

PORTCULLIS TRUSTNET

PTN eUpdates – Keeping you informed (Issue 10 – Nov 2008)

BRITISH VIRGIN ISLANDS COMPANIES - DEALING WITH SUCCESSION

THE BVI SHARE TRUST OPTION

The Issue of Succession

Planning succession to shares in a British Virgin Islands (“BVI”) company is a matter that is very often not given enough attention by clients and their advisors. This is partly because death is a subject that is avoided and partly because there have not yet been many cases where shareholders have died and the consequences of bad planning have become apparent. This will change as the number of older shareholders increases.

As shares of a BVI company are considered the personal property of the shareholder, the shares will form part of the shareholder’s estate upon their death. To have ownership in the shares transmitted to the deceased’s heirs, the heirs or the deceased’s personal representatives are required to make an application to the BVI court for either:-

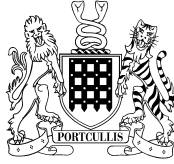
- a Grant of Probate if the deceased had a valid will; or
- a Grant of Letters of Administration if the deceased died without having made a valid will.

The grant, whichever it may be, is a public document and the process in applying for such a grant can be lengthy and very costly as often lawyers in both the deceased’s home jurisdiction and in the BVI will be required. If the deceased’s estate is complicated or is contested, the time and cost of the process will only increase.

It is also important to note that the law of the place of domicile will govern the ability of the shareholder to dispose of their property (issues here include forced heirship rules, family protection rules, competence to make a will and the like) and the manner in which the property is disposed – meaning issues like the technical formalities of a will e.g. the number of witnesses that must be present.

There are various succession planning options available to shareholding clients who wish to avoid the process of applying to the BVI court for a Grant of Probate or a Grant of Letters of Administration. These options range from gifting shares to successors prior to death, to executing a special will to deal with the shares in the company.

Please note that the information contained herein is not intended to be exhaustive with respect all issues or matters arising directly or indirectly out of the law relating to succession, trusts, or the law as it relates to the BVI. It is provided as a general guide or reference point and is in no way intended and should not be relied upon as legal advice.



PORTCULLIS TRUSTNET

The BVI Share Trust Option – Simple, Cost Effective and Manageable

Gifting shares to a trust prior to death provides numerous advantages over other options, making it an attractive alternative. In essence, this option means that there is no succession issue on the death of the shareholder as the shares, if properly transferred to a valid trust, will not form part of the deceased's estate.

The BVI Share Trust is a simple, cost conscious, trust arrangement that addresses only the succession issues of an owner of a BVI company. Its main purpose is to accept and hold shares of a BVI company on behalf of the Settlor (the former shareholder) until the Settlor's death or incapacity, whereupon the shares are transferred quickly and efficiently to the beneficiaries of the BVI Share Trust (beneficiaries designated by the Settlor as such at the time of the Trust's establishment).

The BVI Share Trust incorporates the provisions of the Virgin Islands Special Trusts Act 2003. These provisions allow the Settlor to maintain a level of control over the BVI company without interference from the trustee, being the shareholder or owner of the BVI company.

The Settlor also retains a life interest in the shares. Any income such as a dividend payment derived from the shares is automatically paid to the Settlor with the trustee's direct involvement.

Summary

The BVI Share Trust is designed to provide a simple cost effective mechanism for a BVI company owner to transfer his or her shares on their death or incapacity, while retaining a level of control over the operations of the company.

For further discussion on any aspect of forming a BVI Share Trust in respect of shares in your BVI company, please do not hesitate to contact your usual Portcullis TrustNet representative for assistance.

Please note that the information contained herein is not intended to be exhaustive with respect all issues or matters arising directly or indirectly out of the law relating to succession, trusts, or the law as it relates to the BVI. It is provided as a general guide or reference point and is in no way intended and should not be relied upon as legal advice.