

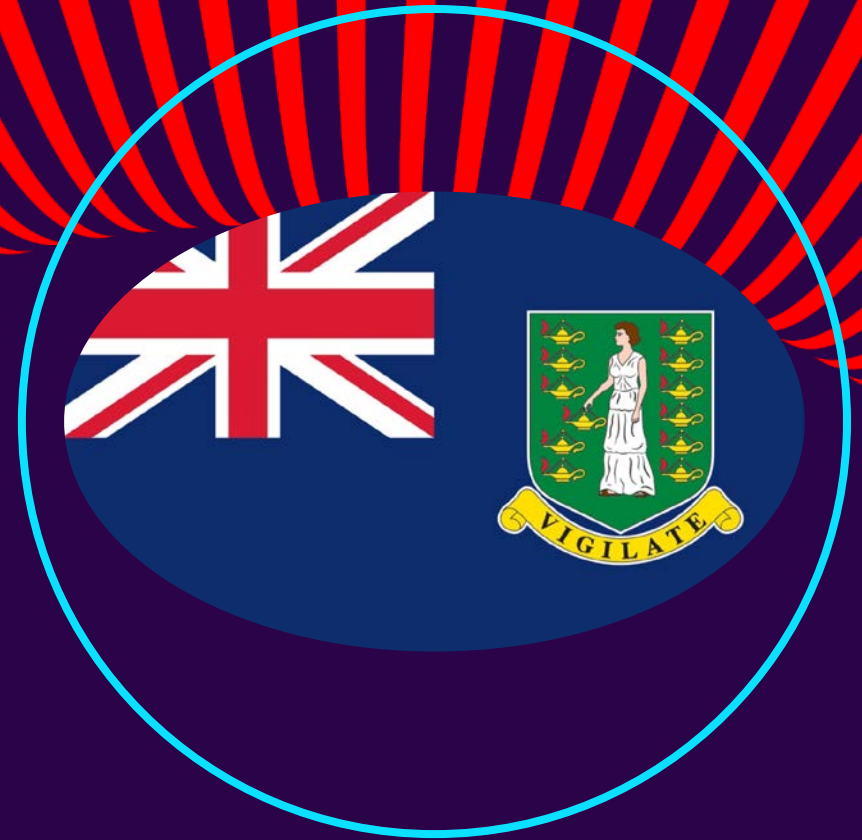
BVI Company Operational Practices

20 April 2023



BRITISH VIRGIN ISLANDS

The Virgin Islands, commonly referred to as the British Virgin Islands (BVI), is a British overseas territory located in the Caribbean to the east of Puerto Rico. The Virgin Islands consist of the main islands of **Tortola**, Virgin Gorda, Anegada, and Jost Van Dyke, along with over fifty other smaller islands and cays. The islands have a population of about 27,800, of whom approximately 23,000 live on Tortola



GLOBAL VISION CPA LIMITED

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Master of Accounting (MAcc)

Master of Laws (LLM)

Bachelor of Laws (LLB)

Bachelor of Business Administration (BBA)

Diploma in Forensic Accounting

Fellow Certified Practicing Accountant of Australia

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LEGAL SYSTEM (COMMON LAW)

United Kingdom

The judiciary of the British Virgin Islands is based on the judiciary of the United Kingdom

Privy Council in London

The courts are organised at four levels, including the provision for final appeal to the Judicial Committee of the Privy Council in London

Eastern Caribbean Supreme Court

The British Virgin Islands is a member state of the Eastern Caribbean Supreme Court

Common law jurisdiction

The British Virgin Islands is a common law jurisdiction, although British Virgin Islands law and procedure differs to a great degree from English law because of local statutes, orders and civil procedure rules

EASTERN CARIBBEAN SUPREME COURT



<https://www.eccourts.org/>

The Eastern Caribbean Supreme Court consists of two divisions, a **Court of Appeal** and a **High Court of Justice**



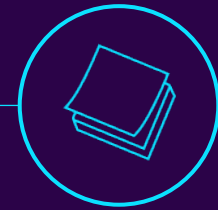
Judgments

<https://www.eccourts.org/judgments/>



E-Litigation Filing

Electronic Litigation Filing Means The Web-Based Application Which Has Been Developed And Implemented To Offer Stakeholders In The Judicial System Of The Eastern Caribbean A Single Point Of Access For Electronic Litigation Filing, Management Of Documents And Case Files Within The Court's Registry



Territory of the Virgin Islands

INCORPORATION



Financial services commission

bvifsc.vg

Registry of Corporate Affairs



BVI Business Companies Act

BVI_Business_Companies_Act_2004

Revised Edition showing the law as at 1

January 2020



Incorporation fee

1 January 2023

Registry fees 50,000 shares USD550

More than 50,000 shares USD1,350



Other fee table

https://www.bvifsc.vg/sites/default/files/bvi_business_companies_amendment_of_schedule_1_no_2_order_2022.pdf

INTERESTED PARTIES



Financial services commission

bvifsc.vg



Administrator

Law firm, CPA firm, Secretarial company



BVI Registered Agent

About 104 Registered Agents (accessed on 19 April 2023)

https://www.bvifsc.vg/regulated-entities-registered-agents?combine=&field_entity_status_tid%5B%5D=72



End Users

Lay clients
Professional clients (Listed Co. Big companies)

POPULAR REGISTERED AGENTS IN HONG KONG



VISTRA (BVI) LIMITED



TRIDENT TRUST COMPANY (BVI)
LIMITED



TMF (B.V.I.) LTD.



OVERSEAS
MANAGEMENT
COMPANY TRUST
(B.V.I.) LTD.

COMPANY NAME



Company ended with "XXX"

Limited, Corporation, Incorporated, Ltd, Corp,
S.A., Societe Anonyme, Sociedad Anonima



Restrictive words in company name

use of the name would, in the opinion of the Registrar, be likely to confuse or mislead
is offensive, objectionable or contrary to public policy or to the public interest
Government, Bank, Trust, LLC, LLP, British, Island, e-commerce

TYPES OF SHARES

a share may be issued with or without a par value

a share with a par value may be issued in any currency



TYPES OF DOCUMENTS

Certificate of Incumbency

Certificate of Good Standard

Company Search Report

Economic Substance Report

STRIKE OFF (2022)

Currently, a Company that is struck-off (but not dissolved) can be administratively restored at any time during its **seven year** strike-off period, by simply paying all outstanding fees due to the BVI Registry. Once a Company has been dissolved, it can only be restored by a Court Order and the application must be made within ten years of the Company's dissolution date



DISCLOSURE OF DIRECTOR INFORMATION

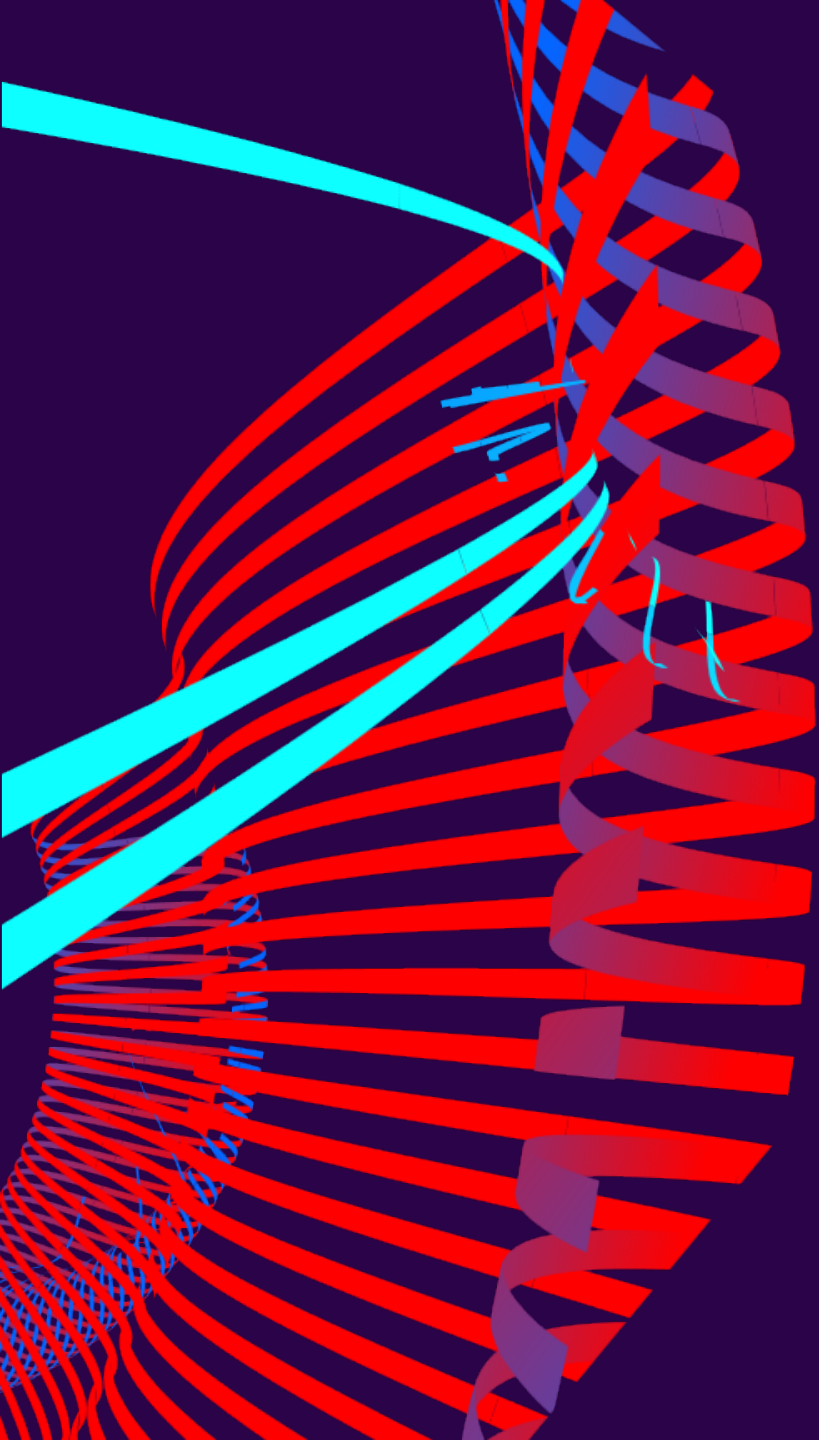
Starting from January 1, 2023, the names of directors of BVI companies will become publicly available by carrying out a company search at the BVI's Registry of Corporate Affairs. BVI Registry will provide the **names of current directors** to third parties (but not Register of Directors)

names, addresses, dates of birth, and nationalities of the directors of a BVI company are required to be filed with the BVI Registry. (change of passport number , need to file ?)



NEW REQUIREMENTS OF FINANCIAL REPORTING

The BVI Amendment Act 2022 requires BVI companies to submit an annual financial return to its registered agent within nine months after the end of the fiscal year.



NEW ADMINISTRATIVE RESTORATION PROCESS AFTER 1 JANUARY 2023

STRIKE OFF AFTER 1 JANUARY 2023

As of 1 January 2023, struck off from that date will be dissolved on the date that the BVI Registrar of Corporate Affairs publishes a notice of striking-off in the BVI Gazette. A company will be given 90 days' grace notice to remedy the default actions (e.g. payment of fees) and regularise its status before it becomes liable to be struck off.

A COMPANY THAT IS STRUCK-OFF AND DISSOLVED CAN BE ADMINISTRATIVELY RESTORED AFTER 1 JANUARY 2023, IF:



Criteria 1

the Company can demonstrate it was carrying on business (or was operational) when it was dissolved



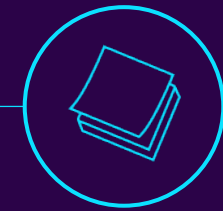
Criteria 2

the registered agent agrees to act, and files a declaration confirming the Company's records (including all compliance documents and information) have been updated



Criteria 3

the Company pays all fees due to the BVI Registry



Criteria 4

the BVI Registrar is satisfied the restoration is fair and reasonable; and the Financial Secretary has signified the Crown's consent to the restoration



BEARER SHARES

The Amendments abolish bearer shares. Any existing bearer shares will be automatically converted into registered shares on 1 July 2023.



TREASURY SHARES-1

company has purchased pursuant to a share buyback but which is not cancelled upon delivery back to the company. A share can only be transferred into treasury where it has been purchased by a company from a shareholder out of distributable profits

TREASURY SHARES-2

the directors resolve that shares to be purchased, redeemed or otherwise acquired shall be held as treasury shares.

the number of shares purchased, redeemed or otherwise acquired, when aggregated with shares of the same class already held by the company as treasury shares, does not exceed 50% of the shares of that class previously issued by the company.

DIRECTORS MEETING

QUORUM

one half of the total number of directors are present in person in the meeting

RESOLUTION OF DIRECTORS

a resolution of directors is passed at a meeting of directors by a majority of the votes cast by directors who are present at the meeting and entitled to vote on the resolution

WRITTEN RESOLUTION

by such majority of the votes of the directors entitled to vote on the resolution as may be specified in the memorandum or articles; **or**

WRITTEN RESOLUTION

in the absence of any provisions in the memorandum or articles, by all of the directors entitled to vote on the resolution

MEMBERS' MEETING-1

CALLED BY DIRECTORS

The directors have power to convene meetings of members at such time and place and in such manners as they think fit.

CALLED BY MEMBERS

Section 82(2) of the BCA, to convene members' meeting on the written request of members holding more than 10% of the voting power.

Subject to the memorandum or articles of a company, a member of the company shall be deemed to be present at a meeting of members if— (a) he or she participates by telephone or other electronic means; and (b) all members participating in the meeting are able to hear each other

MEMBERS' MEETING-2

NOTICE OF MEETING

shall give not less than 7 days notice of the meeting (HK company, GM 14 days, AGM 21 days), BVI does not have compulsory AGM requirement.

QUORUM FOR MEETINGS OF MEMBERS

a meeting of members held in contravention of the requirement to give notice is valid if members holding a 90 % majority of the total voting rights have waived notice of the meeting

a meeting of members is properly constituted for all purposes if at the commencement of the meeting there are present in person or by proxy, members entitled to exercise at least 50 % of the votes

MEMBERS' MEETING-3

CHANG KO KWOK DAVID ET AL
V
WINBLESS INC ET AL

<https://www.eccourts.org/cha-ng-ko-kwok-david-et-al-v-winbless-inc-et-al/>

Judgment Article 4 stated

“The quorum for a meeting of members is the presence of a member holding at least 50% of the shares of each class-meaning that a meeting of either of Silver Shadow or Winbless **alone** would be quorate”

MEMBERS' MEETING-4

WRITTEN RESOLUTION

Section 88(2) CA

Section 88(2) CA, a resolution of members consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

MEMBERS' MEETING-5

WRITTEN RESOLUTION

Standard Article of VISTRA
M&A

a resolution consented to in writing by a majority of in excess of 50 percent of the votes of Shares entitled to vote thereon

RECORD KEEPING-1

RECORDS TO BE MAINTAINED BY COMPANY

Form of records

in written form; or electronic records

retain the records and underlying documentation for a period of at least 5 years from the date—

(i) of completion of the transaction to which the records and underlying documentation relate; or

(ii) the company terminates the business relationship to which the records and underlying documentation relate; and

(c) provide its registered agent without delay any records and underlying documentation in respect of the company that the registered agent

RECORD KEEPING-2

REGISTER OF MEMBERS AND DIRECTORS

Form of records

in written form; or electronic records

29

Where a company keeps **original or a copy** of the register of members or the register of directors at the office of its registered agent, it shall—

(a) within 15 days of any change in the register, notify the registered agent, in writing, of the change; and

(b) provide the registered agent with a written record of the physical address of the place or places at which the original register of members or the original register of directors is kept

STAMP DUTY FOR SHARE TRANSFER

TRANSFER OF BVI STOCK

BVI company to hold a Hong Kong property may have certain advantages

Stamp Duty may be avoided completely by the use of a transfer of shares in a BVI Company holding a property in Hong Kong. Shares in a BVI Company does not fall under the definition of “Hong Kong stock” as the register is not required to be kept in Hong Kong and thus the transfer of the stock is not required to be registered in Hong Kong. To avoid a possible challenge by the Inland Revenue, it is advisable to keep the register of members in BVI

CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT

CURRENT REGISTERED AGENT

A notice of change of registered office or registered agent may be filed only by—

the registered agent of the company

OR

LEGAL PRACTITIONER IN THE VIRGIN ISLANDS

a legal practitioner in the Virgin Islands acting on behalf of the company for the purposes of filing the notice

REGISTRATION OF NON-HONG KONG COMPANY

COMPANIES REGISTRY

Under section 776 of the Companies Ordinance, a non-Hong Kong company is required to register as a registered non-Hong Kong company within one month after the **establishment of the place of business** in Hong Kong

NN1

Authorized Representative in Hong Kong - Natural person)

Authorized Representative - Solicitors firm / CPA firm (other than Natural person)

Director name disclosed (shareholder not disclosed)

Business Registration Certificate

ELIGIBLE FOR LISTING IN HKEX

HKEX.COM.HK

https://www.hkex.com.hk/Listing/Rules-and-Guidance/Listing-of-Overseas-Companies/List-of-Acceptable-Overseas-Jurisdictions?sc_lang=en

6836.HK

Tianyun International Holdings Limited

天韵國際控股有限公司

THE MYTH OF OFFSHORE COMPANIES IN PROPERTY TRANSACTIONS IN HONG KONG

SOURCES FROM ONC LAWYERS

https://www.onc.hk/en_US/publication/the-myth-of-offshore-companies-in-property-transactions-in-hong-kong?category=27&page=7

Published on 1 July 2010

HOLDING PROPERTY IN HONG KONG

By

Individual; Hong Kong limited company; BVI company

Issues: Privacy; Profit Tax; Property Tax; Stamp Duty

VOLUNTARY LIQUIDATORS



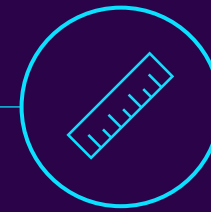
appointed by a Company

voluntary liquidator appointed
by a Company



qualifications

satisfy a BVI residency
requirement, must have
physically lived in the BVI for at
least 180 days before their
appointment



experience

must have certain experience

WIND UP A BVI COMPANY IN HONG KONG-1



Generally speaking

the most appropriate jurisdiction in which to wind up a company is the jurisdiction where the company is incorporated



Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32):

The court's power to wind up a foreign company under Section 327 is discretionary

WIND UP A BVI COMPANY IN HONG KONG-2

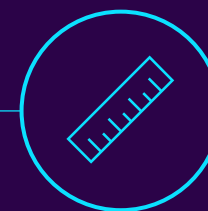
SECTION 327(3) "THE CIRCUMSTANCES IN WHICH AN UNREGISTERED COMPANY MAY BE WOUND UP ARE AS FOLLOWS —



if the company is dissolved



has ceased to carry on business



unable to pay its debt

if the company is unable to pay its debts;

just and equitable



if the court is of opinion that it is just and equitable that the company should be wound up

WIND UP A BVI COMPANY IN HONG KONG-2

LIMITATIONS UPON ITS EXERCISE OF THAT DISCRETION

THREE CORE REQUIREMENTS LAID DOWN BY CASE
LAW (RE REAL ESTATE DEVELOPMENT CO [1991]; RE ZHU KUAN GROUP
CO. LTD. [2003])
MUST BE SATISFIED FOR THE EXERCISE OF JURISDICTION



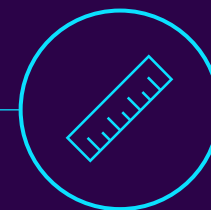
sufficient connection

There is *sufficient connection* with Hong Kong.
In the context of insolvency
there is commonly the presence of assets, but
this is not essential



benefit

There is a reasonable
possibility that the winding-up
order would *benefit* those
applying for it



Persons interested

The Court must be able to exercise *jurisdiction*
over one or more *persons*
interested in the distribution of the company's
assets.

THE YUNG KEE CASE: THE COURT OF FINAL APPEAL DECIDES

THE COURT OF FINAL APPEAL AFFIRMED THE LOWER COURTS' FINDING THAT THERE WAS NO JURISDICTION WITH REGARD TO AN UNFAIR PREJUDICE CLAIM UNDER S. 168A OF THE FORMER COMPANIES ORDINANCE (CAP. 32) (NOW S. 724 OF THE COMPANIES ORDINANCE (CAP. 622))

ON 29 MARCH 2010

KAM
KWAN
SING

KAM
KWAN
LAI

BVI

YUNG KEE
HOLDINGS
LIMITED

11 NOVEMBER 2015

KAM KWAN SING DIED
SHORTLY BEFORE HARRIS
J'S JUDGMENT WAS
HANDLED DOWN

KAM KWAN SING'S ESTATE
SUBSEQUENTLY APPEALED TO THE
COURT OF FINAL APPEAL ON
BOTH THE JURISDICTION ISSUES
AND THE REVERSAL OF THE
FINDINGS OF UNFAIR PREJUDICE
BY THE COURT OF APPEAL

HONG
KONG

RECENT HONG KONG COURT CASE. (CFI)

GRAND PEACE GROUP HOLDINGS LTD
(THE "COMPANY") WAS
INCORPORATED IN BERMUDA AND BERMUDA
LISTED ON THE GEM BOARD OF THE
STOCK EXCHANGE OF HONG KONG
LIMITED (THE "HKEX"). ON 19
DECEMBER 2019, A WINDING-UP
PETITION (THE "PETITION") WAS
ISSUED AGAINST THE COMPANY

19 DECEMBER 2019

LISTED
COMP
ANY
8108

SUBSIDIARY
COMPANY
BVI

*RE GRAND PEACE
GROUP HOLDINGS
LTD [2021] HKCFI
2361*

21 MAY 2021

HONG KONG COURT REFUSED
TO WIND UP A FOREIGN
COMPANY AS LIQUIDATORS
WOULD NOT HAVE ANY
POWER OVER OFFSHORE
SUBSIDIARIES,

**A REASONABLE POSSIBILITY
THAT THE WINDING UP ORDER
WOULD BENEFIT THOSE
APPLYING FOR IT. THE
BENEFIT MUST BE REAL AND
DISCERNIBLE**

BRITISH VIRGIN ISLANDS ADDED TO EU BLACKLIST

THE LIST ADOPTED BY THE COUNCIL
ON 14 FEBRUARY 2023

BVI

The British Virgin Islands have been added to the EU's blacklist of non-cooperative jurisdictions following a meeting of EU finance ministers held on Tuesday 14 February 2023

HK

Hong Kong is not on the list

OTHER JURISDICTIONS

Samoa, Angilla, Marshall Islands, Pamama, Russia, Samoa

WHAT IS TRUST

- Trust is a legally binding arrangement between a settlor and trustee.
- Trusts created in writing be either a Settlement of Trust (Deed) signed by both the settlor and the trustee, or by a Declaration of Trust signed by the trustee alone
- Settlor transfers assets to trustee who is entrusted with legal title to the trust assets
- Trustee hold the assets for the benefit of other persons (beneficiaries)
- Instruction from settlor to trustee called “Trust Instrument” which state the respective rights, power and duties of settlor and trustee
- Letter of wishes, not legally binding, but be considered by the trustee to be persuasive when performing his duties
- Protector: remove the trustee, appoint new trustees, exclude any beneficiary
- Number of trustee: maximum four
- **Succession Planning**
- **Asset Protection** (protect your estate and assets from creditors)
- **Off-balance sheet transactions**
- **Tax planning**

THE VIRGIN ISLANDS SPECIAL TRUSTS ACT (VISTA)

- Mandatory requirements
- The key conditions of a VISTA trust are: The trust can only directly hold shares in a BVI company (or companies). There are, however, no restrictions on the assets which can be owned by the underlying BVI company.
- At least one of the trustees must be a BVI licensed trust corporation or a BVI Private Trust Company (PTC) (for further information on PTCs)
- The trustee cannot be a director of the underlying BVI company.
- If the VISTA criteria are satisfied, then not only does the trustee not have a duty to monitor or interfere with the management of the company, but the trustee is in fact prohibited from doing so, except in extreme circumstances
- known as 'intervention calls'. An intervention call may be made by any 'interested person', including a beneficiary, if the circumstances defined as 'permitted grounds for complaint' in the trust instrument arise
- trustee has no fiduciary responsibility in respect of the BVI company (unless acting on an intervention call) at all, but it is possible to impose specific duties on the trustee. For example, the trustee might be given power to intervene to resolve particular issues, for example, a deadlocked board

COMPARISON BETWEEN HK AND BVI TRUST

- HK Trustee Ordinance governs rights, powers and duties of trustees
- HK trust is not as versatile or well-suited for the needs of increasingly sophisticated clients in the context of international estate and succession planning.
- The HK Trustee Ordinance currently only provides for the reservation of investment and asset management functions of a trust to the settlor
- BVI Trustee Act also sets out powers can be reserved not only to the settlor, but also to other power-holders (such as a protector, nominator, or committee).
- Traditionally a trustee must act prudentially in respect of shares it holds in a company. This will require the trustee to monitor the company's management and performance.
- VISTA trustees have no duties to interfere in the management of the company or maximize the potential value of the shares
- The directors or other parties of the underlying company can manage the affairs of the company without interference from the trustee
- VISTA trustee is expressly prohibited from exercising its voting power or other powers attaching to the shares

OUR TEAM



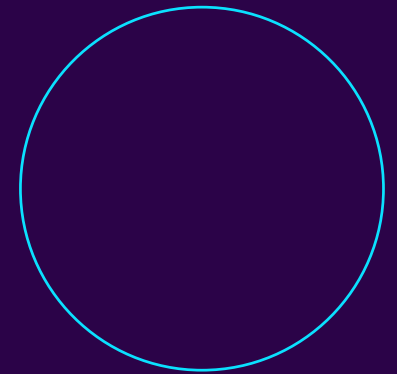
VINCENT WOO
Managing Partner



CLEMENT SIU
Partner



CARRIE LAM
Partner



THANK YOU

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