

# Succession Issues for Individual Shareholders – A Basic Guide

The world of succession planning is one ripe with a complex array of considerations for the clients of financial services and wealth solutions firms and advisory to attempt to navigate. In this piece, Hong Kong's RDG Fiduciary Services' Founder, Richard Grasby, attempts to deconstruct some of the options and structures available to those individuals who are seeking to get their assets and affairs in order, and thus facilitate a smooth transition to the next generation when such a need arises.



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Individual owners of wealth hold a great variety of assets. Often these assets are held via limited liability companies (or the asset itself is shares in such companies). Two popular jurisdictions for such companies are Hong Kong and the British Virgin Islands (“BVI”) but there are of course many options.

In many cases, such individual shareholders have done little or no planning in respect of their death<sup>1</sup>. Furthermore, many consider the use of the company itself as “planning”.

More seriously it is important to note that:

- (a) certain other attempted planning may not work; and
- (b) there is often an incorrect understanding of what will happen in the event of the shareholder’s death.

This note will highlight some of these issues and the author will gladly provide further advice in respect of such matters.

## **What is the process to transfer shares following the death of a registered shareholder?**

The only person(s) entitled to deal with shares in a BVI or Hong Kong company are the persons named in a valid grant of representation (“Grant”) relevant to such jurisdiction. A Grant is needed whether or not there is a will naming executors ( called a grant of probate) or where there is no will or a will with no executors appointed over the relevant assets (a grant of letters of administration). There does not need to be a separate will for each jurisdiction although this is commonly seen in practice. All that is needed in respect of shares is a will which is valid<sup>2</sup> under the domicile<sup>3</sup> of the deceased at death. Grants obtained in one jurisdiction may in certain cases be “resealed” for use in another – although in the case of BVI and Hong Kong this is a limited number<sup>4</sup>.

Obtaining a Grant can take several months (assuming no complications) and during such time the deceased’s shares are paralysed. Furthermore, in many cases, the same person is the sole director and sole shareholder of the company so there is no mechanism to appoint a



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new director to run the company. It is important to note that in such cases both Hong Kong and BVI allow a “reserve director” to be appointed<sup>5</sup>.

Having obtained a Grant, the administrators of the deceased’s estate can deal with the shares. Subject to debts and other similar restrictions, the shares will pass in accordance with a valid will or under the laws of intestacy of the deceased’s domicile.

## **What if the registered shareholder is a nominee for the deceased?**

In this case, the beneficial interest under the nominee’ship is part of the estate of the deceased and the personal representatives (holding a valid Grant) are the only persons who can direct the nominee in respect of the shares held by the nominee. The nominee has no power to act otherwise.

## **Planning which does not work**

The use of powers of attorney, nominees (with letters of wishes given to the nominee to direct the nominee) and signed undated share transfer forms<sup>6</sup> do not work<sup>7</sup> for succession purposes.

In such cases the authority of the attorney/nominee/holder of the signed undated share transfer form ceases on death and any documents executed<sup>8</sup> by such person are invalid.

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<sup>1</sup> See Basic Guide on uses of trusts at [https://www.linkedin.com/posts/richard-grasby\\_trusts-trustees-successionplanning-activity-6696401390048292864\\_Z3m](https://www.linkedin.com/posts/richard-grasby_trusts-trustees-successionplanning-activity-6696401390048292864_Z3m)

<sup>2</sup> If not, the intestacy rules will apply.

<sup>3</sup> Domicile to be determined in accordance with the rules in Hong Kong or BVI as appropriate.

<sup>4</sup> BVI will soon significantly increase this number.

Were the directors to approve a transfer of shares based on such process, they would run the risk of being personally liable.

### Use of joint tenancies (with rights of survivorship)

This is a limited option which may be suitable in simple cases or as a stop-gap.

In this instance, on the death of the first of the joint owners to die, the survivor will become the absolute owner of the shares. The main drawback of such a strategy is that joint owners are concurrent owners (not consecutive owners) and have immediate rights as shareholders. Having minor children as one of the joint tenants also gives rise to certain issues.

### Other corporate vehicles

In certain cases, and with bespoke drafting, succession issues can be dealt with using multiple share classes, companies limited by guarantee, foundation companies and LLCs.

However, these are not all available in Hong Kong and the BVI. The author would be happy to give further details.

### Lifetime trusts<sup>9</sup>

A lifetime trust can remove the need for a Grant. It can also deal with the shareholder's mental incapacity. Furthermore, lifetime trusts can be set up to give the settlor a certain degree of control and can also be revocable if so desired.

### Use of Private Placement Life Insurance ("PPLI")

PPLI is an investment linked insurance policy<sup>10</sup>. It is customised to each client and is therefore only suitable for relatively wealthy clients. Assets are held by the insurance company and not the holder of the policy. In this case the shares would be held by the insurance company. ■

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## Getting Personal with Richard Grasby

Richard Grasby is an experienced trusts, funds, family office and private wealth lawyer. He has experience in multiple jurisdictions and has been admitted as a lawyer in England & Wales, the Cayman Islands and the BVI.

Richard has expertise in the establishment and administration of offshore entities including trusts, companies and investment funds. He has significant experience in compliance, governance and account opening. Richard also has considerable involvement in private trust companies, family constitutions and succession planning. He has worked with clients and advisers in numerous jurisdictions.

Richard lived and worked in Asia for over 12 years. Prior to that, he was based in the Cayman Islands. He has also worked in Jersey and London.

Richard is the immediate past chair of the STEP Hong Kong branch, a committee member of the STEP Business Families Global Special Interest Group and a committee member of the STEP International Client Global Special Interest Group. He is a member of the Hong Kong Trustees Association and a lecturer on their Trust Training Certificate course. He is an elected member of the International Academy of Estate and Trust Law.

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<sup>5</sup>Such reserve director assumes the role of director in the event of the director's death.

<sup>6</sup>To be dated with a date prior to the date of death

<sup>7</sup>Save in respect of certain security interests.

<sup>8</sup>Or dated and delivered.

<sup>9</sup>See [https://www.linkedin.com/posts/richard-grasby\\_trusts-trustees-successionplanning-activity-6696401390048292864- Z3m](https://www.linkedin.com/posts/richard-grasby_trusts-trustees-successionplanning-activity-6696401390048292864- Z3m)

<sup>10</sup>See <https://www.hubbis.com/article/ppli-an-overlooked-planning-tool>