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SUCCESSION PLANNING IN THE BVI: THE BVI SHARE TRUST

As the saying goes, the only certain things in this world are death and taxes, and by utilising a BVI business company, one is certainly reducing the latter. However, this does not detract from the importance of succession planning where the shares in such BVI company are held by an individual. Succession planning focuses not only on ensuring that an individual's wishes are met on his death, but ensuring that this is done as efficiently, quickly and cost-effectively as possible, with minimum impact on the management of the BVI company.

Succession in the BVI

Where the shares in a BVI company are held by an individual, on such individual's death, the shares cannot be validly distributed, either in terms of a foreign or BVI will or by the laws of intestate succession, until the deceased's will has been probated in the BVI courts. This process includes the public disclosure of the ownership of the company and the identity of the heirs. The process is time consuming, usually taking not less than 6 months, and could cost between 1% and 2% of the value of the asset. During probate, the company's assets and bank accounts may be frozen. This is even more time-consuming and expensive if the individual dies without a valid will and the shares must be distributed in terms of intestacy laws.

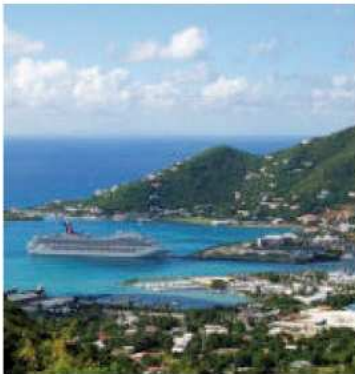
Shares in a BVI company are considered to be movable property and BVI law treats the law of the jurisdiction of domicile at death as the law governing succession to movable property. This may result in distributions contrary to the deceased's wishes, both if the deceased dies intestate or if the provisions of his BVI or foreign will contravene the applicable law.

A more robust approach is obviously required, which allows the individual to control the company during his lifetime, but on his death ensures that the shares are distributed, according to his wishes, with minimum delay, costs and publicity.

The BVI Share Trust

The BVI Share Trust is a specially designed product, for use only in respect of shares in a BVI company. It requires the owner of shares in a BVI company to transfer his shares into a trust established in terms of the Virgin Islands Special Trusts Act, 2003 ("Vista"). The ownership in the shares would then pass to the trustee. However, the Settlor and trustee will simultaneously enter into a Rights Deed, which governs the way in which the shares will be dealt with during the Settlor's lifetime. Under the Rights Deed, the Settlor will retain all voting rights attaching to the shares. He will also be able to terminate the arrangement at any time and have the shares transferred back to him.

On the death of the Settlor, the trustee will distribute the shares to the beneficiaries, and in the proportions, set out by the Settlor in the Trust Deed. The trustee will also be able to



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appoint a substitute director of the company, if necessary. As the Trust Deed is governed by Vista, the trustee is prohibited from acting as a director and is only obliged to retain the shares.

Advantages:

- Avoidance of the need to prove probate in the BVI courts;
- The Settlor can determine the beneficiaries, and the proportion in which they will benefit, in the Trust Deed;
- Automatic succession by the beneficiaries to the shares on the Settlor's death;
- The share transfer is confidential;
- The Settlor or appointee remains a director during the Settlor's lifetime and enjoys lifetime income and voting rights;
- Automatic succession to the office of director on the Settlor's death;
- The Settlor can revoke the arrangement at any time;
- The arrangement can be terminated and re-established at any time during the Settlor's lifetime;
- The arrangement can also apply on the Settlor's incapacity, as set out in the Deeds;

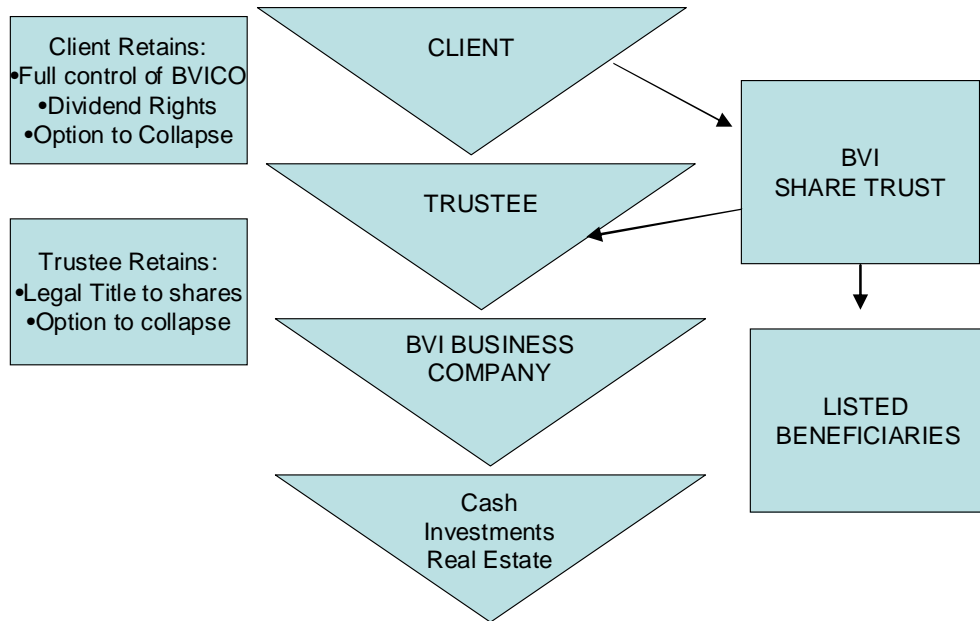
The BVI share trust structure provides the Settlor with freedom to manage the BVI company during his lifetime, with minimal interference by the trustee, but provides certainty, confidentiality and simplicity on his death.

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