



CONFIDENTEM

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THE DEFAULT SUCCESSION COMPANY

A TRUST ALTERNATIVE

This document is a supplement to “The Last Will and Testament” and “Revocable Settlor Reserved Powers Trust”.

This document discusses the “Default Succession Company”. This vehicle has many possible applications which can be incorporated into specific functions or as part of a broader estate and succession plan.

THE DEFAULT SUCCESSION COMPANY

The Companies Act of both Samoa and the Cooks Islands, permits an international company to include provisions in its articles of association that cause a designated membership interest to automatically vest in a specified person upon the happening of a specified event. The specified event that gives rise to the automatic divestment can be any event or occurrence relative to the objectives of the owner of the membership interest. When such a vesting occurs no person other than the specified person shall have any rights in or to that membership interest. Subject to the provisions of the articles, no action is required by the original owner of the membership interest to effect the transfer or vesting of ownership of the membership interest. Simply stated, succession to ownership of the international company is effected through the default provisions expressed in the company’s constitution.

Simple and complex arrangements can be established within this framework. Consider a simple family succession arrangement:

- Mr. and Mrs. Chan establish a default succession company (“the Company”); they are joint shareholders, meaning the survivor will inherit the ownership interest of the first to die.
- Mr. and Mrs. Chan are appointed the directors of the Company. They have full control during their joint lifetime. They can either establish direct investment holdings with the Company or they might establish an underlying BVI or other company for certain investment or asset holding purposes.
- In drafting the Articles of Incorporation of the Company, the definition of ‘specified event’ is edited to include “the death of the survivor of the two members, being the persons entered in the register of members as the joint holders of Share Certificate No. 2”. The specified event can include other provisions such as mental incapacity.
- The ‘specified persons’ and the manner in which the membership interest is transferred to them, on occurrence of the specified event, is then recorded in a Schedule that attaches to the Articles of Incorporation. Detailed provisions can be made for equitable or other distributions to children, with provisions to allow for the failure of a child surviving and allocating interests to their spouse or issue.
- The detailed family provisions are not publicly visible so the privacy around the intentions is maintained.

HOW IT CAN BE USED

The applications of a default succession company can be far reaching and may suit either comprehensive solutions or a segment of a broader arrangement. The following are some considerations for the application:

- Probate avoidance: many clients hold shares in investment holding companies in their personal name. On the death of the shareholder, the probate process (assuming there is a Will) will delay the transfer of the shares and will be a public exercise. The default succession company avoids probate.



- Mental incapacity: if a 'specified event' is defined as the mental incapacity of a shareholder, then the shares could be transferred immediately upon proving mental incapacity to the 'specified person' (this might be a close family relative or the trustee of a trust that has already been settled). Again, where clients hold shares in investment companies in their personal name and have not put into place a Lasting Power of Attorney, this can create significant problems. A default succession company resolves these issues by defining mental incapacity as a 'specified event'.
- Trust alternative for a civil law client: many wealth management clients in Asia are from civil law jurisdictions and are unfamiliar with trusts and the concept of relinquishing ownership and control to a third party (Trustee). A default succession company can operate as a simple form of succession structure for such clients whilst ensuring they retain full control and legal ownership during their lifetime.
- Specific gifts: for the transfer of specific assets to 'specified persons' on determinable events. For example, a client may wish to purchase a property and leave it to one of their children, whilst other assets for other beneficiaries may be held in separate structures.
- Future settlements: in combination with a standby SRPT or fully settled SRPT. For example, a client holds private equity investments in a default succession company; he has bankable investments already settled to a trust, and his Will deals with the settlement of his real estate holdings to the trust on his demise (often a stamp duty exempt exercise). Under the provisions, the shares in the default succession company will be settled to the trust on the event of his death or mental incapacity.

SUMMARY

The Default Succession Company provides a simple and cost effective solution to many issues and in its basic form acts as a perfect 'simple form trust'. More complex structures can be achieved with default succession companies, or under common-law, e.g. through the use of the new Cayman Islands Foundation Company, or the civil law form; the choice being dependent on client needs.

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The information given in this memorandum should be used as a guide only.
Before making significant business decisions, professional advice should be obtained.