



FINANCIAL SERVICES

Companies under the Companies Act, 1992

Companies are incorporated under the Companies Act 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. Provided that all is found to be in order, the Registrar will issue a certificate of incorporation evidencing the incorporation of the company. Certificates of incorporation can typically be issued within a few days. Government fees for the incorporation and filing of the requisite documents with the Registrar are approximately \$540. Annual fees are payable on the 1st January of each year. Further there are no restrictions on capitalization and there are no tax consequences in The Bahamas which are specific to utilizing a company incorporated under the Companies Act.

Companies under the International Business Companies Act, 2000

An International Business Companies can engage in business outside of the Bahamas but with special permission they may engage in business in The Bahamas. A company is incorporated under the IBC Act by two or more persons subscribing to a memorandum which satisfies the requirements of the Act. The memorandum and articles must be registered with the Registrar of Companies who will issue a certificate of incorporation certifying that the company is incorporated. Certificates of incorporation can typically be issued within a few days. The certificate will however bear the date on which the memorandum and articles were submitted to the Registrar. Government fees for incorporation and filing of the requisite documents with the Registrar are approximately \$480. Annual fees are payable on the 1st January of each year. There are no restrictions on capitalization and there are no tax consequences which are specific to utilising a company incorporated under the IBC Act in this jurisdiction. An International Business Company may be established for a limited duration.

Unlimited Liability Companies

Unlimited liability companies may be incorporated under the Companies Act or under the IBC Act. 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. 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 in this jurisdiction which are specific to utilising a company incorporated under the IBC Act.

Segregated Account Companies (SACs)

The Segregated Account Companies Act, 2004 provides for the registration of SACs in The Bahamas. Commonly used by captive insurance and investment funds, a SAC is a type of company with a series of accounts with assets linked to one or more of the segregated accounts. Assets linked to a segregated account are protected from claims of creditors of other segregated accounts, to which the assets are not linked. A governing instrument evidences the rights, interests and obligations of account owners. A SAC must inform parties with whom it does business that it is a SAC.

TRUST AND PRIVATE CLIENT



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McKINNEY, BANCROFT and HUGHES is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in the cities of Nassau and Freeport.

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The trust and private client group advises on most aspects of international trust and private client matters. The firm has a wealth of experience in this area and its lawyers are frequently called upon to advise high net worth individuals and families on the use of the panoply of off shore Bahamian structures available to them. Lawyers are trained to think innovatively in addressing client needs. From advising on the use of a Settlor Reserved Powers Trust as a variant to the traditional discretionary trust to the use of a Purpose Trust in conjunction with a Private Trust Company, the firm's trust and private client practice group is renowned for its cutting edge thinking.

Trust

Trusts are recognized in The Bahamas and are governed by the Trustee Act 1998. A trust under Bahamian law is a relationship between parties and is not an entity with a separate juristic existence. Assets transferred to a trustee under trust cease to be legally owned by the transferor and become subject to the terms of the trust. Bahamian law allows an investor to be the settlor and/or beneficiary of a trust. An individual investor may also act as trustee of a trust governed by Bahamian law. There is no legal requirement for trusts to be registered or for public disclosures to be made. Exchange control regulations do not apply to non-resident settlors, donors, beneficiaries and trustees participating in an offshore trust. An exemption exists in respect of trusts with non-resident beneficiaries, in connection with the payment of taxes including stamp duty on transfers of property into trusts. All trusts established after the commencement of the Trustee Act must be stamped with a \$50 revenue stamp. Other features of the Trustee Act are:

- Settlers can retain a wide range of powers without the trusts being attacked as shams;
- Subject to the trust document, trustees are given wide statutory investment and management powers;
- Indemnities;
- A wide range of trust purposes including accumulation trusts; and
- The role of protector is recognized. recognized.

The Trust (Choice of Governing Law) Act, 1998 provides an additional dimension to the law of trusts with the protection it affords against the law of forced heirship.

The Bahamas has a sizeable and sophisticated cadre of professionals capable of advising on various aspects of trust formation and administration. Corporate trustees must be licensed and are regulated by the Central Bank of The Bahamas pursuant to and under the Banks and Trust Companies Regulation Act, 2000.

Asset Protection Trusts (APT)

The operation of asset protection trusts in The Bahamas is supported by the Fraudulent Dispositions Act. 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 Dispositions Act foreign judgments are not recognized.

Purpose Trusts

Persons investing in The Bahamas may use a purpose trust as a component of their investment scheme. A purpose trust can be created for purposes which are not charitable and will not require an individual or corporate beneficiary. The intent behind a purpose trust must (i) be possible and sufficiently certain to allow the trust to be carried out; and (ii) not be contrary to public policy or unlawful.

Purpose trusts can be 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 is a wide range of assets which can be the subject of purpose trusts, but land, and any interest in land are excluded. Although the following is not an exhaustive list, generally, purpose trusts can be used (i) to hold shares of a private company, (ii) for philanthropic and charitable purposes, (iii) for asset purchase or financing transactions; and (iv) for the structuring of voting rights in a company.

Each purpose trust must have an “authorized applicant” appointed under the trust instrument. The authorized applicant is a person 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.

Private Trust Companies

A Private Trust Company (PTC) is a company incorporated under the Companies Act or the IBC Act which acts as trustee only for a trust or trusts created or to be created by or at the direction of a designated person or persons or an individual or individuals who are related to the designated person described within the designating instrument.

The establishment of the PTC allows for the trusteeship of a defined class of trusts by reference to the designated person. All other settlors of trusts for whom the PTC acts as trustee must be related to the designated person or persons.

PTCs require a registered representative who must meet certain criteria including being: (i) a separate legal entity, (ii) either a licensee of the Central Bank of The Bahamas or a Financial and Corporate Services Provider approved by the Central Bank and (iii) resident in The Bahamas. PTCs also require a special director unless an officer of a licensee of the Central Bank serves as registered representative. Special directors need not be resident in The Bahamas but they must possess a good reputation, experience in a discipline relevant to the administration of trusts (law, finance, commerce, investment management or accountancy).

PTCs serve as a convenient vehicle for the transfer of control over family business interests and assets. By their nature they allow for flexibility and fast and easy decision making.

Directors of a PTC are required to submit annual certification to the registered representative confirming that the company continues to qualify as a PTC.

The financial services and regulation practice group is both knowledgeable and experienced in navigating the legislation and obtaining the requisite approvals for public and private sector clients. The team is well positioned to advise on all financial services and regulatory matters including: insurance, securities and investment funds, capital markets, limited partnerships, licensing, compliance, banking, and gaming.

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 heirship 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, subject to the revocation of the charter, winding up, liquidation or being otherwise terminated. 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 articles (if any) and the Foundations Act. The foundation must have assets valued at not less than B\$10,000 or US\$10,000 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 Foundations 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.

Bahamas Executive Entity

The Bahamas Executive Entity is a unique concept vehicle created under the Executives Entity Act, 2011 designed to perform executive functions such as fiduciary duties, administrative duties, protectors, directorships or officers. The Bahamas Executive Entities or BEEs were specifically designed to cater to the family office concept and is an ideal entity with limited liability which can serve as a trustee, protector, director or as a shareholder of a private trust company in the family office context. The management and administration of a BEE is conducted through its appointed officers or council members. One of its most distinguishing factors is that a BEE has no beneficial ownership, members or shareholders however it is permitted to hold and own assets.

A BEE must have a registered office in The Bahamas, which must be the address of the Executive Entity Agent of the BEE. Additionally, a BEE must have a Founder, an Executive Entity Agent, a Secretary, Council Members, Officers, and an Auditor. All questions arising in regard to a BEE or in regard to any disposition of assets to it are determined in accordance with the laws of The Bahamas, without reference to the laws of any other jurisdiction with which the BEE or disposition or Founder may be connected.