The trusted solution in wealth structuring

# The Nerine Life Trust

## The Life Trust is a refined version of the BVI VISTA trust used to avoid the need for a grant of probate in the BVI. Nerine have worked with BVI legal counsel to create a life interest VISTA trust.

The intention was to create a trust structure to substitute and improve the functions of a will whilst being simple, cost effective and utilising the benefits of the BVI VISTA legislation.

The Life Trust has four basic principles:-

- that the Life Trust must be able to dispense with the need for probate following the settlor's death in respect of assets held in the trust; ensuring
- the settlor is able to make financial provision for his family after his death in a manner of his choosing; whilst
- permitting the settlor to place BVI company shares (“Designated Shares”) into a trust without interference from the trustee (subject to certain exemptions). Therefore the settlor may continue to manage a company held in this structure in the same fashion as he did before; and
- allow the settlor to benefit financially from the Designated Shares and underlying assets, while maintaining the integrity of the Trust.

### Benefits

The Life Trust is typically used where there is a sole shareholder of a BVI company. It is now also possible to use the Life Trust for joint shareholders.

Instead of owning the shares in the BVI company directly, the shareholder(s) settles the shares in the Life Trust and becomes the settlor of the trust. This has certain advantages in regard to estate planning as detailed below.

The trust is revocable by the settlor. Therefore the Designated Shares, and the control of underlying assets, can easily be transferred back into the name of the settlor.

The VISTA Trust component adds an extra benefit to the director(s) of the company as it removes the trustee’s fiduciary duty to act as a prudent investor with regard to the company. This allows the director(s) during his lifetime to operate and run the company, which is owned by the trust, as he considers fit and prudent without trustee interference.

On the death of the settlor, the trust terminates and the Designated Shares are distributed to the named beneficiaries of the trust.

The estate planning benefits are evident when compared with what happens when a sole shareholder owning shares in his own capacity dies:-

- If the sole shareholder has a will an application for a grant of probate needs to be filed. Probate needs to be sealed by the courts and can typically take between six and nine months.
- If there is no will then an application to the courts for a grant of letters of administration will need to be made before the shares can be transferred (in accordance with the laws where the settlor is domiciled), again this can take between six and nine months.
- Grants of probate and grants of letters of administration are public documents in the BVI therefore confidentiality as to share ownership and the value of the shares is lost.
- Some jurisdictions impose forced heirship rules, which determine how a person's assets must pass on death and these might not be in line with the shareholders wishes.
- If there is a sole director, and no reserve director, the management of the company is effectively paralysed until a grant is received and a new director appointed by the new shareholder. Even with a reserve director no decisions that require shareholder consent can be made until the grant is received.

All of these obstacles are overcome by the Life Trust owning the shares. Simply put the shareholder no longer owns the shares, the trustees do, and as the shares no longer form part of the shareholder's estate they can be distributed by the trustees in accordance with the terms of the trust on his death.

Until the death of the settlor he retains a life interest in the Life Trust which means he is automatically entitled to receive the income from the shares held in trust. The settlor is able to change the remainder beneficiaries of the trust by deed at any time while he has capacity.

It is important to note the Life Trust is a basic short form trust used solely as a will replacement vehicle allowing the BVI company shares to be transferred on the death of the settlor to those persons that the settlor wished to benefit.

## Joint Settlors

The Life Trust can also be used for joint shareholders. This is particularly advantageous for couples who own shares together and want to make plans for succession on the second death.

The benefits and advantages are as above with the following differences:

- The Life Trust will terminate on the death of the second settlor and the shares will transfer to the named beneficiaries at that time.
- The settlors may revoke the Life Trust at any time and the shares will be transferred back to the original settlors.
- After the death of the first settlor it is possible for the surviving settlor to change the beneficiaries.
- If the instructions of the settlors conflict the Trustee is permitted not to follow them.

## What the Life Trust is not

The Life Trust is not designed to be a tax planning vehicle and we recommend obtaining independent legal and tax advice. Additionally it is not designed for complex succession matters, nor any flexibility on distributions after the settlor's death and no continuation of the trust.

These can be encompassed in other forms of trust structures such as a traditional VISTA trust which, whilst more expensive, can be specifically tailored to the settlors particular needs.

Please note this is not, a comprehensive summary or a legal opinion on the Life Trust but merely an information sheet designed to introduce the concept of a Life Trust and point out some of the benefits of this form of trust.

Additionally if you require a legal opinion on the effectiveness of the Life Trust we are happy to facilitate the production of such a legal opinion from the BVI legal counsel who assisted with the drafting of the deed.