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British Virgin Islands Will

Many BVI companies are used as private holding companies, the shares of which are owned beneficially by an individual or individuals, often for reasons of confidentiality. Such an arrangement is not problematic, while such individuals remain alive.

The problem

Shares in a BVI company are personal property (section 33 of the BVI Business Companies Act). This means that they are treated in the same way as property that is physically located in the BVI.

This also applies to BVI shares that are held by a nominee shareholder under a bare declaration of trust for an individual, who, although not named in the register of members, is the actual beneficial owner of the company.

The implications are that on the death of an individual who owns shares in a BVI company ("the Shareholder"), the shares can only be disposed of in a manner that BVI law permits. That is to say, they will be disposed of in the manner specified in the last will and testament of their owner or, if he/she died without leaving a valid will, in the manner provided under the Intestates Estates Act of the BVI. In our experience, many international clients who use BVI companies are unaware of this important fact.

If the Shareholder does not have a BVI will, or if his overseas will, though dealing with the disposal of his BVI property, was not executed in the manner required by BVI law (see below), then on his death he will be intestate with respect to his BVI assets. The result is that the BVI property will be distributed by the BVI courts to persons under the law of the BVI and not according to the wishes of the Shareholder.

It is important to note that, even with a BVI will that covers BVI assets; the BVI probate process is public, takes approximately 6 months and can be expensive. This is what is meant when it is said that the probate process, whether or not there is a will, is a public and lengthy process:

- Application for probate must be made to the High Court Registry exhibiting the will, the death certificate of the deceased, and the property and value of the property of the deceased in the BVI;
- Notice of the application for probate must be advertised in two successive issues of a local newspaper so that anyone who wishes to oppose the application may do so;
- Fourteen days must elapse before the Registrar can consider the application;
- It then takes a while before the Registrar examines every document filed and calls a conference if necessary before the grant is issued.

The solution

In order to avoid the BVI courts and the probate process altogether, the preferred solution is for the shares in a BVI company to be held as part of a trust settlement. However, many clients are uncomfortable with ceding control of their assets to a trustee, and likewise do not wish to pay professional trustee fees.

If there is no trust settlement, the next best solution is to execute a BVI will or to ensure that an overseas will is executed in accordance with BVI law and includes the Shareholder's BVI property.

A BVI will that deals with the Shareholder's BVI property (e.g. shares in a BVI company), will ensure that the assets are distributed according to the Shareholder's wishes on his death. A BVI will can be prepared and executed quickly and easily, and will remove uncertainty and further delays.

The procedures

At least three persons must be party and execute a BVI will. These are the testator, in this case the Shareholder, and a minimum of two independent witnesses.

The testator must first sign and date the will in the presence of both witnesses, and the witnesses must sign it in the presence of the testator and in the presence of each other. If they sign at different times, the will is invalid. It is also desirable that the testator and the witness initial each page of the will if it consists of more than one page. It is also best practice for the witnesses to print their name, address and occupation under their signature.

On the death of the testator, the will must be produced to the court in the BVI for probate, and one of the witnesses must swear an affidavit that he was present with the other witness and that they both saw the testator sign the will and that they then signed it as witnesses.

Nerine can refer you to lawyers who are able to draft the BVI will and ensure its proper execution.

Conclusion

It is vitally important that individuals who beneficially own shares in a BVI company understand that the shares are BVI property, and the implications of that.

On the death of the Shareholder, the BVI courts will have jurisdiction over the shares. Whilst a trust settlement is preferable and recommended, in the absence of such it is strongly advised to have a BVI will in place to ensure that the shares are distributed according to the wishes of the Shareholder.