

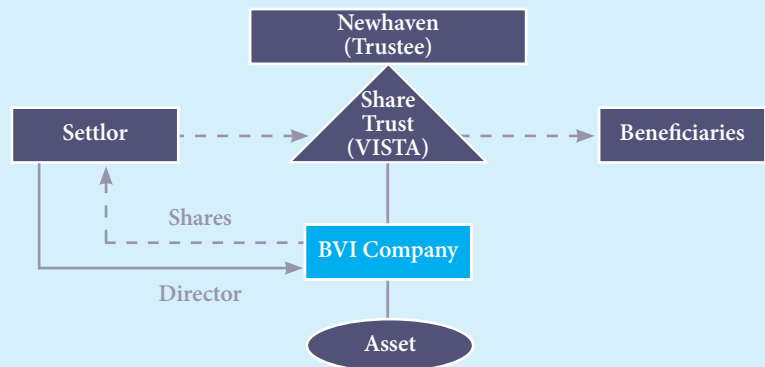
## The BVI Share Trust

“In this world, nothing can be said to be certain, except death and taxes.”

Benjamin Franklin

### At a glance

- Succession planning
- Anti-forced heirship
- Reservation of voting and income rights
- Residual control
- Reversible
- Cost-effective



### Background

There are over 500,000 active British Virgin Island (BVI) companies. In many cases, an individual who owns shares in a BVI company (BVI Shareholder) may not yet have considered the issues that may arise in respect of those shares in the event of death or incapacity. It is, of course, essential for every individual to put in place appropriate arrangements in respect of their personal assets in case of their death or incapacity. This is particularly important in respect of shares held in a BVI company, because, if no such action is taken, there will likely be various undesirable consequences as more specifically set out below.

### The issues

In the event of death or incapacity of a BVI Shareholder who has made no appropriate arrangements in respect of those shares, the successors/heirs will be required to make an application to the BVI Court to be recognized as the owners of those shares by way of a Grant of Probate (where a will exists) or Grant of Letters of Administration (where no will exists). Negative outcomes of this complicated process will include:-

- 1 Time & Cost** The application typically involves two sets of lawyers and is therefore costly and lengthy. A simple application frequently takes longer than 3 months and in the case of an application for Grant of Letters of Administration, the case will be dealt with in accordance with BVI intestacy laws and the process will likely be even more time consuming.
- 2 Business Inertia** There are occasions when the assets/operations and bank account of the company are frozen until the process is finalized resulting in a negative impact on the business of the company and possibly economic loss.
- 3 Publicity** The process results in making the owners and heirs/successors of the company public knowledge, which in many circumstances defeats the very reason the company was set-up.
- 4 Forced Heirship** BVI law looks to the jurisdiction of the deceased shareholder, which means that if there are forced heirship provisions in the home jurisdiction, these will be recognized and enforced by the BVI Courts and result in distributions being made contrary to the deceased's wishes.

### Myths

Many clients believe that the nominee arrangements they have in place will provide an effective transfer mechanism for BVI shares. This is incorrect – bare trust arrangements do not provide for succession of shares in the event of death of a shareholder as such arrangements automatically terminate on the death of the beneficial owner of the shares. Accordingly, nominee arrangements do not work and, similarly, the incapacity of the shareholder cannot be dealt with by way of an enduring Power of Attorney as it is not possible for a BVI Shareholder to simply appoint an individual to administer their affairs in the event of their incapacity.



# The BVI Share Trust

## Solutions

While one of the accepted mechanisms of dealing with succession of BVI company shares, is to place them in trust for named beneficiaries, BVI Shareholders may be reluctant to establish discretionary trusts for this purpose, as they are concerned about losing control of the underlying assets and are mindful of the costs of introducing professional trustees to administer the assets at their discretion.

The BVI Share Trust addresses these concerns and presents practitioners and clients with an ideal solution in the form of a low-cost mechanism that provides all the advantages of a trust to ensure simple and effective transition of the benefit of BVI shares to heirs/successors while allowing the BVI Shareholders, as Settlers to retain substantial control during their lifetime.

## Advantages

### 1 Control

**Lifetime:** Continue to act as director of the BVI company and administer its day-to-day activities including making operational business decisions and dictating investment strategy.

**Legacy:** Direct trustee to appoint nominated successor director in event of death / incapacity ensuring control over future management of the BVI company by intended heirs/successors.

These capabilities are available through the VISTA (Virgin Islands Special Trust Act) “Office of Director Rules” which enable Settlers to direct the Trustee to remove or appoint directors during their lifetime and also specify who should be appointed and/or removed on their death.

### 2 Succession Planning / Avoidance of BVI Probate

**Lifetime:** Continue to enjoy the rights and benefits of owning BVI shares including: i) *voting rights* and ii) *profit entitlement* (i.e. no economic entitlement to the Trustee). This is achieved under the Rights Deed and pursuant to a Power of Attorney granted to the BVI Shareholder.

**Legacy:** Provides a simple, effective and automatic transfer mechanism to future generations or identified successors (in defined portions). This has the added advantages of: i) minimal interference and disruption to the business of the company; and ii) avoidance of forced-heirship provisions.

### 3 Privacy/Confidentiality

The avoidance of the probate/letters of administration process ensures that the affairs of the Settlor and the company are not brought into the public domain.

### 4 Reversibility

The settlor is entitled to reverse the settlement and ‘call’ for the return of the shares from the Trustee any time and for whatever reason.

### 5 Ease of establishment

There are only two documents required in order to establish the share trust. It is possible to establish the structure within one week.

### 6 Low-cost

The simplicity of the structure and reduced responsibility of the trustee means that the cost is low when compared with a discretionary trust for example, and is a small price to pay for the comfort that the benefit of the shares of the BVI company will be safely and confidentially transferred to the next generation.

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