THE VISTA TRUST

The Virgin Islands Special Trusts Act 2003, more popularly known by its acronym VISTA, came into force on 1 March 2004. In simplest terms, VISTA seeks to overcome some of the obstacles of traditional trusts in the areas of management and succession planning. In particular, it is designed to meet the growing international need for a satisfactory legal mechanism to facilitate the succession planning of family corporate businesses.

Traditional Trusts

Traditional trusts that cater for succession planning are impeded by a rule of trust law known as "the prudent man of business rule". This rule is designed to help preserve the value of trust investments and imposes on the trustee of shares in a company the following obligations:

(a) the obligation to monitor the conduct of the directors of the company and to intervene where necessary, which may involve preventing the company from entering into an unduly speculative venture;

(b) the obligation to exploit the shareholding to its maximum financial advantage, which may involve accepting a financially attractive takeover bid for the company, regardless of the wishes of the settler; and

(c) the obligation to look for opportunities of spreading the financial risk by diversification, which may involve a sale of the company or its underlying assets, regardless of the wishes of the settler.

These obligations often conflict with the wishes of the typical owner of a family corporate business and raise significant difficulties for trustees holding shares in such a business.

The VISTA Trust

VISTA seeks to overcome the obligations imposed on the trustee of shares in a company. It makes special provision for trusts of shares including,

(a) provision for the retention by trustees of shares in a company regardless of the financial advantages of disposal;

(b) provision for prohibiting trustees from intervening in the management of the company except in certain circumstances; and

(c) provision for the appointment and removal of directors of the company in accordance with the terms of the trust instrument.

The essence of the above provisions is that property held in a trust can now be retained rather than be subject to a trust for sale and trustees can now leave the management of the underlying companies to the directors.