

# Why a guarantee company can be a beautiful solution to a taxing problem

Going through probate is both expensive and time-consuming. For many commentators, including me, just avoiding that drawn-out process is reason enough to place one's assets into a trust or a foundation.

Even for a simple estate, probate can rarely be wound up in less than a year. An estate with assets located in different countries will normally take at least two years, and the procedures will typically cost 4 to 6 per cent of the estate's value.

If you know when you are going to die, then you need to do nothing until nearer the time. If you don't – like most of us – then do something about it now. Making a will is always necessary, and it's surprising how many haven't done it. But putting the majority of your assets into a trust, a foundation or a lovely guarantee company may well be the best solution.

Guarantee companies are an extremely useful alternative to a trust or civil law foundation. They are structured like most social clubs, which are actually companies "limited by guarantee". When you

## Tax File

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join the club you become a guarantee member of that company rather than being a shareholder of the club.

If you buy shares in a company, its creditors cannot demand that you pay more if the firm goes bust. Your liability is limited in this way. Members of a guarantee company have their liability limited in a different way.

They become members of the company by guaranteeing the debts of the company up to a certain specified – usually nominal – amount. While a share is an asset, a guarantee membership is a potential liability: it only falls due if the company gets into financial difficulty.

The guarantee membership can carry the same rights, privileges and obligations as a shareholder, namely votes, the rights to dividends and to capital. Frequently, you will find members with financial rights but

no votes, and others with votes only. The beauty of the guarantee membership is that it avoids the probate procedure when you die. Like membership in a club, it is generally non-transferable and expires on the death of the member. This facet is particularly useful.

A guarantee company can be structured along the lines of a civil law foundation, which may be more familiar to citizens of common-law countries.

For example, the head of the family, Mr X, may turn over the ownership of his personal assets to a guarantee company or one of its subsidiary firms. He and other family members might be the directors. He could be a Class A member with 100 votes, his wife the Class B member with 10 votes and his three children Class C members with one vote each.

He might also include a committee that has the power to expel members and/or approve further applications for membership.

During his lifetime he would have 100 votes out of a total of 113, and therefore control the company.

On his death, resignation or expulsion, Mrs X would have 10 votes out of the remaining 13, and therefore have control. When she dies, the three children would be left with one vote each, and they can work out the question of control among themselves.

In another way of structuring it, Mr X holds a non-participating Class A membership which carries 100 votes. A professional trust company can hold a non-participating Class B membership which carries 10 votes, while Mrs X and the children hold non-voting participating shares.

The voting control would allow Mr X to appoint or fire directors. He could also rearrange the company ownership as he chooses, adding or expelling members.

Thus, you have an extremely flexible personal holding company. To use another analogy, the participating members are like the beneficiaries under a discretionary trust – and the voting members are like the trustees. But since it is a company, it is much more easily understood than either a foundation or a trust.

At the same time, it will have

similar advantages in asset-protection, taxes and estate management if carefully structured.

When a member dies, there is normally an immediate transfer away from the deceased's estate equal to the value of the expired membership. In essence, this is calculated as the value of the underlying assets of the company divided by the number of memberships that carry rights to capital.

This could constitute grounds for estate duty, which would depend on the domicile and residency of the member. But probate would be avoided, so it is difficult to see how estate duty could be calculated and who would have the duty to report to the taxes office responsible for collecting estate duty.

Anyone with substantial assets would be well advised to get their affairs in order and this structure might be just what is required.



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