

Client Guide to Creating a Share Trust

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This guide describes in detail the process for creating a Share Trust and gives guidance on how to complete the documentation package which we need from you. Our objective is to make the procedure easy and efficient but in order to achieve a robust and clear legal structure there are a number of necessary steps. *If at any point you have any questions please email Lynadia Maduro-Maximin at lynadia.maduro-maximin@harneys.com or Gizelle Osborne-Leader at gizelle.osborne-leader@harneys.com. If it is more convenient, you can also contact a lawyer at one of Harneys' British Virgin Islands, London or Hong Kong offices.*

It is probably helpful to have at the outset a full list of the documents which are necessary to create and support the operation of the Share Trust. These are:

- (a) Trustee Service Agreement
- (b) Trust Deed
- (c) Rights Deed
- (d) Director Nomination Form
- (e) Share Transfer Form
- (f) Directors Resolution
- (g) New Share Certificate
- (h) Original Share Certificate
- (i) Power of Attorney
- (j) Income Mandate Form
- (k) Call Notices

We will generate these documents but some input from you is necessary.

Section 1 - The process of creating a Share Trust

Stage 1

First you should complete the Trustee Service Agreement which contains a Share Trust Formation Questionnaire.

The Formation Questionnaire contains a number of questions for you to answer before we can draft your particular Share Trust and also requires you to produce proof of your identity. The Trustee Service Agreement sets out the terms under which our subsidiary trust company, Harneys Trustees Limited, will act as trustee of your Share Trust. A copy can be downloaded from our website at www.harneys.com

Section 2 of this guide provides information on how to complete the Formation Questionnaire and Trustee Service Agreement. Once they have been completed please return to *Lynadia Maduro-Maximin at lynadia.maduro-maximin@harneys.com or Gizelle Osborne-Leader at gizelle.osborne-leader@harneys.com*. An emailed pdf copy at this point enables us to get on with the drafting although as you will see we cannot proceed beyond stage 3 until we have hard copies and proof of your identity.

As soon as we receive the pdf copy of your Formation Questionnaire and Trustee Service Agreement we will ask you for payment.

Stage 2

Once we have been paid (see the fees section of the Trustee Service Agreement and section 2 of this guide for details) and based on the information contained in the Formation Questionnaire we will draft the:

- (a) Trust Deed;
- (b) Rights Deed;
- (c) Director Nomination Form; and
- (d) Share Transfer Form.

The Trust Deed sets out details of your beneficiaries and your entitlement to enjoy dividend income from your shares, and enables you to nominate replacement directors in the event of your death or earlier incapacity, the Director Nomination Form identifies those replacement directors.

The Rights Deed sets out the terms on which you are prepared to transfer and we are prepared to accept your shares as an addition to the Share Trust, and contains the right for you to vote and recall the shares, and circumstances in which your shares may be re-transferred to you.

The Share Transfer Form is the document by which you will formally transfer your shares to Harneys Trustees Limited to be held on the term of your Share Trust.

Once drafted we will send you those four documents by courier

Stage 3

You now need to execute/sign the Trust Deed, the Rights Deed, the Director Nomination Form and the Share Transfer Form.

➤ **Trust Deed**

Before executing the Trust Deed, you need to consider its contents and in particular clause (1), are your name and contact details correctly recorded? Clause 1.2, is the name of your Share Trust correct? Clause 5.1, are the correct primary beneficiaries identified? Clause 5.3, are the correct secondary beneficiaries identified?

Provided you are satisfied with the contents you should execute the Trust Deed. Page [8] of the Trust Deed is where you need to do that. To execute correctly the Trust Deed you need to sign in the margin next to the execution clause which contains your name. This must be done in the presence of an adult witness who is neither a beneficiary, proposed director nor a member of your family. The witness should then sign and insert his or her details in the spaces provided.

Please **do not** date the Trust Deed.

➤ **Rights Deed**

Before executing the Rights Deed, you need to consider its contents and in particular clause (1), are your name and contact details correctly recorded? Recital (A), does it accurately record details of the shares you wish added to your Share Trust, and the company to which they relate? Recital (B), which contains the name of your Share Trust, is it correct? Clause 2, are you able to make the various representations? Clause 8, do you appreciate and understand the indemnity that you are required to give?

Provided you are satisfied with the contents you should execute the Rights Deed. Page [9] of the Rights Deed is where you need to do that. To correctly execute the Rights Deed you need to sign in the margin next to the execution clause which contains your name. This must be done in the presence of an adult witness who is neither a beneficiary, proposed director nor a member of your family. The witness should then sign and insert his or her details in the spaces provided.

Please **do not** date the Rights Deed.

➤ **Director Nomination Form**

Before signing the Director Nomination Form, you need to consider its contents and in particular, are your name and contact details correctly recorded? Recital (A), is the name of your Share Trust correct? Clause 2, are the details of your proposed replacement directors correctly recorded?

Provided you are satisfied with the contents of the Director Nomination Form, you should simply sign the form in the space provided – your signature will not need to be witnessed.

Please **do not** date the Director Nomination Form.

➤ **Share Transfer Form**

Before executing the Share Transfer Form, you need to consider its contents and in particular, are your company's name and registration number correct? Are your name and contact details correctly recorded? Are the details and number of shares you propose to add to your Share Trust correctly recorded?

Provided you are satisfied with the contents of the Share Transfer Form, you should simply sign it in the space provided – your signature will not need to be witnessed.

Please **do not** date the Share Transfer.

Please notify *Lynadia Maduro-Maximin* at lynadia.maduro-maximin@harneys.com or *Gizelle Osborne-Leader* at gizelle.osborne-leader@harneys.com if the Trust Deed, Rights Deed, Director Nomination Form or Share Transfer do not accurately record your intentions.

Once you have executed the Trust Deed, the Rights Deed and signed the Director Nomination Form and Share Transfer Form please courier them to:

Harneys Trustees Limited
Share Trust Business
Craigmuir Chambers
P.O. Box 71
Road Town, Tortola
British Virgin Islands
VG 1110

If you have not already sent us originals of the signed Trustee Service Agreement and proof of your identity please also include these.

Stage 4

As soon as we have the:

- (a) signed and dated Trustee Service Agreement;
- (b) required proof of identify;
- (c) executed Trust Deed;
- (d) executed Rights Deed;
- (e) signed Director Nomination Form;
- (f) signed Share Transfer Form; and
- (g) payment,

We will check each document to ensure that it has been correctly completed. We will countersign execute and date where appropriate. ***This constitutes the Share Trust but at this point the only asset in the Share Trust is cash (see 1.2(a) of the Trustee Service Agreement) and further steps are necessary to add the shares.***

In order to add the shares to the Share Trust we will then send you:

- (a) Share Transfer Form, dated;
- (b) draft Director's Resolution (ready to be signed);
- (c) draft New Share Certificate (ready to be signed); and
- (d) draft Income Mandate Form (to check only)

You will need to ensure that the Directors Resolution and New Share Certificate accurately record the name of the company, and its registration number as well as your details (where relevant) and that the Income Mandate Form contains the correct bank account details. Please contact ***Lynadia Maduro-Maximin at lynadia.maduro-maximin@harneys.com or Gizelle Osborne-Leader at gizelle.osborne-leader@harneys.com*** if any of these require amendment.

The Directors Resolution and New Share Certificate will then need to be signed by the director(s) of the company.

Once the Directors Resolution and New Share Certificate have been signed by the directors in accordance with the memorandum and articles of the company you will need to send them to the registered agent of the company in whatever way you usually communicate with them together with any existing Original Share Certificates which are in your name.

If Harneys Corporate Services Limited is the registered agent for the company then you can send them to *Lynadia Maduro-Maximin* at lynadia.maduro-maximin@harneys.com or *Gizelle Osborne-Leader* at gizelle.osborne-leader@harneys.com if you prefer and they will hand them on to the account officer who usually deals with your company.

It is important that you appreciate that your shares will not be added to your Share Trust until Harneys Trustees Limited is registered as shareholder.

Stage 5

Once the registered agent of the company has completed its job, Harneys Trustees Limited will be a registered shareholder in the company and will have been provided with a share certificate. An Income Mandate Form will be sent to the company by Harneys Trustees Limited, notifying that any dividends can be paid directly to your account.

Your Share Trust is now complete, and you will be provided with the following documents:

- (a) **Trustee Service Agreement**, counterpart copy and conformed copy;
- (b) **Trust Deed**, certified copy;
- (c) **Rights Deed**, counterpart copy;
- (d) **Director Nomination Form**, certified copy;
- (e) **Share Certificate**, certified copy;
- (f) **Power of Attorney**, original; and
- (g) **Call Notices**, originals.
- (h) **Income Mandate Form**, certified copy

You will need to provide us with a completed Call Notice if you wish to recall any or all of the shares from your Share Trust.

Section 2 - How to complete the Trustee Service Agreement

The Trustee Service Agreement sets out the terms under which our subsidiary trust company, Harneys Trustees Limited, will agree to act as trustee of your Share Trust, and it and the scheduled Formation Questionnaire contain a number of sections which you will need to complete before we can draft your particular Share Trust.

In addition the second part of the Formation Questionnaire requires you to collect and have certified certain evidence of your identity.

The purpose of this section is to explain what information is required by and how to correctly complete the Trustee Service Agreement. We suggest that you have a copy of the Trustee Service Agreement at hand while reading it. A copy can be downloaded from our website at www.harneys.com

Body of Trustee Service Agreement:

Parties - Settlor Details

In the area left blank for the second party and ending with the words “(the “**Settlor**”)” you will need to insert your details, that is, details of the shareholder that wishes to create a Share Trust.

Clause (1) – Fees and Payment Obligations

This clause sets out the costs of a Share Trust, it does not require you to insert any information but you should nevertheless consider its contents carefully. We will ask you to pay the Acceptance Fee and the amounts in 1.2(a) and (b) as soon as we receive the Trustee Service Agreement back from you and will always include in that invoice the following out of pocket expenses (i) our charges for conducting a company search (to confirm the existence of the company) US\$[] (ii) our charges for sending two couriers to you US\$[]. Whether there is other out of pocket expenses depends on the extent to which we otherwise need to communicate with you. We will not charge any time based fees during the set-up process outlined in this guide. You will most likely also have to pay fees to your registered agent in connection with changes to the share register. You are not required to insert any information in this Section.

Clause (3) - Representations

This Section sets out extensive representations which you make to us and on which we rely. You should consider this Section carefully with your legal adviser. Note, to be able to make the representation in clause 3.3 you must have obtained independent legal advice. You are not required to insert any information in this Section.

Clause (6) - Indemnity

This Section sets out the terms of an indemnity that you are required to provide to Harneys Trustees Limited, you should consider carefully with your legal adviser. You are not required to insert any information into this Section.

Signature Clause

This is where you are required to insert your signature and the date you signed the Agreement.

Do not complete the date at the very beginning of the Trustee Service Agreement.

The Schedule

Part 1 – Share Trust Formation Questionnaire

Section (1) – Name of Share Trust

You need to insert the proposed name of your Share Trust, you can choose almost any name except that you cannot use the word “Fund”. We suggest your family name, followed by “Share Trust”.

Section (2) – Details of Primary Beneficiaries

In this Section you will need to insert details of the beneficiaries that you wish primarily to benefit, you need to insert their full name and contact address, their age and indicate their sex and the proportion of the shares that you wish them to have – 10%, 50% etc., repeat this process for each beneficiary, use an additional sheet of paper if required.

Note, it is very important that the percentage taken by each of your beneficiaries equals 100% when added together.

Section (3) – Details of Secondary Beneficiaries

In this Section you set out details of beneficiaries that you would wish to take your shares if all your primary beneficiaries were to predecease your death or earlier incapacity. You need only insert the name and address of each secondary or default beneficiary, use an additional sheet of paper if required.

Section (4) – Details of the Company

In this Section you are required to insert the company registration number, details of its registered agent and current directors, and to confirm whether the company is licensed, registered, recognised and or authorised under any of the listed statutes. Use an additional sheet of paper if required.

Section (5) – Details of Shares

In this Section you will need to indicate how many shares you wish added to your Share Trust, their par value (if any) and whether or not held by a nominee.

Note, where your shares are held by a nominee, your nominee will need to transfer legal title to the shares to you before you can add the shares to your Share Trust.

Section (6) – Details of Nominated Director(s)

In this Section you will need to insert the name and address of every director that you wish appointed in the event of your death or earlier incapacity, use an additional sheet of paper if required.

Section (7) – Income Mandate Form, Payment Details

In this Section you need to insert your bank account details so that any dividend income can be paid into your bank account.

Section (8) – Agent for correspondence

This Section relates back to the Trustee Service Agreement and if you so indicate allows us to correspond via your agent; if you want to do this you will need to insert their details.

Part 2 – Settlor Identification Evidence

This Section sets out the form of personal identification information that you will need to provide to us. You will need to show this to your relevant third party professional, and they will need to insert their details and sign as appropriate.

Section 3 – Contacts

If you would like further information on the subject matter of this Guide please contact Zac Lucas at zac.lucas@harneys.com or Sheila George at sheila.george@harneys.com or your usual contact at Harneys. Alternatively, you can visit our website at 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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