



Asian clients using BVI Vista structures to tailor benefits to children

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In an article first published by Citywealth, Ogier Marcus Leese says that UHNW Chinese and Southeast Asian families are taking business transfer issues more seriously as the stakes are higher and recent high-profile dispute cases have rung alarm bells.

What cases of succession planning involving business transfer have you been dealing with?

We've had several recent cases involving our Southeast Asian clients where the principal concern has been to preserve the unified ownership of the family business through successive generations. In each case, we've addressed this by separating out ownership of the underlying family business from the rights to the income arising from that business. In one case, the shares in the family company were held in a BVI VISTA trust structure, which disengages the traditional duty of a trustee to monitor and intervene in the running of an underlying company. In our case, the patriarch and one of his children were appointed directors of the underlying VISTA company.

The beneficiaries of that VISTA trust then included the trustees of several other discretionary trusts, each established for a different child of the patriarch. Unity and continuity of ownership of the family company, along with continued involvement by the patriarch and his chosen family successor, was ensured via the VISTA trust structure. And benefits were able to be channelled to family members from the family company, via the VISTA trust to its beneficiaries, including the trustees of the trusts for the children, and then onward to the children through those "beneficiary trusts". This structure was particularly appropriate in this case as the different children all had differing levels of involvement in the family company: some in a day-to-day executive role, some as non-executive directors, others with no involvement. They also had differing needs: one child was disabled and needed significant care, another was thought to be vulnerable to adverse matrimonial claims. These factors could all be addressed by tailoring the terms of the particular trust of which each child was the principal beneficiary, all with no impact on the family business.

What trends do you see in the industry you can tell us about?

In relation to our Chinese and Southeast Asian clients, we are slowly beginning to see the issue of transferring family businesses to the next generation as a matter of real importance that requires careful thought and planning. Whether it's because the amounts at stake are now so large, or because of some of the spectacular and high-profile disputes which have arisen in the absence of good planning, or for other reasons, nevertheless we're seeing more and more enquiries in this area. Where families are looking at these issues, they're beginning to do it in a serious way. They're less inclined to look for "standard form" documents or to rely upon informal arrangements or "understandings", but instead are prepared to invest the time and money in some bespoke planning that actually fits their needs and circumstances. The trends are very gradual, but we are beginning to see them.

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