companies is currently designed to uphold a rule of trust law known as “the prudent man of business rule”. This rule imposes on the Trustee the obligation to monitor the conduct of the directors of the underlying companies and to intervene whenever it be necessary. This may involve preventing the underlying companies to the Trust from entering into an unduly speculative venture. It also imposes on the Trustee the obligation to make use of shareholding to its maximum financial advantage, irrespective of the wishes of the client and the obligation to look for opportunities of spreading the financial risk by diversification, which may involve the sale of the underlying company or its underlying assets, regardless the wishes of the client.

In principle, trusts and all subsidiaries and underlying entities must be legally under the control and independent management of the Trustee. These obligations are often in conflict with the wishes of the typical owners of family businesses, who only need share certificates to be kept in Trust. The Vista=Trust includes provisions for the retention of share certificates by the Trustee (Mossack Fonseca & Co. (BVI) Ltd.) irrespective of the financial advantages of disposal, even prohibiting the Trustee from intervening in the management of the underlying companies except in certain circumstances. There are certain provisions in the VISTA TRUST for the appointment and removal of directors of underlying companies to the Trust in accordance with the terms of the Trust instrument.

Hence, the management of the subsidiaries to the Trust may perfectly be carried out by its directors without any power of intervention being exercised by the Trustee. Therefore, the client would feel comfortable that the Trust Instrument is legally created

without the necessity to name appointee directors from the licensed trustee company. Even if appointee directors are appointed, the management and control of the underlying companies to the Trust can be directly controlled by the client or his/her professional managers.

IV. TRUSTEE OF A VISTA TRUST

The Trustee of a VISTA Trust must be a company which is licensed by the BVI Financial Services Commission to undertake trust business. Mossack Fonseca & Co. (BVI) Ltd is licensed as a Trustee company in BVI since 1987.

V. UNDERLYING COMPANIES

In accordance with the VISTA TRUST ACT, direct subsidiary companies to the Trust must be registered in the British Virgin Islands. As long as a BVI Holding company (in turn owned by the VISTA TRUST) retains shares of companies from BVI and/or other jurisdictions, it would comply with the VISTA TRUST ACT.

Hence, it would be perfectly in order for the BVI subsidiary company to the VISTA TRUST to hold shares in companies registered in another country; thus a family business in any part of the world, of any nationality, could be owned by the BVI Business Company which in turn would be owned by the VISTA Trust. The directors of both the BVI Business Company and the family business could be the client or any appointee under the control of the client. It is important to note that a BVI Business Company must be placed between the Vista Trust and other companies of the family business flowchart.

VI. DRAFT FORMAT

You will receive a draft format for a Vista Trust Settlement at your requirement.

VII. ACTIVE TRUSTS WITH OR WITHOUT DISCRETIONARY POWERS

In a discretionary trust, the Trustees may distribute income and capital to all or any of the Beneficiaries as the Trustees choose.

In a non-discretionary i.e. strict trust, arrangements for a specific distribution of income and/or capital to or among the Beneficiaries are set out as terms of the trust instrument.

These kinds of active trusts are explained under different memorandums. Feel free to request the information to our offices (mf@mossfon.com).

VIII. DECLARATION OF OWNERSHIP AND BENEFIT THROUGH A FOUNDATION

A Fiduciary structure for inheritance, asset protection and flexibility, holding share certificates of subsidiary companies can also be created using a Panama Private Foundation. Please also feel free to request information at mf@mossfon.com.

