



Bahamian Company Law & Taxation

HIGGS & JOHNSON
Counsel & Attorneys-at-Law



Contents

Preface	2
1. Incorporation	3
2. Share Capital	3
3. Dividends & Distributions	3
4. Merger, Consolidation & Disposition of Assets	3
5. Accounting & Auditing Requirements	3
6. Register of Members	3
7. Share Register	3
8. Inspection of Books & Records	4
9. Resolutions	4
10. Subsidiaries Owning Shares in Parents	4
11. Liquidation	4
12. Indemnification	4
13. Stamp Duty on Transfers	4
14. Taxation	4



Preface

Set out below is a summary of certain provisions of the International Business Companies Act, 2000 (Statute Laws of The Bahamas, 2000 Edition), which is a useful, albeit brief, overview of Bahamian company law and taxation. 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 such matters pertaining to Bahamian corporate law and taxation which may differ from equivalent provisions in jurisdictions with which interested parties may be more familiar.

INCORPORATION

A company (an “IBC” or “the company”) incorporated under the International Business Companies Act, 2000 (the “IBC Act”) may carry on business in The Bahamas or anywhere in the world. An IBC is not required to file an annual return, however, it is required to pay an annual fee which is based on the size of its authorized capital.

SHARE CAPITAL

The IBC Act permits IBC’s to issue common shares, preference shares, redeemable shares or any combination thereof (subject to any limitation in its Memorandum or Articles).

An IBC may (subject to any limitation in its Memorandum or Articles) issue shares for money, services rendered, personal property (including other shares, debt obligations or other securities in the IBC), an estate in real property, a promissory note or any other binding obligation to contribute money or property or any combination thereof.

Where shares are issued with a par value, the consideration paid, to the extent of the par value, constitutes capital and any excess constitutes surplus. If there is no par value, the directors would determine what would constitute capital and surplus.

An IBC may (subject to any limitation in its Memorandum or Articles) increase or reduce its authorized capital by amending its Memorandum pursuant to a resolution of its directors. In this connection, the IBC may increase or reduce the number of shares which it may issue and/or increase or reduce the par value of any of its shares. An IBC may also increase its capital by transferring funds out of the surplus account into capital or reduce its capital by returning capital to surplus for the purpose of acquiring its own shares. The shares acquired may be held as treasury shares or cancelled, however if they are acquired out of capital they must be cancelled, and the amount of those shares is deducted from capital.

An IBC may not reduce its shares unless the directors determine that immediately after the reduction the company would be solvent, that is, it would be able to satisfy its liabilities as they become due in the ordinary course of its business and the realizable value of its assets will not be less than the sum of its total liabilities (other than deferred taxes).

Subject to any limitation in its Memorandum or Articles and the exceptions contained in section 32 of the IBC Act, an

IBC may purchase, redeem or otherwise acquire and hold its own shares, provided it meets the solvency test above.

DIVIDENDS & DISTRIBUTIONS

The Directors of an IBC may, by resolution, declare and pay dividends in money, shares or other property, subject to a solvency test and its Memorandum and Articles of Association.

MERGER, CONSOLIDATION AND DISPOSITION OF ASSETS

Pursuant to the IBC Act, two or more companies may merge or consolidate. On a merger or consolidation, members holding 90% of the votes of the outstanding shares or the outstanding shares of a class or series of shares entitled to vote, may give written instructions to a company directing the company to redeem the share held by the remaining members. The IBC Act further provides that an IBC may sell, transfer, lease, exchange or otherwise dispose of more than 50 per cent (by value) of its assets (if not made in the usual manner or regular course of its business). In order to effect such disposition of the assets, the directors must approve same and thereafter, submit the proposal to the members for their approval.

ACCOUNTING & AUDITING REQUIREMENTS

The IBC Act stipulates that an IBC shall keep such financial statements, accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company.

SHARE REGISTER

An IBC is required to keep a Share Register at its registered office but it is not required to file the same at the Companies Registry. The Share Register may be in such form as the directors may approve but if it is magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents. Failure to keep a Share Register is an offence under the IBC Act, the penalty which, upon summary conviction, is a fine of \$10,000.00 or 2 years’ imprisonment.

INSPECTION OF BOOKS & RECORDS

The IBC Act makes provision for a member of an IBC to inspect the Share Register, books, records, minutes and consents of such IBC in furtherance of a proper purpose. A proper purpose is defined as a purpose reasonably

related to the members interest as a member. The directors may, by resolution, refuse an inspection request if they determine that it is not in the best interest of the company to comply with the request.

SUBSIDIARIES OWNING SHARES IN PARENT

There is no express prohibition in the IBC Act with respect to a subsidiary acquiring and holding shares in a parent company.

LIQUIDATION

An IBC may be wound up voluntarily or by an order of the court. A liquidator is appointed whose duties are to identify the assets and the creditors of and claimants against the IBC and to pay or provide for payment of, or to discharge all claims, debts, liabilities and obligations of the IBC. Thereafter, the liquidator would distribute any surplus assets to the members in accordance with the Memorandum and Articles and prepare a statement of account of his actions and transactions.

INDEMNIFICATION

Subject to any limitations in its Memorandum or Articles or any unanimous shareholder agreement, an IBC may indemnify a director, an officer or a liquidator if he is or was a party or is threatened to be made a party to any threatened, pending or completed civil or administrative proceedings, provided such person acted honestly and in good faith with a view to the best interests of the company. An indemnity may also extend to any person who is or was, at the request of the company, serving as a director, officer or liquidator, or in any other capacity is or was acting for, another company or a partnership, joint venture, trust or other enterprise.

STAMP DUTY ON TRANSFERS

The Stamp Act provides that where an IBC disposes of real estate or a resident business in The Bahamas (whether it owns the business or real estate wholly or in part), it will be subject to Government stamp tax.

Subject as hereinafter provided, an IBC and its members and shareholders are exempted under the IBC, for 20 years from the date of incorporation, from payment of any business licence fees, income tax, corporation tax, capital gains tax and any other tax on income or distributions. Further, no estate, inheritance, succession or gift tax, rate, duty, levy or other similar charge would be payable in The Bahamas with respect to any shares, debt, obligations or other securities of the IBC or shareholder.

The foregoing exemptions do not apply to a person who is a resident of The Bahamas within the meaning of the Exchange Control Regulations Act or to a company incorporated or continued under this Act if a resident of The Bahamas within the meaning of the Exchange Control Regulations Act and the regulations made thereunder is the beneficial or legal owner of any of the common or preferred shares issued or to be issued by such company or acquires a legal or beneficial interest in any debt or other securities issued or to be issued by such company or is otherwise directly or indirectly entitled to receive any dividends or distributions from such a company.

EXCHANGE CONTROL

The Exchange Control Regulation Act and the regulations made thereunder do not apply to an IBC the operations of which are conducted exclusively outside of The Bahamas.