



Guide to Companies Limited by Guarantee

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Preface

Set out below is some useful information on companies limited by guarantee under the International Business Companies Act, 2000 (Statute Laws of The Bahamas, 2000 Edition). This summary is by no means exhaustive and does not purport to contain all applicable qualifications and exceptions or to be a complete review of issues pertaining to such companies.

The International Business Companies Act, 2000 (the “IBC Act”) provides for one of four types of companies to be incorporated. These are as follows:

- A company limited by shares;
- A company limited by guarantee;
- A company limited by shares and by guarantee; and
- A company with unlimited liability.

A Company Limited by Shares

This type of company is by far the most common type. Shareholders of this type of company are essentially owners of the company and such a company obtains its capital from the issue of shares to its shareholders. The liability of the members or shareholders of this type of company is limited to the amount, if any, unpaid on the shares held by such shareholder. The IBC Act requires that for such a company, the Memorandum of Association contain a statement of, “the authorised capital of the company setting forth the aggregate of the par value, if any, that the company is authorised to issue and the amount if any, to be represented by shares without par value that the company is authorised to issue”. - Section 13(1)(f).

A Company Limited by Guarantee

A company limited by guarantee only is a company where the liability of its members is limited to an amount guaranteed by its members to contribute to the assets of the company in the event that it is wound up. The IBC Act requires that for such a company, the Memorandum of Association contain a statement that, “each member undertakes to contribute to the assets of the company, in the event of a winding up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the company and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required, not exceeding an amount to be specified therein”. – Section 13(1)(g).

A Company Limited by Shares and by Guarantee

This is essentially a hybrid between the company limited by shares and a company limited by guarantee. The IBC Act provides that for such a company, the Memorandum of Association has to include therein the statements

contained in sections 13(1)(f) and 13(1)(g). – Section 13(1)(h).

A Company with Unlimited Liability

With this type of company, its members have no limit on their liability, thus having unlimited liability. The IBC Act requires that for such a company, the Memorandum of Association contain a statement that the liability of the members is unlimited. – Section 13(1)(i).

This memorandum will discuss companies limited by guarantee, including such companies limited by both guarantee and by shares, under the IBC Act, and some of the general uses of companies limited by guarantee.

Companies Limited by Guarantee

This type of company is considered to be the guarantee company in its “purest form”. As discussed above, the memorandum of association of such a company has to contain a clause stating that each member undertakes to contribute to the assets of the company, in the event of a winding up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding up the company and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required, not exceeding an amount as specified in the memorandum. It is imperative that such amount be specified in the memorandum of association. Also, the guarantee is only relevant on a winding up of the company and is relevant in respect of the debts and liabilities of the company contracted before the time at which a member ceases to be a member, and of the costs, charges and expenses of winding up the company and for the adjustment of the rights of the contributories amongst themselves.

A company limited by guarantee has to include the word “limited” as part of its name and as is the case with a company limited by shares, such company has separate legal personality.

The members of such a company do not contribute initially to the capital of the company and such a company would obtain working capital or funds from alternative means such as fees, charges, donations etc. It follows then that such a company is best suited for non-commercial purposes. Such companies are typically used for charities, other

non-profit organizations, professional associations, homeowners associations etc.

Companies Limited by Guarantee and by Shares

This is a hybrid between the company limited by guarantee and the company limited by shares with characteristics of both being present. Such a company can have a share capital and raise capital from its members by the issue of shares and also provide for its members to guarantee to contribute on a winding up of the company. As stated above, in the case of such a company, the memorandum of association has to state the authorised capital of the company setting out the aggregate of par value or the amount if any, to be represented by shares without par value and a statement pertaining to the amount each member will contribute to the assets of the company on a winding up.

Members of such a company can be liable to an amount unpaid on their shares and to the guarantee which may become necessary on the winding up of the company or will only be liable to the guarantee in the event that they are not issued shares, which guarantee may become necessary on the winding up of the company.

Uses of Guarantee Companies

- Charities

One of the most common uses for a company limited by guarantee is a charity or non-profit organization that requires a corporate structure. This is useful as a charity in that it is company which provides the benefit of a separate legal entity but without the personal benefits due to members in the case of a company limited by shares, that is, with a company limited by guarantee there is no requirement for profits to be distributed to members but instead can be retained by the company.

- Quasi-trusts for Persons Unfamiliar with Trusts

A company limited by guarantee can be an attractive vehicle for persons who would wish to create a trust but are not comfortable with a trust, for example individuals from civil law countries. Such persons can use a company limited by guarantee and structure it to operate like a trust. In such a case the company limited by guarantee could operate like a foundation.

- Tax considerations

Generally speaking, such a company is exempt from Bahamian Exchange Control Regulations and from the payment of stamp duty.

Additionally, such companies are also exempt from any corporation taxes, withholding taxes, capital gain taxes or any other tax on income or distributions payable.

- Reinvestment

A company limited by guarantee can be used in structures where the main objective is to reinvest any potential profits back into the company, without making distributions to shareholders, hence any potential profits or surplus can be reinvested into and by the company.

- Protectors or Enforcers for Trusts or Foundations

A company limited by guarantee can be formed to act as a Protector or Enforcer for a trust or foundation. This use is becoming increasingly popular as the death of a member need not occasion a probate application in The Bahamas.