

# Osiris International Trustees Limited

## TRUST FORMATION QUESTIONNAIRE 'VISTA TRUST'

Please read the attached 'Guide to VISTA Trusts', before completing this Questionnaire.

(1) **Proposed Name of VISTA Trust**

\_\_\_\_\_

**NB: the word "Fund" should not be included in the name of the Trust.**

(2) **Proposed Settlor**

(a) Full Name \_\_\_\_\_

(b) Full Address \_\_\_\_\_

\_\_\_\_\_

**NB: for these purposes, the "Settlor" is the legal and beneficial owner of the shares which are to be settled and if the shares in question have not been issued they should first be issued to the Settlor and then transferred to the Trustee on establishing the Trust.**

(3) (a) Please confirm whether shares in a BVI company will be used to create the trust?

**YES/NO** (Delete as applicable)

**IF NO**, please indicate the property or cash sum that will be used to create the trust:

\_\_\_\_\_

**IF YES**, please confirm number of companies to be placed in trust:

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Please confirm whether any of the following could or may apply to any of the companies to be placed in trust:

- the company has a licence under the Banks and Trust Companies Act, 1990;

**YES/NO** (Delete as applicable)

- the company is licensed as an insurer under the Insurance Act, 1994 or which is authorized to act as an insurance manager under that Act;

**YES/NO** (Delete as applicable)

- the company is registered as a public fund, or recognised as a private fund under the Mutual Funds Act, 1996;

**YES/NO** (Delete as applicable)

- the company is licensed as a manager or administrator of mutual funds under the Mutual Funds Act, 1996;

**YES/NO** (Delete as applicable)

- the company has a license under the Company Management Act, 1990.

**YES/NO** (Delete as applicable)

In respect of each company to be placed in trust, please completed the following:

- (b) What is the name of the company? \_\_\_\_\_
- (c) What is the company's registration number? \_\_\_\_\_
- (d) Where is the company's registered office located? \_\_\_\_\_
- (e) How many shares in the company are being settled into the trust? \_\_\_\_\_

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**NB: all the shares in the company in question should be transferred to the Trustee of a VISTA trust. If, for any reason, this is not possible any partial**

**holding should be held by a new BVI company which should be established all shares of which should be transferred to the Trustee of the VISTA trust.**

(f) Par value (if any) and description (if any) of shares (e.g. US\$1.00 ordinary shares)

\_\_\_\_\_

(g) Are the shares currently held by a nominee shareholder?

**YES/NO** (Delete as applicable)

**(4) Directors of the underlying BVI company**

Who is/are to be the director(s) of the underlying BVI company immediately following the Trust's establishment?

Full Name(s) \_\_\_\_\_

Full Address(es) \_\_\_\_\_

\_\_\_\_\_

**NB: if you need additional space, you may put the information on a separate paper and attach it to this document.**

**(5) Power to sell or dispose of shares in the underlying company in the exercise of administrative powers.**

Please indicate which of these three alternatives will be applicable:

(a) The Trustee may not sell or otherwise dispose of the shares in the exercise of an administrative power without the consent of the directors of the company

**YES/NO** (Delete as applicable)

(b) The Trustee may not sell or otherwise dispose of the shares in the exercise of an administrative power without the consent of both the directors of the company and the Protector

**YES/NO** (Delete as applicable)

**NB: the selection of any of these alternatives will not affect the Trustee's ability to distribute shares to Beneficiaries in the exercise of dispositive powers**

**(6) Type of VISTA Trust - please indicate type required**

- (a) Fixed Interest**                      **YES/NO** (Delete as applicable)
- (b) Discretionary**                      **YES/NO** (Delete as applicable)
- (c) Others**                              **YES/NO** (Delete as applicable)

(NB Fixed Interest means that the life tenant or settlor has a right to the capital/income during his life time; Discretionary Trust means that the Trustee decides which beneficiary shall receive capital/income)

**(7) Is a Protector required?**

**YES/NO** (Delete as applicable)

- (a) If YES, please give Name, Address, Telephone and Fax Numbers, Domicile and Residence.**

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**(We can suggest offshore corporate protectors who offer their services for a fee if required)**

**(8) Please choose from the following list of suggested Protector**

- (a) Consent to early termination of the "Trust Period"                      YES/NO**
- (b) Consent to distributions of Trust Fund to Beneficiaries                      YES/NO**
- (c) Consent to change of proper law of the trust                      YES/NO**
- (d) Consent to exercise of Trustee power to release its powers                      YES/NO**
- (e) Consent to exercise of Trustee power to amend the trust                      YES/NO**
- (f) Consent to Trustee remuneration                      YES/NO**
- (g) Others - please list separately                      YES/NO**

**(9) In whom is the power to appoint a new Protector to be vested?**

- (a) The Protector or (failing the Protector) the Trustee YES/NO** (Delete as applicable)
- (b) The Settlor or, if he/she dies/is unable/unwilling to act, the Protector or (failing the Protector) the Trustee YES/NO** (Delete as applicable)

**(10) Does the Settlor wish to provide rules that specify one or more grounds for the Trustees to intervene in the affairs of the company ('permitted grounds for complaint')?**

**YES/NO** (Delete as applicable)

If **YES**, please confirm one or more suggested permitted grounds for complaint:

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**NB: Under VISTA the trustee's monitoring and intervention obligations over the trust are removed. The trust instrument may however list circumstances in which any person who is interested in the trust may approach the trustee in writing, if such person believes that the affairs of the company are not being carried out as they should, and request that the trustee intervenes in the management of the company in order to deal with the complaint. If no grounds are listed, the trustee cannot intervene even if a complaint is made.**

**(11) Appointed Enquirer**

Does the Settlor wish to appoint an Appointed Enquirer to the Trust?

**YES/NO** (Delete as applicable)

**An Appointed Enquirer has the duties under section 8(8)(b) of VISTA to:**

- (a) make reasonable enquiries as to whether there is a permitted ground for complaint; and**
- (b) make intervention calls where appropriate. In the case of most VISTA trusts, there will be no appointed enquirer.**

**If there is no Appointed Enquirer then the trustee must use all reasonable endeavours to ensure that at least one of the persons interested in the trust who has full capacity is given copies of the trust instrument and any subsidiary deeds, the contact information of the trustee, the name and registered office of the company, the names and addresses of the directors of the company and the nature of the current activities of the company.**

If **YES**, please provide contact details for the proposed Appointed Enquirer:

Name: \_\_\_\_\_

Address / Registered Office: \_\_\_\_\_

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- (12) A VISTA Trust requires rules to determine the manner in which the Trustee shall exercise its voting powers to appoint and remove directors of the underlying company (Office of Director Rules ('ODR')).

The ODR rules are set out in the trust instrument and may be of a general nature or specific eg require the trustee to ensure that a specific person is named as director and retains that office or require the trustee to act on the decision of a third person or committee in appointing or removing a director.

Please indicate preferred ODR rule (please complete separately for each company to be placed in trust):

Name of Company: \_\_\_\_\_

- |   |               |
|---|---------------|
| (a) <u>Settlor will determine who will be directors of the company</u>  | <b>YES/NO</b> |
| (b) <u>ODR Appointor** will determine who will be directors of the company</u>                                | <b>YES/NO</b> |
| (c) <u>Protector will determine who will be directors of the company</u>                                      | <b>YES/NO</b> |
| (d) <u>Director eligibility rules, e.g. age, family relationship, qualifications – please specify</u>         | <b>YES/NO</b> |
| (e) <u>Automatic director removal rules, e.g. age, capacity or other criteria - please specify separately</u> | <b>YES/NO</b> |
| (f) <u>Does Settlor wish to specify ODR rules at a later date?</u>  | <b>YES/NO</b> |
| (g) <u>Others - please list separately</u>  | <b>YES/NO</b> |

**NB: Osiris International Trustees Limited will only accept New Vista Trust Business provided that certain specified ODR are included for reputation risk purposes.**

**(13) \*\*ODR Appointor**

Does the Settlor wish to appoint an ODR Appointor to the Trust?

**YES/NO** (Delete as applicable)

If **YES**, please provide contact details for the proposed ODR Appointor:

Name: \_\_\_\_\_

Address/Registered Office: \_\_\_\_\_

**The ODR Appointer is usually selected in order to instruct the Trustee concerning the appointment or removal of the director in specific circumstances. The ODR Appointer**

**may owe fiduciary duties to the Trust. The ODR Appointer does not carry out the functions of the Appointed Enquirer. His functions are limited to circumstances surrounding the appointment and removal of directors.**

**(14) Beneficiaries**

- (a) Please list Beneficiaries' Names, Addresses, Telephone and Fax numbers, Domicile, Residence, Dates of Birth and Relationships (if any) to Settlor, together with the nature and extent (e.g. whether discretionary, fixed, life or reversionary) of each of their interests. In the case of charitable and purpose trusts, please describe the Trust's purposes
  
- (b) If the Beneficiaries are to be defined with reference to their relationships to the Settlor or others (eg as the Settlor's children and remoter issue) are those related through illegitimate unions or who are adopted to be covered?

**YES/NO** (Delete as applicable)

**(15) The Settlor/Protector/Trustees are to be given/not to be given power to add and exclude beneficiaries (Delete as applicable). The Settlement is to include/not to include powers to add and exclude Beneficiaries**

**YES/NO** (Delete as applicable)

Who is to have this power?

- (a) The Trustee **YES/NO** (Delete as applicable)
  
- (b) The Trustee, but only having obtained the Settlor's consent (if he/she is alive and/or capable) **YES/NO** (Delete as applicable)
  
- (c) The Trustee, but only having obtained the consent of the Protector (if any) **YES/NO** (Delete as applicable)
  
- (d) The Settlor **YES/NO** (Delete as applicable)
  
- (e) The Protector **YES/NO** (Delete as applicable)

**(16) Who is to be the Ultimate Default Beneficiary?**

(Unless the Trust Period is to be very short, it is inadvisable to name living persons as the ultimate default beneficiaries and it is sometimes considered appropriate to refer instead, say, to "such of the Beneficiaries who are living or in existence at the end of the Trust Period and if more than one in equal shares per capita absolutely" or to refer to charitable purposes or charities (although a named charity would either need to be a juridicial entity which would take absolutely or the trustees of a trust the purposes of which are exclusively charitable as a matter of BVI law)/(Unless the Trust Period is to be very short, it is inadvisable to name living persons as the ultimate default beneficiaries and it is sometimes considered appropriate to refer instead, say, to "such of the children and remoter issue of [the Settlor] as shall .... be living [at the end of the Trust Period] and, if more than one, in equal shares per stirpes, provided that no issue shall take whose parent is alive and so capable of taking." Alteratively (or should none of them be alive at the end of the Trust Period) charitable purposes or charities could be referred to (although a named charity would either need to be a juridicial entity which would take absolutely or the trustees of a trust the purposes of which are exclusively charitable as a matter of BVI law)

**(17) In whom is the power to appoint new Trustees to be vested? This may be vested in the Trustees themselves if appropriate. If, on the other hand, this is to be vested in the Settlor please specify and indicate in whom the power is to be vested following the Settlor's death (note, any successor trustee will need to hold a BVI Trust Licence)**

**(18) Is the Trust is to be revocable/irrevocable** (Delete as applicable)

**(19) Does the Settlor wish to exclude the rule of law that all beneficiaries (acting together) may terminate the trust**

**YES/NO** (Delete as appropriate)

\_\_\_\_\_  
**Settlor's Signature**

\_\_\_\_\_  
**Date**

In the event of any queries in relation to this questionnaire, please feel free to contact us at:

Tel: + 1 (284) 494 9820

Fax: +1 (284) 494 6934

E-mail: [osiritrust@surfbvi.com](mailto:osiritrust@surfbvi.com) or your usual Osiris contact