

Structures for Doing Business

Apart from the great climate and scenic environment, The Bahamas is also an established corporate and financial hub which is regularly used by both private individuals and corporate entities as a vantage point for their financial portfolio. Often recognized for its proximity to North America and for its number of professionals involved in the corporate and financial industry, investors worldwide often choose The Bahamas as their financial centre of the western hemisphere.

A number of investment and corporate vehicles are available when selecting a structure for doing business in The Bahamas, although certain businesses require a particular vehicle (i.e. bank formation or insurance businesses, which require a corporate structure). As in most jurisdictions, the first step in establishing your corporate vehicle is the identity of the vehicle itself which must be approved by the Registrar of Companies and registered under the Business Names Act. This process involves securing a certificate from the office of the Registrar General which may be approved within 24 hours of submission.

In most instances there are no restrictions on capitalization nor are there any investor tax deductions by the Government, making the creation of investment vehicles clear-cut without complication. Investment structures for doing business in The Bahamas include the following:

Sole Proprietorships

Investors may become sole proprietors whom are not registered to be registered in The Bahamas. Investors will require a business license and a shop license if appropriate, and the name of his business should be registered under the Business Names Act. There is no fee payable simply for commencing business as a sole proprietor and the investor (as sole proprietor) will be personally liable for expenses associated with the operation of the business. There are no restrictions on the capitalization required to launch the business however the investor may be required to demonstrate the ability to adequately fund the investment.

Government fees payable will be the required fees for renewal of the Business licence, however there will be no tax payable in connection with the operation of the sole proprietorship.

Limited Liability Companies

Limited liability companies are permitted under Bahamian law and may be incorporated under the Companies Act 1992 (for local limited liability companies) or the International Business Companies Act 2000 (for international business companies).

Companies Under The Companies Act 1992 (Domestic Limited Companies)

A domestic resident company limited by shares is usually formed for the purposes of carrying on local business. Companies are incorporated under the Companies Act 1992 by two or more persons signing a memorandum which satisfies the requirements of the relevant Act and by submitting it to the Registrar accompanied by required affidavits and declarations. The Registrar will issue a certificate of incorporation evidencing the incorporation of the company. These Certificates of Incorporation may take up to a week to be issued by the Registrar, bearing the date on which the memorandum was submitted to the Registrar. There is no requirement that a national of The Bahamas or a related state be a participant, manager or director of the Company, nor are there any restrictions on capitalization or tax consequences for utilizing a company incorporated under the 1992 Companies Act.

In establishing a domestic limited company there must be at least two directors. The company's annual return includes a list of the members, and is kept on the public register. An annual audit can be dispensed with, if all shareholders agree. There is no requirement to file financial statements. Shares need not have a par value, and when paid up, need not have distinguishing numbers. Bearer shares can be issued with exchange control permission.

Fees for incorporation are *\$300 upon filing of the memorandum of incorporation and *\$50 on the filing of the company's articles of association. Furthermore, where the company has not less than 60 per cent of its shares beneficially owned by Bahamians it must pay *\$350.00 per annum. Where less than 60 % of its shares are beneficially owned by Bahamians it must pay *\$1,000.00 per annum.

Companies Under The International Business Companies Act 2000 (International Business Companies)

The International Business Company is the most widely used vehicle for offshore operations in the Bahamas; it normally takes the form of a private company limited by shares. Until 2001, there was no need to register details of beneficial owners, directors or officers, but under the International Business Companies Act 2001 which came into force at the start of 2001 IBCs are required to submit their identities, addresses and names of directors and owners to the Registrar General's Department.

Otherwise, statutory requirements are minimal, and flexible: only one director, who may be corporate, and two shareholders are required. Shareholders, directors and officers need not be resident in the Bahamas and there is no stipulation as to their nationality. There is no minimum capital requirement; shares must be registered and may be issued in any currency; bearer shares are no longer permitted. Accounts need not be kept; however, if they are kept there is no requirement for an audit. A share register needs to be kept; it is unclear whether nominee shareholders are still permitted. Shareholders and directors meetings need not be held in the Bahamas and can be held by telephone. The Memorandum and Articles of

Association are the only documents to be held on the public record. The legislation contains asset protection clauses against actions emanating from without the Bahamas; it also contains provisions for the protection of minority shareholders.

Unless given special permission by the Central Bank of The Bahamas, IBC status is granted subject to certain conditions: no business may be transacted with residents in the Bahamas. No ownership interest in real property in the Bahamas is permitted; property may be leased for office use only. Banking, insurance or re-insurance business is not permitted. Engaging in the business of company management or providing registered facilities for Bahamian incorporated companies is not permitted. IBCs are permitted to own shares in other Bahamian companies, maintain bank accounts in the jurisdiction and employ the services of local professionals. It is usual to use a registered agent in the Bahamas to incorporate an IBC (eventually it is obligatory to appoint one anyway). Normally, the formation process takes no more than one day. A company incorporated or (if foreign) registered under the Companies Act 1992 can switch to IBC status if it qualifies under the legislation.

Fees for formation of an IBC are based on the company's authorized share capital. Government fees for incorporation are *\$300 upon filing of the memorandum and *\$30 on filing of the articles. Further, on the 1st January of each year the company must pay an annual fee of *\$350.00. There is no requirement that a national of The Bahamas or a related state be a participant, manager or director of the Company. Further, there are no restrictions on capitalization and there are no tax consequences for utilizing an IBC.

An IBC may also be established for a limited duration. It is exempt from Bahamian Exchange Control, from stamp duty and from other taxes and estate duties for 20 years from the date of incorporation. An IBC can be managed, controlled and operated from the Bahamas.

Company Limited by Guarantee

Under the Companies Act, a company limited by guarantee must have a minimum of two members; the Memorandum of Association contains a statement of the amount up to which the members guarantee the company's debts. The Articles can provide for the members to have differing 'shares' of the assets and liabilities. The Company Limited by Guarantee has certain advantages, including that there is no list of members on the annual return, and that control over assets can be achieved without the use of shares; in some jurisdictions, profits realized from such companies are classified as capital gains rather than as income. Specialist advice is required by anyone considering the use of a company limited by guarantee.

Unlimited Liability Companies

A public company formed under the Companies Act is similar to a private company limited by shares except that there is a compulsory annual audit, and there must be at least three

directors. A list of all officers, directors and managers of the company must be kept at the registered office and sent to the Registrar-General along with the annual return.

The procedure and cost for incorporation of these companies is the same as mentioned for the incorporation of limited liability companies. The nature of shareholder's liability is detailed in the memorandum of association of the company.

Limited Duration Company. The International Business Company (Amendment) Act 1994 introduced the Limited Duration Company, which is essentially the same as the IBC but with a life limited to 30 years. This form is directed towards a certain class of US investors - when suitably structured the LDC has the characteristics of a partnership and is treated as such in the US, where it is known as a Limited Liability Company.

Foreign Company (also known as Subsidiaries/ Branches /Representative Offices)

Companies incorporated outside The Bahamas may conduct business in The Bahamas by registering as a foreign company under the Companies Act 1992. It may operate a branch in the Bahamas with minimal formality and no registration requirements, but once the branch is recognized as an 'undertaking' under the Companies Act 1992, or as a 'trading' branch, it has to register with the Registrar-General. The following amount to having 'undertaking' status: the keeping of a place of business. A Foreign Company may be required to hold a license for specified business (i.e. securities, insurance, etc.).

If the foreign company (branch) intends to trade within the Bahamas or to employ more than two Bahamians, it needs to apply to the Bahamas Investment Authority for clearance from the National Economic Council, and it needs to obtain the relevant business license as does a Bahamian company. It is open to a qualifying foreign company, once registered, to become an International Business Company.

Registration may be effected by deposit of documents with the Registrar containing particulars of the foreign company, which involves filing a notarized copy of the company's Memorandum and Articles of Association (or its Statutes) and details of the directors and officers. A Certificate of Registration is issued, and the company (the branch) then has the same position as a Bahamian incorporated company, i.e. it must maintain a local registered office, etc as with any other incorporated entity in The Bahamas.

Stamp duty for a foreign company is *\$600 and the registration fee is *\$50. Foreign companies registered in The Bahamas pay an annual fee of *\$1,000. There is no requirement that a Bahamian become a participant, manager or director. There are no capitalization requirements and no tax consequences for an investor.

Segregated Account Companies

Commonly used by captive insurance and investment funds, a Segregated Account Company (SAC) is a type of company with a series of accounts with assets linked to one or more of the segregated accounts. The Segregated Account Companies Act, 2004 provides for the registration of Segregated Account Companies in The Bahamas, along with regulations which protect Assets linked to a segregated account from claims of creditors of other segregated accounts not linked to the asset, as well as informing other parties with whom it does business that it is a SAC. The Act also provides for the mandatory drafting of a governing instrument which evidences the rights, interests and obligations of account owners.

A SAC must be incorporated under the Companies Act or the International Business Companies Act and then registered as a SAC by filing a request with the Company Registrar. Written consent of the company's primary regulator and, if the company has conducted business prior to registration, the consent of all known creditors must be received. The SAC is also required to appoint a Representative to be resident and licensed in The Bahamas. Once the Registrar has approved the application and registration fees have been paid, the company is registered as a SAC and a notice of the registration is published in the Gazette.

Joint Ventures

Joint Ventures are also permitted under the laws of The Bahamas. There are no registration or incorporation requirements for joint ventures. Fees for establishing a joint venture will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in connection with advising generally on the joint venture and for preparation of documents. There is no requirement that a Bahamian or a foreign national be a participant, manager or director in a joint venture and there are no restrictions on capitalization. Further, there are no special rules which determine an investor's potential liability and under Bahamian law there are no tax consequences for participating in a joint venture.

Partnerships

This is one of the most common business arrangements held by professional service providers (i.e. doctors, accountants, engineers, architects, etc) along with other business minded persons who wish to pool their resources and enter into a partnership. Legally speaking, a Partnership is a voluntary association of two or more persons/ individuals carrying on a business for the intent of making profits. Bahamian law recognizes and permits both general and limited liability partnerships under the Partnership Act (Ch. 281).

General Partnership

A partner in a general partnership will potentially be personally liable for the debts contracted on behalf of the firm although as between partners his liability may be limited to the proportionate value of his share in the partnership. There is no requirement that a national of The Bahamas or a related state be a partner in a general partnership arrangement.

Fees for establishing a general partnership relationship will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in connection with advising generally on the partnership and for preparation of documents (upon acquiring the services of an attorney/ legal consultant). There are no Bahamian tax consequences to the investor for participating in a general partnership arrangement.

Limited Liability Partnership

A partnership, with limited liability, may be formed by two or more persons for the transaction of any mercantile, mechanical or manufacturing business within The Bahamas, except banking or insurance. In any such partnership, one or more of the members shall be called the general partners and shall be jointly and severally responsible, as partners now are by law; and the other members shall be called the special partners, who shall each contribute a specific amount of capital in cash, or other property such as cash value, to the common stock; and such special partners shall not be liable for the debts of the partnership beyond the amount of the funds so contributed by them respectively to the capital (except as provided in the Partnership Limited Liability Act).

The individuals involved in forming such partnerships are required to draft and sign a memorandum of co-partnership, which will be similar to the form in the schedule of the Partnership Limited Liability Act. After the memorandum of co-partnership has been executed, the general partners named therein shall also execute a solemn declaration before a notary public to the effect that such portions of the capital stock as have been contributed in cash by the partners involved and have been deposited in a bank at Nassau in the name of the firm and produce to the notary to be annexed to a declaration certificate provided by the manager of the bank. The partners shall also declare that the amount in money or other property at cash value, specified in the memorandum has been actually and in good faith contributed for the purpose of being applied as specified in the memorandum.

The memorandum and the declaration with the certificate of the manager of the bank must be recorded in the Registry of Records. Once recorded, the partners must publish the terms of the partnership in all newspapers printed in The Bahamas for at least six weeks immediately after the recording. It is important to note that until the publication is made for that period, the partnership shall not be deemed a partnership with limited liability under the Act.

Fees for establishing a limited liability partnership will vary depending upon the complexity of the arrangement and will usually be restricted to fees for professional services rendered in

connection with general advice. There is no requirement that a national of The Bahamas or a related state be a general or special partner. Further, there are no restrictions on contributions to the capital and there are no Bahamian tax consequences to the investor for participating in a limited liability partnership.

Exempted Limited Partnership

The Exempted Limited Partnership Act (1995) created a partnership form (ELP) equivalent to the International Business Company, and has the same limitations on local activity as the IBC (see above). The structure is the same as for a limited partnership, whereby a general partner can also be a limited partner, and one of the general partners must be either a Bahamian resident or a company incorporated under the Companies Act 1992 or the International Business Companies Act 1989.

An ELP must be registered, and the names and addresses of all general partners must be filed. On issue of the registration certificate, the ELP becomes exempt for 50 years from exchange controls, from all forms of taxation, from stamp duty, and from business license fees. Please note that should one of the general partners is a Bahamian resident, there may be some exchange control implications involved in the creation of the ELP.

The initial registration fee for an ELP is *\$850, and the continuing annual fee is *\$450. An annual declaration must be filed confirming adherence to the local trading prohibition.

Undisclosed Partnerships

Undisclosed partnerships are permitted in The Bahamas as there are no specific regulations governing undisclosed partnerships. Undisclosed partnerships are formed by private contract and fees will vary depending on the complexity of the relationship. There is no requirement that a national of The Bahamas or a related state be a participant, manager or director in an undisclosed partnership. A partner in an undisclosed partnership will potentially be personally liable for the debts contracted on behalf of the firm although as between partners his liability may be limited to the proportionate value of his share in the partnership. There are no Bahamian tax consequences to the investor for participating in an undisclosed partnership arrangement.

Trusts

The trust laws of The Bahamas is perhaps one of the most updated legislation group within the country. Based on English trust law, trust legislation was codified in the Trustee Act 1893, and later repealed by the Trustee Act and the Variation of Trusts Act Cap 166. The Trust (Choice of Governing Law) Act 1989 protects against forced heirship provisions while

the Fraudulent Dispositions Act 1991 strengthened the position of asset protection trusts. Trust legislation dealing with purpose trusts was then introduced into Bahamian law in 2004.

Trusts (other than those holding Bahamian real estate) with non-resident beneficiaries are exempt from all taxes, including stamp duty on transfers into trust. Under the 1998 Act, new trusts need to be stamped with a \$50 Bahamas revenue stamp, which can be bought for cash and does not involve any disclosures. The 1998 Act provides for the appointment of a 'protector of trust', effectively a supervisor of the trustee(s), and also managing and custodian trustees. A company offering trust services must obtain a licence under the Banks and Trust Companies Act 1965 and conform to various conditions.

Asset Protection Trusts (APTs)

The operation of asset protection trusts in The Bahamas is supported by the Fraudulent Disposition Act, 1991. This Act provides for the protection of financial assets of a settlor by placing them out of the reach of litigation commenced more than two years after the assets were placed under the trust. Under the Fraudulent Disposition Act foreign judgments are not recognized.

Purpose Trusts

Investors may use a purpose trust as a component to their investment scheme, as it can be created for purposes which are not charitable and will not need an individual or corporate beneficiary. However, the objective behind a purpose trusts must be possible and sufficiently certain to allow the trust to be carried out, and not be contrary to public policy or be unlawful.

Purpose trusts can be either fixed or discretionary and unless otherwise expressed in the trust instrument, the trustee may distribute capital and income between different authorized purposes, individuals, corporations and charitable purposes.

There are a wide range of assets which can be the subject of purpose trusts such as holding shares of a private company for philanthropic and charitable purposes or, for asset purchase or financing transactions. However, land or any interests in land are excluded.

Each purpose trust must have an "authorized applicant" appointed under the trust instrument, who can enforce the purpose trust and who has standing to make court applications pertaining to matters involving the purpose trust. Purpose trusts being administered for profit or reward, must appoint a trustee who is either, a licensed bank or trust company, counsel or attorney, a registered accountant or any other person designated by the Minister with responsibility for the Purpose Trust Act 2004. The rule against perpetuities or remoteness of vesting does not apply to purpose trusts.

Foundations

As an alternative to trusts and corporations, wealth management planners may employ the use of a Bahamian foundation. The foundation is best understood as a hybrid between a trust and a company. The foundation will have beneficiaries and may have a protector. It can be established by a will and no forced heriship rules apply. It may be revoked by the founder if provided for in the charter by which it is established.

Upon registration the foundation will be a legal entity, resident and domiciled in The Bahamas with the capacity to sue and be sued in its own name. It may enjoy unlimited duration. The assets transferred to the foundation will become exclusively its assets and shall cease to be the assets of the person who or which made the endowment. The foundation documents will identify its beneficiaries which may be individuals, a charity or the public at large. The foundation assets will not become the assets of a beneficiary unless and until distributed in accordance with the provisions of the foundation charter.

The foundation must have assets valued not less than B\$10,000.00 or \$US10,000.00 or the equivalent thereof in another currency. The foundation will have a stated purpose or object which may be any lawful purpose and may, but need not, be charitable. The Act describes the main purposes or objects of a foundation as including the management of its assets. This may involve the buying and selling of such assets.

Types of Business

The following is a list of areas of investment especially targeted by the Government of The Bahamas for overseas investors:

- Touristic Resorts
- Upscale Condominium, Time Share and Second Home Developments
- International Business Centres
- Marinas
- Information And Data Processing Services
- Ship Repair And Other Services
- Light Manufacturing For Export
- Agro Industries
- Food Processing
- Banking and other Financial Services
- Captive Insurances
- Aircraft Services
- Pharmaceutical manufacturing
- Off-shore Medical Centres
- Sea/Air Business Centres
- Film and Television recording facilities

Business License Fees

Under the Business Licenses Act 1980 (as amended) enterprises operating in the Bahamas are liable to pay annual license fees. Non-resident entities, International Business Companies, Limited Duration Companies and Exempted Limited Partnerships are not liable for these fees; nor are banks, trust companies, insurance companies, mutual funds or ship holding companies, all of which have their own separate fee regimes. Business License Fees depend on annual turnover and gross profit percentage; the rules are complicated and professional advice is necessary. Some illustrative situations are as follows: businesses with turnover below \$50,000 are exempt. Businesses with turnover between \$50,000 and \$100,000 pay between \$250 and \$800 depending on the level of gross profit. Larger businesses pay gradually increasing amounts; a business with turnover of \$30m and a high gross profit percentage might pay as much as \$500,000 or 1% of turnover.

Payroll Taxes

Under the National Insurance Act 1972 as amended, Bahamian employers, employees and the self-employed pay social security contributions.

Employees pay 3.4% of earnings (up to maximum earnings of \$13,000 pa); employers pay 5.4% of earnings to the same maximum; self-employed persons pay 8.8% of earnings to the same maximum.

Although all employers and employees pay these contributions, whether or not they are resident, benefits can generally be claimed only by resident Bahamians. Even in Paradise, it seems, there are thorns on the roses. Expatriates returning home to die at 60 after a lifetime of service in the Bahamas may be able to get a refund of contributions, or can elect to receive a pension.

Stamp Duties

Stamp duties are payable in a number of situations in the Bahamas. The most important of these are company incorporation, real estate transactions and overseas remittances of Bahamian currency. Stamp duty on the capital (initially and on subsequent increases) of a domestic limited company runs at \$64 on the first \$5,000 and \$3 on each additional \$1,000. Stamp duty on real estate transactions ranges from 2% on small amounts to 8% on sales over \$100,000. It is normally shared between the parties. There is a 1% stamp duty on mortgages paid by the borrower. Bahamian currency exported from the jurisdiction is stamped at 0.25%.

