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## **BVI SHARE TRUST GENERAL GUIDE**

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## **1. Introduction**

The BVI Share Trust (“**Share Trust**”) is a trust product which has been designed by Harneys to provide individuals who own shares in a BVI company with a succession planning tool whilst ensuring that for the remainder of their lifetime, they are able to continue to manage and operate the business of the company in the way they see fit and to receive the economic benefits of share ownership.

The Share Trust is only applicable to shares held in a BVI company and is not applicable to shares held in a company incorporated in any other jurisdiction. It marks a significant advance in succession planning for anyone currently holding assets through a BVI vehicle and, for those who do not, a compelling reason to consider it.

## **2. How does the Share Trust work?**

The Share Trust requires the owner of shares in a BVI company (the “**Settlor**”) to transfer his or her shares into trust, so that legal ownership of the shares in the company is thereafter held by a trustee (the “**Trustee**”). When the transfer of the shares is made, the Settlor and the Trustee will have entered into two documents which together govern the way in which the shares will be dealt with during the Settlor’s lifetime and what happens to the shares upon the death or earlier incapacity of the Settlor.

The Share Trust comprises two documents:

1. a Rights Deed; and
2. a Trust Deed.

### **Rights Deed**

The Rights Deed sets out the contractual terms on which the Settlor agrees to transfer and the Trustee agrees to accept the shares. It also deals with the way in which the voting rights attaching to the shares are conferred on the Settlor and includes “call option” (see below) as well as provisions that permit the Trustee, in certain circumstances, to re-transfer or “put” the shares back to the Settlor.

### **Trust Deed**

The Trust Deed sets out details of the individuals who are to inherit the shares upon the death of the Settlor and in what proportions, and at the same time provides the Settlor with the right to receive any dividend income declared and paid on the shares during his lifetime.

The Trust Deed is governed by the provisions of the Virgin Islands Special Trusts Act, (“**VISTA**”) and as a result prohibits the Trustee from being a director of the company and imposes an obligation on the Trustee to retain and not sell the shares. The VISTA provisions also permit the Settlor to direct the Trustee as to who should succeed to the office of director of the company, in the event of the Settlor’s death or earlier incapacity.

The Trustee of the trust will generally be a professional trustee – a corporate entity that specialises in the provision of trustee services. Harneys Corporate Services Limited has a trustee division and is able to provide the trustee role to Settlers wishing to take advantage of the Share Trust.

### **3. Key benefits**

Some of the key benefits that the Share Trust provides to Settlers and their families are outlined below:

- Avoidance of the need to prove probate (in relation to the shares) in the BVI courts on the death of the Settlor - automatic succession to shares in the event of the death or incapacity of the Settlor
- Automatic succession to the office of director in the event of the death or earlier incapacity of the Settlor
- Retention of control of the operation of the company during the Settlor's lifetime/while the Settlor is not incapacitated through retention by the Settlor of the office of director as well as maintenance of shareholder voting and income rights during the Settlor's lifetime
- It is freely reversible at any time prior to the Settlor's death or earlier incapacity - the Settlor has a right to take back legal ownership of the shares from the Trustee

*“Automatic succession to shares in the event of death or incapacity”*

Under the Share Trust, the Settlor transfers legal ownership of the shares in the company to the Trustee but continues to enjoy practical benefits of owning the shares. Under the terms of the Trust Deed, the Settlor is able to name individually and determine who will inherit the shares and in what proportions in the event of the Settlor's death or incapacity. On the death or earlier incapacity of the Settlor, the Trustee is legally obliged to transfer the shares to the named beneficiaries in the proportions indicated by the Settlor.

*“Automatic succession of directors in the event of death or incapacity”*

The Settlor is able to direct the Trustee to appoint or remove a director in the event of his death or incapacity. The power to direct the Trustee is obviously dependant on the Trustee having sufficient voting control of the company at the time of the Settlor's death or earlier incapacity. Assuming the Trustee has sufficient voting rights, such appointment or removal ensures that the Settlor's wishes as to the identity of the individuals who are to manage the company - once the settler is no longer able to do so - can be met.

*“Retention of control, voting and income rights”*

While the shares are held in the Share Trust, the Settlor can vote the shares, and so may appoint or remove the directors of the company, the Settlor is also able to direct the Trustee as to the appointment and or removal of directors following the Settlor's death or earlier incapacity. The

Trust Deed provides that the Settlor is entitled to any dividends or other income distributions paid on the shares, and this is not subject to exercise of any Trustee discretion. Taken together, the Settlor is therefore able to run the business of the company (if it is an operating company) and appoint or remove directors at his discretion, as well as to declare and receive dividends on the shares without interference from the Trustee. Again, rights of control over the company are dependant on the Settlor having had ownership of a sufficient number of shares in the company prior to transferring these shares into the Share Trust.

*“Freely reversible at any time”*

The Settlor is able, by use of a “call option” (embedded in the Rights Deed) at any time, and for whatever reason or purpose to request that the Trustee re-transfer to him, the legal ownership of the shares. The Trustee is contractually obliged to re-transfer the shares once the Settlor has exercised his right to “call” for the shares. If the Settlor calls for the shares, the Share Trust ends immediately upon the Trustee transferring the shares back to the Settlor.

#### **4. Summary**

The Share Trust structure gives owners of shares in a BVI company unprecedented freedom to manage succession to those shares with minimal interference to the business of the BVI company or enjoyment of the company’s profits. It has the added advantage of completely avoiding a public application for probate in the BVI courts, and therefore maintains confidentiality, saves costs and avoids the inevitable delays that an application for probate would entail.

#### **5. Further Information**

**If you would like further information on the subject matter of this Guide please contact Zac Lucas at [zac.lucas@harneys.com](mailto:zac.lucas@harneys.com) or Sheila George at [sheila.george@harneys.com](mailto:sheila.george@harneys.com) or your usual contact at Harneys. Alternatively, you can visit our website at [www.harneys.com](http://www.harneys.com).**

*This Guide is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice.*

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