

Guide to BVI Share Trust

Harneys pioneered the BVI Share Trust, a simplified trust for clients who own shares in BVI companies with the primary objectives of (1) avoiding any forced heirship rules applicable in the country of domicile/habitual residence of the client; and (2) circumventing the requirement to obtain a grant of probate or letters of administration in the BVI (**probate**) in respect of those shares. Harneys have revised the Share Trust to offer a simpler, even more cost effective trust to meet these objectives.

Issues

Forced heirship

Forced heirship laws apply in many countries, and vary from country to country. Where forced heirship rules apply, an individual is not free to dictate who inherits his assets on death, but rather the applicable law determines who the entitled heirs are. Insofar as shares in BVI companies are concerned, the applicable law is the law of the country in which the deceased was domiciled/habitually resident, not BVI law. Therefore, if the deceased shareholder dies domiciled/habitually resident in a country where forced heirship rules apply, those rules will apply to his or her BVI company shares, overriding the terms of any BVI Will.

Probate

Under the BVI Business Companies Act, shares in BVI companies are deemed to be situated in the BVI. Therefore, regardless of where the owner of a BVI company dies, probate must be obtained from the BVI Court before the deceased shareholder's interest in the BVI company can be validly transmitted to his or her heirs.

Prior to probate being obtained, the shares are effectively frozen, as they cannot be voted on, transferred or sold, nor can any dividends payable on those shares be distributed.

The process of obtaining probate in the BVI generally takes around 12-16 weeks, but will take longer in more complex cases.

Solution

The BVI Trusts Act specifically states that assets held in a properly constituted BVI trust are not subject to any "right,

claim or interest conferred by a foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights".

Shares held in a BVI trust are, therefore, protected from the forced heirship claims which would otherwise have arisen on the death of a shareholder if the shares had continued to be personally owned by him; and

Probate is only required in respect of shares personally held on the death of a shareholder, and not shares held in trust.

A Share Trust is a simple and inexpensive structure which (a) protects the assets held against forced heirship claims; and (b) avoids the requirement to obtain probate.

Main terms of a share trust

- Professional trusteeship services are provided by Harneys Trustees Limited for a set annual fee
- The trust deed is prepared by Harneys for a set, one-off fee
- The shares in the BVI company are transferred by the client (referred to as the **settlor**) to the trustee
- The trust will be subject to the VISTA regime, meaning that the trustee will not be able to intervene in the management of the underlying BVI company, which will remain under the control of the directors
- The settlor can ensure that he (or another) remains director of the company held in the trust

- Any income received by the trustee by way of dividend from the company held in the trust will be payable to the settlor during his or her lifetime. The directors of the company will control the payment of dividends to the company and therefore the flow of funds (if any) to the settlor
- Following the settlor's death, the company shares will be divided amongst such persons as are named and in such proportions as are stated in the trust deed. The transfer of the shares to the designated beneficiaries can be completed immediately following the death of the settlor, and will not be delayed by any requirement to obtain probate in the BVI or elsewhere
- The settlor will retain power to remove and appoint trustees

Other trust options

The Share Trust is specifically designed to be a simple and cost effective way in which the owners of shares in BVI companies can avoid forced heirship rules and the requirement to obtain probate in the BVI. The terms of a Share Trust are deliberately simple, with the settlor being the primary beneficiary during his or her lifetime, and the shares being made over outright to the designated beneficiaries on the settlor's death. A Share Trust will not continue in existence following the settlor's death.

Trusts are established for a number of reasons. Where asset protection or sophisticated or multi-generational succession planning is required, a Share Trust is not appropriate but rather a more flexible trust structure should be put in place. Further, where a settlor wishes to retain a degree of oversight or control over the trustee, for example, by appointing himself or another as 'protector' of the trust, a Share Trust is not appropriate.

Harneys provide bespoke advice where more complex trust structures are required. Please see Harneys' guides on Trusts and VISTA Trusts.



For more information and key contacts please visit harneys.com

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