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The trusted solution in wealth structuring

British Virgin Islands - Reserve director

Many BVI companies are used as private holding companies, often run by and for the benefit of a single individual. As a result, a significant number of BVI companies have a sole director and sole member, who are one and the same person ("the Entrepreneur"). This arrangement is legal for BVI companies, and does not cause problems while the Entrepreneur remains alive.

The problem

A substantial problem arises, however, should the Entrepreneur die. Unless the shares of the BVI company have been placed into trust, then the company will be subject to BVI probate, which is a time-consuming, expensive and public process. This factsheet deals only with the appointment of directors, the BVI probate process, and how to avoid it is detailed separately.

On the death of the Entrepreneur, his or her heirs will not be able to take control of the company until the probate process has been completed in the BVI. As the company has no remaining director or shareholder, there is no party that has the power to appoint a new director. As a result, the company will continue to have no serving directors and will not be able to function for several months or more, which could have very serious implications.

The solution

While recognising that many clients do not wish for other directors to be appointed to their private companies, Nerine does not encourage clients to establish a company with a sole member/sole director for the reasons stated above.

If there is no other option, then Nerine strongly suggests that the Entrepreneur also appoint a reserve director. The reserve director could be a family member, or a trusted professional or advisor. Nerine can also provide the service of acting as reserve director.

If a reserve director had been appointed (for example, the adult children of the Entrepreneur) prior to the Entrepreneur's death, then the reserve director could continue to operate the company immediately on the death of the Entrepreneur, without any delay.

It is important to note that the reserve director has no duties or responsibilities until the death of the Entrepreneur.

The legislation

Section 113 (7) of the BVI Business Companies Act states that:

"Where a company has only one member who is an individual and that member is also the sole director of the company,

notwithstanding anything contained in the memorandum or articles, that sole member/director may, by instrument in writing, nominate a person who is not disqualified from being a director of the company under section 111(1) as a reserve director of the company to act in the place of the sole director in the event of his death”.

The procedures

In order to appoint a reserve director, a simple director's resolution is required to be signed by the Entrepreneur, and the reserve director must sign a letter of consent. The register of directors, held confidentially in the BVI by the registered agent, will then be updated.

The appointment of the reserve director can be revoked or amended at any time in writing by the Entrepreneur.

Nerine can assist with drafting all required documentation and updating the register of directors.

If Nerine are to provide a reserve director, there will be an additional one off acceptance fee. No further fees will be incurred in respect of this appointment until such time as the Entrepreneur dies and the reserve director undertakes his duties.

Conclusion

Nerine strongly suggests that for any BVI company with a sole member/director that a reserve director be appointed.

It is a cost-effective method to ensure the continued operations of a BVI company, even in the worst case scenario of the death of the Entrepreneur who is the sole member/director.