

MEMORANDUM

relating to

The Samoa International Special Trust Arrangement

("SISTA")

1. The nature of and conditions for a SISTA:

The nature of a SISTA is that there shall be a Trust governed by Samoan law, which will hold the shares of a Samoan company. The Trustee of the Trust must be a Samoan licensed Trustee Company (but soon may instead be a Samoan Private Trust Company ("PTC"), exempt from licensing as a Trustee in Samoa and such a PTC may be a Samoan Foundation).

2. The purpose of a SISTA:

The purpose of a SISTA is that the Trustee of the SISTA shall retain the shares of the Samoan company indefinitely and permit the directors of that company to control and manage it day to day without the Trustee being involved or being liable for the acts or omissions of the directors.

3. Diagram:

There is a diagram showing a SISTA attached to this Memorandum.

4. Trustee a shareholder – Office of director rules:

Since the Trustee is the shareholder of the Samoan company, it could, for example, appoint and remove directors, instigate or support an action against them and require a dividend. The Trustee's power of voting is therefore restricted by statute. There can also be "office of director rules" whereby matters, such as who can be director and for how long and who will appoint and remove directors and the remuneration of directors, can be set out in the Trust.

5. Protection of Beneficiaries - Intervention Call:

The purpose of a SISTA protects the Trustee from the misfeasance of the directors. It needs to provide a means of protecting the Beneficiaries. The Trust can set out "permitted grounds of complaint" which "interested persons", including a Beneficiary, a Protector and an "Appointed Enquirer" can use to require the Trustee to look into the acts or omissions of the directors and, if necessary, require rectification. The Trust can appoint a person called an Appointed Enquirer, who must be given information regarding the company. As an interested person or an Appointed Enquirer can make an "Intervention Call" on behalf of the Beneficiaries to require action from the Trustee in these respects.

6. Sale of the company:

It may be that later there is a need for the sale of the company's shares. This would be contrary to the purpose of the SISTA. However, there are provisions which enable consents to be given for such a sale and for an application to be made to Court if necessary for this.

7. Conclusion:

This is a means of permitting a client or family or others than a Trustee to retain control of a company, the shares of which are held by the Trustee as an asset of the Trust.

The solution is statutory and in Trust law.

The solution is jurisdictional specific (Trust and company both governed by the same law).

The solution permits Beneficiaries, as "interested persons" to complain about the acts or omissions of the directors.

8. Similar solutions:

Apart from Samoa with SISTA, the following jurisdictions offer a similar solution:-

British Virgin Islands – the Virgin Islands Special Trusts Act ("VISTA"); and

Labuan – the Labuan Special Trust ("LST")

SISTA is the most recent of these and has a slightly wider solution in certain ways.

NOTE: This Memorandum is provided for your assistance but you should always take professional advice before acting. Circumstances and needs differ considerably from one person or family to another.

This Memorandum was last updated on 30th July 2015