

[www.onealwebster.com](http://www.onealwebster.com)



**We know our Territory**

**A New and Improved VISTA : May 2013  
Amendments to the Virgin Islands Special Trusts  
Act**

## **A NEW AND IMPROVED VISTA: MAY 2013 AMENDMENTS TO THE VIRGIN ISLANDS SPECIAL TRUSTS ACT**

### **1. Introduction**

- 1.1 The Virgin Islands Special Trusts Act, 2003 ('VISTA') came into effect on 1 March 2004. VISTA was based on proposals which were made to the British Virgin Islands (BVI) Government by the BVI Branch of the Society of Trust and Estate Practitioners (STEP). The statute introduced an optional form of trust for holding shares in BVI companies – designed for situations in which (a) the shares were intended to be held indefinitely and (b) the trustee was not intended, other than in special circumstances, to intervene in the conduct of the affairs of the company.
- 1.2 The original background to the enactment of the 2003 statute is summarised in Appendix 1 and its main provisions are summarised in Appendix 2 below. The main uses of VISTA are summarised in part 2 below.
- 1.3 VISTA has been extremely well received by international trust practitioners and clients. However the Trust and Succession Law review Committee of the BVI branch of STEP (which was at that time chaired by O'Neal Webster partner Christopher McKenzie and which is now chaired by O'Neal Webster partner Vanessa King) considered it prudent to review the provisions of the Act in light of issues which had come to the attention of its members and in light of improvements which they considered desirable. The Trust and Succession Law Review Committee accordingly made additional suggestions for law reform to the BVI Government.
- 1.4 The suggestions for law reform which were made were reviewed by the BVI Government and the BVI's regulatory authority, the Financial Services Commission, and an amending statute, the Virgin Islands Special Trusts (Amendment) Act, 2013 came into effect on 15 May 2013.
- 1.5 The amendments which have been made by the 2013 Act are summarised in part 4 below.

## **2. Main uses of VISTA trusts**

The main uses of VISTA trusts are as follows:

- (a) When the settlor wishes to retain control, since matters can, if appropriate, generally be structured so that settlor-control can be retained at the director (company) level.
- (b) When the settlor intends the shares which he or she wishes to settle on trust and/or the underlying assets of the company to be retained.
- (c) When trustee involvement in the underlying company's affairs is undesirable or inappropriate.
- (d) Where purpose trusts are needed to hold the shares in exempt private trust companies.
- (e) Where purpose trusts are needed for securitisations and off-balance sheet transactions.
  
- (f) Where the underlying assets of the trust are to comprise speculative investments or investments which involve a degree of risk which would be regarded as inappropriate for the trustees of a non-VISTA trust.

## **3 Recent amendments to the VISTA trust legislation**

### **3.1. Trusteeship of VISTA trusts**

3.1.1 Before the recent reforms came into effect, as a result of section 4 (4) (b) of VISTA, unlike other BVI trusts, VISTA trusts were only capable of having sole trustees: co-trusteeship was originally not permitted. Moreover, again as a result of section 4 (4) (b), the sole trustee of a VISTA trust must be a 'designated trustee'. The latter was previously defined by section 2(1) of the Act as the holder of a trust licence under the Banks and Trust Companies Act, 1990, with the result that, before 15 May 2013, all VISTA trusts were required to have licensed trustees.

3.1.2 The requirement that VISTA trusts must have, as their sole trustees, companies which fall within the pre-15 May 2013 definition of 'designated trustees' clearly restricted the use of such trusts since there was no incentive for service providers which do not operate in the BVI to promote the use of such trusts. By way of contrast, although it was originally a requirement of Cayman's STAR trusts legislation<sup>1</sup> (another special alternative trust regime which only applies to a Cayman Islands trust if there is a declaration to that effect in the trust instrument) that one of the trustees of a STAR trust must be a 'trust corporation' (as defined in the legislation), co-trusteeship or STAR trusts has always been permitted and the definition of a 'trust corporation'<sup>2</sup> has recently been extended to cover Cayman Islands private companies. Similarly it is a requirement of the BVI's purpose

---

<sup>1</sup> Now contained in Part VIII of the Trusts Law (2009 Revision).

<sup>2</sup> See the definition of a 'trust corporation' in section 105 (2) of the Trust Law (2010) Revision.

trusts legislation<sup>3</sup> that only one of the trustees of such a trust be a 'designated person' (i.e. typically a company holding a licence under the Banks and Trust Companies Act, 1990 ('BTCA') but following the Trustee (Amendment) Act, 2013, which also came into force on 15 May 2013, the qualifying trustee may instead be an exempt BVI private trust company). There is furthermore no corresponding restriction on the trusteeship of BVI trusts which are not VISTA or purpose trusts.

- 3.1.3 VISTA has accordingly been amended to permit co-trusteeship, provided that one of the trustees is a 'designated trustee' and the definition of 'designated trustee' has been amended to include an exempt BVI private trust company (i.e. a company which is exempt from the requirements to obtain a trust licence under the BTCA as a result of the Financial Services (Exemptions) Regulations, 2007).<sup>4</sup>
- 3.1.4 These amendments enable family-controlled VISTA trusts to be established. Furthermore foreign service providers now have an incentive to encourage further VISTA trusts to be created and for advantage thereby to be taken of the provisions of the legislation since they can act as co-trustees or set up exempt BVI private trust companies to be trustees.
- 3.1.5 Section 4(4) (c) has also been amended to make it clear that the restrictions on trusteeship only apply *for so long as VISTA applies to the trust* (i.e. since, as indicated below, section 4 has been amended to make it clear that the Act can apply to the trust at a future date or may cease to have effect at a future date).

## **3.2 Transfers and appointment of assets from other trusts to VISTA trusts**

- 3.2.1 The conditions which a VISTA trust must satisfy are listed in section 4 of the Act. Before the 15 May 2013 amendments came into force, subsections (3) and (4) (d) of that section were worded as follows:

"...(3) *A direction [to the effect VISTA shall apply to the trust] shall not be made in respect of shares added to the trust fund by a trustee of another trust in exercise of power in that other trust...*

(4) *The conditions [which must be fulfilled for VISTA to apply] are ... (d) the trust is not created in the exercise of a power conferred by another trust."*

- 3.2.2 Subsections (3) and (4) (d) somewhat limited the use to which VISTA was put since the relevant restrictions (in most cases) *inter alia* prevented assets from being appointed out of other trusts to existing or new VISTA trusts in exercise of powers of appointment and other powers (i.e. even if those other trusts were governed by BVI law and indeed even if they were VISTA trusts).

---

<sup>3</sup> Now contained in section 84A of the Trustee Act.

<sup>4</sup> As amended by the Financial Services (Exemptions) (Amendment) Regulations, 2013. It should be noted that one of the conditions with which the company must comply in order to qualify for such an exemption is that its registered agent must hold a Class I trust licence (thus ensuring that at least two senior officers have solid and practical experience in trust administration).

- 3.2.3 The restrictions in subsections (3) and (4) (d) have therefore been modified so that these restrictions do not now prevent powers in other trusts ('transferor trusts') from being exercised so that the assets of such trusts become subject to the VISTA trust regime. The removal of these restrictions is likely to lead to the creation of a substantial number of additional VISTA trusts since the only conditions which have been imposed are (a) that the transferor trust must be governed by BVI law and (b) that one of its trustees must be a designated trustee (i.e. a BVI licensed trustee or an exempt BVI private trust company).
- 3.2.4 The amendments referred to in paragraph 3.2.3 above should provide significant opportunities for the assets of existing trusts to be "VISTAised" and for advantage thereby to be taken of the benefits of the VISTA trust legislation. Although the ambit of the relevant powers in an existing trust, and the manner of their exercise, (and where relevant the doctrine of fraud on a power) would need to be considered, it should in a lot of cases be possible for the proper law of an existing trust to be changed to BVI law, for a designated trustee (a licensed BVI company or an exempt BVI private trust company) to be appointed as the trust's sole trustee (or a co-trustee) and then, say, for a power of appointment (or power transferring the assets to a new VISTA trust) to be exercised. It is however essential that advice from a specialist BVI trust lawyer (and, if the proper law of the trust is not currently BVI law, the advice of a lawyer who is qualified to advise on the laws of the jurisdiction the law of which presently governs the trust) be obtained whenever consideration is given to VISTAising trust assets.

### **3.3 The provision of accounts and information in relation to underlying companies and their subsidiaries**

Most well drafted VISTA trust instruments and articles of association of underlying companies will invariably have included provisions specifying that trustees will be entitled to information relating to underlying companies and their subsidiaries (i.e. so that they can, where relevant, comply with their obligations under section 8 (8) (c) of the Act which relate to the supply of information to beneficiaries and others where there are permitted grounds for complaint in the trust instrument and so that they can protect themselves against reputational risks). As a precautionary measure, however, section 6 of VISTA (which, *inter alia*, prevents trustees from applying to the court for any form of remedy or relief) has now been restricted in its ambit so that it does not prevent trustee - shareholders from exercising (i) their statutory rights to inspect, make copies of or take extracts from specified documents (such as registers of directors) and (ii) their entitlements to inspect, make copies or take extracts from accounts and records of companies and underlying companies pursuant to provisions in the companies' articles of association. This amendment serves the additional advantage of ensuring that the BVI is compliant with international standards in relation to the maintenance of ownership and identity information.

### **3.4 Other amendments**

#### **3.4.1 Amended definition of an interested person**

The definition of an 'interested person' in section 2(1) of VISTA has been amended. An interested person is a person who is able to call on the trustee to

intervene but *only* by making a written intervention call on the basis of a ground specified in the trust instrument. The amendments (a) make it clear that a protector will not be an ‘interested’ person in circumstances where this is considered undesirable (e.g. for tax reasons) and (b) extend the definition to include anyone appointed as such by the trust instrument. The objective of the latter amendment was to introduce an element of flexibility, should the settlor wish to appoint additional persons who may call on the trustees to intervene.

#### **3.4.2 New definition of Virgin Islands shares**

As indicated above, the Act can only apply (directly) to shares in BVI companies but shares in such companies which carry on specified regulated activities cannot be held on VISTA trusts. The definition of 'Virgin Islands shares' in section 2(1) of VISTA reflects this. Section 2(1) has now been amended to ensure that shares in professional funds are not capable of being held on VISTA trusts and also to reflect the enactment of the BVI's new legislation relating to mutual funds and insurance since VISTA was originally enacted.

#### **3.4.3 Flexibility in relation to the period for which VISTA will apply to the trust**

Section 4(1) of VISTA effectively provides that the statute will only apply if there is a direction to that effect in the trust instrument. An element of flexibility has now been introduced by providing that the trust instrument may also specify a future date on or event on the occurrence of which the Act will apply i.e. since for instance some settlors like VISTA only to apply until (or else to cease to apply to the trust following) their deaths. The relevant amendments are now included in the new section 4 (5) (b) to (e) and the consequential amendment to the definition of 'designated shares' in section 2(1) of the Act. The new sections 4 (5A), (5B) and (5C) have been included to enable the events on which VISTA starts (or ceases) to apply to a trust to include the service on the trustee of a ‘trigger direction’ which is made by a person or committee. Since it was considered inappropriate for the person who gives the direction which activates or which deactivates the provisions of the Act at a future date to be (or include) the trustee of the trust which is to become (or cease to become) a VISTA trust as a result of the direction, this is prohibited. However a direction to activate or deactivate the provisions of the statute may be given in a fiduciary or non-fiduciary capacity, but unless an express provision to the contrary is contained in the trust instrument a fiduciary intent will be presumed.

#### **3.4.4 New provisions enabling fees to be charged by appointors where appropriate**

The Act has been amended so that the office of director rules (i.e. the rules which the trustees are required to follow in relation to the exercise of their shareholder powers to appoint and remove directors of the underlying company) may now provide for the remuneration of those whose directions the trustees are effectively obliged to follow in relation to the exercise of their powers (i.e. as a result of section 7(2) (e)).

#### **3.4.5 Amendments to section 7 (8) (b)**

The words ‘or plainly inconsistent with the wishes of the settlor’ have now been removed from section 7 (8) (b) of the Act. This was done on the basis that it was

arguable that the effect the inclusion of these words was that a settlor's wishes might have overridden the 'office of director rules' (i.e. the rules for determining the manner in which voting powers should be exercised by trustee shareholders in relation to the appointment and removal of directors) with the result that the trustees might arguably have needed to have considered the settlor's wishes whenever the relevant powers were exercised whereas it is the clear intention of the statute that the office of director rules should have priority over other factors.

#### **3.4.6 Amendments to the appointed enquirer provisions**

Several amendments have been made to the 'appointed enquirer' provisions in section 8 of VISTA. An 'appointed enquirer' is a person who may be appointed by a trust instrument who has the duties which are specified in section 8(8) (b) of the Act: if an appointed enquirer is appointed he or she will be an 'interested person' and will thus be able to call on the trustees to intervene in the company's affairs pursuant to section 8 (1) of the Act. Section 8 has been amended to enable the terms of the trust to provide for the remuneration of the appointed enquirer (from the trust fund). In addition the section has been amended to require the trustee to provide the appointed enquirer with the documents which are referred to in paragraphs (i) to (v) of section 8 (c) (i.e. the documents with which they are in general obliged to provide one of the beneficiaries in cases where there is no appointed enquirer). Furthermore, since VISTA trusts are often set up as purpose trusts which do not have beneficiaries (e.g. to hold the shares of private trust companies), section 8 (8) has been amended to provide that (if the trust is a purpose trust) the documents which are listed in section 8 (8) (c) must be provided to its enforcer.

#### **3.4.7 Amendments to section 14 to provide for corporate settlors**

Sub-sections (2) and (3) of section 14 have been amended to refer to settlors which are 'in existence' i.e. to cater for situations in which VISTA trusts have corporate settlors.

#### **3.4.8 Amendments to section 15 to enable trustees to have duties where this is considered desirable**

Section 15 of VISTA has been amended so that trust instruments can now disapply or modify the provisions of that section, which states that trustees have no fiduciary duty or duty of care, should the settlor of a VISTA trust wish the trustee to have such duties. The objective of this amendment is to introduce flexibility.

#### **3.4.9 *Saunders v Vautier* exclusion**

To add further flexibility section 12 (2) of VISTA, which imposes an optional 20 year limit on the exclusion of the rule in *Saunders v Vautier*, has been amended to enable a shorter period to be specified in the trust instrument. (This has been done in order to exclude any doubt as to whether this is already permissible under the terms of section 12 (1).)

## Appendix 1<sup>5</sup>

### Background to the enactment of VISTA

#### 1.1 Overview

It had become increasingly evident, prior to the enactment of VISTA in 2003, that the duty of prudence which a trustee owed in relation to trust investments could have unintended and inappropriate consequences when applied to a controlling shareholding in a company. Various techniques had been devised by the trust profession to circumvent the problem, but since all suffered from significant drawbacks the BVI decided to consider a fresh approach. VISTA was the outcome of that consideration.

VISTA harks back to an earlier era – that of the land-based economy when trustees were not expected to intervene in management, and would have been appalled at the very idea<sup>6</sup>. VISTA adapts this traditional non-interventionist concept to today's corporate environment.

#### 1.2 The prudent investor rule – and its problems

Where a trustee held a controlling interest in a company (typically a small family company) the prudent investor rule, if not modified, placed the trustee under the following obligations:

- (a) To monitor the conduct of the directors of the company and to intervene where necessary in the company's business, e.g. to prevent the company from entering into an unduly speculative venture.<sup>7</sup>

---

<sup>5</sup> This has largely been taken from an article by Christopher McKenzie and John Glasson which was published in the *STEP Technical Quarterly Review*, vol. 4, issue 2, 2006 pp 10 - 19 and (as a chapter by Christopher McKenzie) in *The International Trust* (third edition, ed David Hayton).

<sup>6</sup> If one looks at the trust text books circulating in the eighteenth and early nineteenth centuries, discussion of the duty of care in today's terms is notable by its absence. See Gilbert *The Law and Uses of Trusts* (three editions from 1734 to 1811) and Sanders *on Uses and Trusts* (five editions from 1791 to 1844). Professor John Langbein comments 'The modern law of fiduciary administration is simply not detectable in these books. Thus, well into the nineteenth century, the function of the law of trusts was remote from modern practice'. (Langbein *The Contractarian Basis of the Law of Trusts* [1995] 105 Yale Law Journal, 625, 633.)

<sup>7</sup> *Bartlett v Barclays Bank Trust Co. Ltd.* [1980] Ch 515. See also *Re Lucking's Will Trusts* [1967] 3 All ER 726; [1968] 1 WLR 866. (In proceedings against a trustee/shareholder the principle in *Prudential Assurance Co Ltd v Newman Industries Ltd* [1982] Ch 204 also requires consideration, as to which see *Walker v Stones* [2001] QB 292, CA and discussion of this decision and subsequent developments in Mowbray and others *Lewin on Trusts* (18<sup>th</sup> ed) ('Lewin') paragraphs 39-37 to 39-43.

- (b) To exploit the shareholding to maximum financial advantage - which may require the trustee to accept a financially attractive takeover bid for the company, or to seek out and take opportunities for spreading the trust's financial risk by selling the company or its underlying assets and reinvesting in a diversified portfolio. (In some cases, there could have been an argument that the intention of the settlor modified the duty to diversify, but it was only an argument.)<sup>8</sup>

By 2003, these obligations had become a source of concern for the trust industry because they failed to meet the requirements of the typical settlor of family company shares, and posed significant difficulties for trustees. The reasons were as follows:

- (a) The prudence required of trustees when monitoring a company's affairs was incompatible with the entrepreneurial flare and quick decision taking required to run a successful business.
- (b) Trustees rarely had, or could be expected to have had, the skills appropriate for assessing business decisions made by directors. If the trustees delegated the assessment task to, or acted on advice from, a person with suitable skills (if one could be found) that person would have been doing no more than second-guessing the directors.
- (c) The cost of trust administration was increased substantially, and often disproportionately, by the monitoring procedures necessary to ensure that trustees were acting prudently.
- (d) Case law on the duty of prudence had not yet answered crucial questions on the precise responsibilities of a trustee controlling an entrepreneurial business – which by its nature carried a significantly higher level of risk than that carried by a balanced investment portfolio.

The leading case on the duty of monitoring, *Bartlett v Barclays Bank Trust Co Ltd*<sup>9</sup> arose out of the failure of a hazardous development project. But this case was little help in identifying the precise dividing line between hazardous speculation and reasonable commercial judgment. Did it vary according to the nature of the business (some businesses being inherently more risky than others)? If a trustee, on a safety first principle, adopted a too cautious approach would it have incurred liability for losses which followed from its not being prepared to adopt the level of risk customary for the business in question?

- (e) Indemnity insurance for trustees with controlling shareholdings could be prohibitively expensive, if not unobtainable.

---

<sup>8</sup> See, in the context of section 4 of the (English) Trustee Act 2000, *Lewin*, paragraph 35-71.

<sup>9</sup> See footnote 7 above.

- (f) A settlor with an established corporate business may not have viewed the business merely in investment terms and hence may not have wished the company or its assets to be sold for the sake of short-term gain or diversification. Typical non-investment reasons for retaining a company include family or local tradition, social concerns for employees or the environment, and career opportunities for descendants.
- (g) In so far as the business *was* seen by the settlor simply as an investment he or she may have wished to have taken a longer view in terms of profit generation than a prudent trustee would have been prepared to have allowed. The settlor may also have preferred to have left to the directors, rather than to the trustees/shareholders, the question of whether the company expanded, contracted, or went out of business.
- (h) The trustees' obligation to intervene extended, when appropriate, to the appointment and dismissal of directors – a potential source of conflict if the settlor wished to remain at the helm and to nominate successors. Such a wish was entirely legitimate because (a) the settlor was settling his or her own assets and should have been free to have decided the terms on which he or she did so and (b), as economic commentators have pointed out, some of the most successful companies were those whose owners had remained at the helm.

### 1.3 Alternatives to VISTA

Although various non-legislative techniques had been devised for addressing the difficulties posed by the prudent investor rule, none could claim to be the ideal answer. The most familiar and long-standing technique was the insertion in the trust instrument of a so-called anti-*Bartlett* clause designed to excuse trustees from monitoring and intervention duties. The extent to which it was safe for trustees to place reliance on such a clause, however tightly drafted, was a matter for debate.<sup>10</sup> The uncertainty led to more sophisticated approaches involving, for example, private trust companies, unit trusts, prior contracts with directors, or non-voting shares. There is no space in the present paper to discuss these in detail but it is fair to say that all have significant shortcomings. For example, they may postpone or transfer the problem rather than solve it; in some cases they introduce new risks.

### 1.4 The VISTA approach

VISTA removes, rather than circumvents, the problems arising from the prudent investor rule. It enables a settlor to establish a trust of his or her company that disengages the

---

<sup>10</sup> See, e.g., *Lewin*, paragraph 34-50.

trustee from management responsibility and permits the company and its business to be retained as long as the directors think fit.

## Appendix 2

### Summary of VISTA's main provisions<sup>11</sup>

- 1 VISTA sets out in section 3 its primary purpose, namely to enable a trust of company shares to be established under which:
  - (a) the shares may be retained indefinitely; and
  - (b) the management of the company may be carried out by its directors without any power of intervention being exercised by the trustee.
- 2 The application of VISTA is restricted to shares in BVI companies (section 4) although shares in companies which carry on specified regulated activities cannot be held subject to VISTA trusts. That said, non-BVI companies may (and, in practice, will in most cases) be subsidiaries.
- 3 VISTA applies to shares held in trust, when, and only when, there is a direction to that effect in the trust instrument (section 4). Until the May 2013 reforms took effect, the direction could not extend to shares appointed out of another trust.
- 4 It was originally a requirement that the trustee of a VISTA trust must be a BVI licensed trustee company and co-trusteeship of a VISTA trust was not originally permitted.
- 5 Shares subject to VISTA are held by the trustee on trust to *retain* them. The trust for retention has priority over any duty to preserve or enhance the value of the shares.
- 6 Notwithstanding the trust to retain, the trustee is given power (subject to the terms of the trust) to dispose of the shares with the consent of the directors (and of any other person whose consent is made requisite by the trust instrument) but this power carries no duty to exercise it for the purpose of preserving or enhancing the value of the shares or to consider its exercise for that purpose (section 9). There is however a residual power for the court to order or authorise a disposal when retention would be incompatible with the wishes of the settlor (section 11).
- 7 The trustee is required to leave the conduct of the company's business, and all decisions as to the payment or non-payment of dividends, to the company's directors (section 6). The trustee is expressly prohibited from (*inter alia*)

---

<sup>11</sup> More detailed commentaries on the provisions of the statute, by Christopher McKenzie, are to be found in *International Trust Laws (op, cit.)*, in Thomas and Hudson *Law of Trusts* (OUP) 2nd ed. 2010, Chapter 42, and in *The Journal of International Trust and Corporate Planning* Vol 11 No 2 2004 at pages 63 to 82.

exercising its voting or other powers in respect of the shares so as to interfere with the management or conduct of the business or the declaration of dividends. (These provisions take effect subject to the terms of the trust.)

- 8 By way of exception to 7 above, an ‘interested person’ (an expression defined to include beneficiaries and discretionary objects) may call upon the trustee to intervene in the company’s affairs if that person has a permitted ground for complaint concerning the conduct of those affairs (section 8). A ground for complaint is permitted if it is specified as such in the trust instrument. Upon receiving an intervention call, action by the trustee to deal with the complaint is obligatory. The inclusion in a trust instrument of one or more permitted grounds for complaint will almost always be the prudent course.
- 9 Provision is made for the settlor to lay down rules regulating the appointment, removal, and remuneration of directors of the company (section 7). The rules might permit, for example, the settlor to remain in office as director and to nominate a successor on his death, incapacity, or retirement.
- 10 Other provisions of VISTA relate to, in particular, enforcement of the trustee’s obligations by beneficiaries, directors and others (section 10), optional modification of the rule in *Saunders v Vautier*<sup>12</sup> (section 12), ascertainment of the settlor’s wishes when required (section 14), and limiting, consistently with VISTA’s purposes, the trustee’s fiduciary responsibilities and duty of care (section 15).
- 11 Additional points to bear in mind in relation to VISTA trusts are as follows:
  - (a) The Act does not in any way affect the company law duties of directors.
  - (b) VISTA essentially only affects trustees’ administrative and managerial powers and duties. There is, therefore, nothing in the Act which would prevent a trustee from transferring trust property to the trust’s beneficiaries in accordance with the trust’s dispositive provisions or from exercising dispositive powers of appointment which will effectively remove the trust from the VISTA regime.

**Christopher McKenzie**  
**Partner - Trusts & Estates/Private Client**  
**O’NEAL WEBSTER**  
31, Southampton Row  
London WC1B 5HJ  
Tel: +44 (0)203 078 7295 (office)  
+44 (0)203 078 7297 (direct)  
+44 (0)783 702 5118 (cell)  
Fax: +44 (0)203 008 6015

---

<sup>12</sup> (1841) 4 Beav 115. See *Lewin* at paragraphs 24-01 *et seq.*

E-mail: [cmckenzie@onealwebster.com](mailto:cmckenzie@onealwebster.com)  
Website: [www.onealwebster.com](http://www.onealwebster.com)

## **Firm Overview:**

O'Neal Webster is a leading offshore law firm located in the British Virgin Islands. Our firm provides legal advice and solutions of the highest quality to a broad client base including leading financial institutions, law firms, trust companies, investment houses, corporations and high net worth individuals. O'Neal Webster is a member firm of Lex Mundi, the world's largest association of independent law firms. O'Neal Webster is also a member of World Services Group, a global membership association whose members are among the top providers of professional business services. Our firm's affiliated financial services company, Coverdale Trust Services Limited provides a full complement of corporate and fiduciary services including company, trust and fund formation, and related services.

## **Main Areas of Practice:**

### **Banking & Finance:**

The Banking and Finance Team has extensive experience in advising financial institutions and borrowers on international and local banking transactions. The team is on the legal panel of many international banks as the BVI law firm of choice to advise on various types of transactions including property acquisition financing, asset and project financing, debt financing and general banking transactions involving BVI entities.

### **Corporate & Commercial:**

Our firm's Corporate and Commercial Team has a wide breadth of expertise and experience in international and local corporate and commercial transactions. It advises on stock exchange listings, private equity transactions, joint ventures, redomiciliations, corporate arrangements, mergers and acquisitions, partnerships, corporate restructuring and related aspects of corporate and commercial law. The team is regularly instructed by leading financial institutions, law firms, trust companies, investment houses and corporations on high value commercial transactions and have a reputation for providing quality advice and solutions to clients.

### **Investment Funds:**

The BVI funds legislation provides a flexible, user-friendly and recognised framework for the establishment of collective investment vehicles. The Funds Team offers efficient, practical and cost effective advice to those wishing to establish or maintain funds in the BVI. It is able to offer advice on fund formation, offering documentation, service providers and agreements with investment managers,

administrators and custodians. Our firm receives instructions from a wide range of international clients and can assist with identification of counsel and service providers throughout the world where necessary through our international network. The goal is to provide the highest level of service to clients whether they are incorporating a private fund or arranging for the listing of a fund on a stock exchange.

### **Litigation:**

The Litigation Department has earned a reputation for excellence in complex business disputes including insolvency and restructuring, asset tracing and general commercial litigation. Both international and local clients look to O'Neal Webster for practical and cost effective solutions. The attorneys combine creative, innovative legal strategies with the dedication of advocates experienced before all levels of the local and regional courts. The team of experienced trial attorneys collaborate with clients and their advisers to keep them involved in every stage of the process. The Litigation Team is committed to providing results and clients can be assured that their matters will be dealt with promptly and with professionalism.

### **Trusts & Estates:**

The Trusts Team provides practical commercial advice on all aspects of BVI trusts law. Whether clients are seeking to take advantage of cutting edge legislation by utilising a VISTA trust or simply wish to adopt a more standard structure, the team can help. It advises trustees (individuals and corporations) and beneficiaries alike on many issues such as wealth protection, probate planning, trust creation, administration and termination.

### **Real Estate:**

Real estate in the BVI is scarce and tightly regulated. Licences are required for foreign ownership of real estate, and the regulatory framework involved is complex. Our firm's experience in commercial, hotel, and residential real estate in the BVI is virtually unmatched. O'Neal Webster has represented major hoteliers and other tourism related developments in the BVI. Our firm works with clients through all phases of development including title verification, planning and design approval, corporate structuring and financing. It has gained particular expertise in tourism projects from concept phase through construction and sales.

### **Shipping:**

The BVI's reputation as a premier sailing destination has also made it an attractive choice for the registration of vessels. The BVI has a category 1 ship registry status and can register mega yachts up to 3,000 gross tons and general cargo vessels of unlimited tonnage. However, there is no VAT or any other levy imposed with respect to registration in the BVI, except for the basic registration fee. Our firm offers the

full range of services required to secure the registration of vessels in the BVI and advises on all matters relating to the acquisition, financing, operation and transfer of vessels in the territory.



[www.onealwebster.com](http://www.onealwebster.com)



Member  
**LexMundi**  
World Ready

