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## **MEMORANDUM ON INCORPORATION OF BERMUDA LOCAL COMPANIES**

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## **Part 1**

### **MEMORANDUM - INCORPORATION OF A LOCAL BERMUDA COMPANY**

#### **1. Incorporation**

A local Company can be incorporated by registration under the Companies Act, 1981, as amended ("the Act") which takes approximately seven days from the date of application.

The Act prohibits a Company from issuing its shares to more than twenty persons unless the Company files a prospectus in accordance with the Act.

#### **2. Control of Local Company**

Bermuda law requires that a local Company be controlled by Bermudians. In essence, at least sixty percent (60%) of the total voting rights of the Company shall be exercised by Bermudians and the percentage of shares of all classes beneficially owned by Bermudians in the Company shall not be less than sixty percent (60%) in each case. The Directors and Officers cannot authorise the issuance or transfer of any shares in a local company which will result in non-compliance by the Company with the 60/40 rule unless the Directors have the Minister's consent to do so.

#### **3. Capital**

The Company is no longer required to maintain a minimum share capital. It is required that such shares must have a par value.

Shares may be issued at par value or at a premium (i.e., for an amount in excess of the par value). However, the price need not be fully paid before the shares are issued. If the shares are not fully paid the holder of shares remains liable to the Company for the unpaid portion of the price of the shares and must pay such part of the purchase price as and when the Board of Directors shall make calls for payment.

#### **4. Stamp Duty**

The aggregate value of the shares attracts an ad valorem non-recurring stamp duty. Upon any transfer of shares, stamp duty is payable on the value of those shares.

#### **5. Exchange Control**

The Company will be 'resident' in Bermuda under the Foreign Exchange Control Regulations and must seek the permission of the Controller to open foreign currency bank accounts, to make

payments or distributions in foreign currency or to invest money in foreign securities. A transfer of shares in the Company to 'non-residents' requires the approval of the Bermuda Monetary Authority.

6. **Powers**

A local Company may engage in those business activities which are expressly set out in its Memorandum of Association. A Company may not engage in any other activities unless it first alters its Memorandum of Association in accordance with the Act.

7. **Organization**

The administration of a local Company (i.e., the relationship between the Company and its shareholders) is regulated by the Bye-laws.

The Bye-laws of a local Company should provide that no transfer of shares shall be effected unless the Directors approve such transfer by a resolution passed at a meeting of Directors or by written resolution signed by all the Directors.

In addition the Bye-laws should provide for:

- (a) the transfer of shares and registration of estate representatives of its deceased Members;
- (b) an Annual General Meeting and other General Meetings of Members;
- (c) the keeping of accounts and laying of financial statements before General Meetings;
- (d) an audit of accounts by an independent auditor;
- (e) the duties of the secretary; and
- (f) as well as the quorum and procedures for directors and members meetings, the execution of documents and a method of payment of dividends.

The Bye-laws must be read in conjunction with the Memorandum of Association of the Company and The Companies Act, 1981.

8. **Directors**

At least sixty percent (60%) of the Directors of a local Company must be Bermudian. The number of Directors is generally fixed by resolution of the Members and the minimum number would be 'two' Directors.

The Directors cannot transact business at a meeting unless a quorum (as set out in the Bye-laws) is present at the meeting.

9. **Officers**

The President and Vice President must be Directors of the Company (if more than one Vice President, then at least one of them must be a Director). One or more offices may be held by the same person. The Company must also appoint a Secretary who will be responsible for the proper keeping of the records of the Company and such Secretary need not be a Director.

10. **Auditor and Accountant**

A Company is required by the Act to appoint an independent auditor in respect of each financial year. However, a Company may waive the appointment of an auditor if all of the Members and Directors of the Company agree either in writing or at a General Meeting that in respect of any particular period of time no auditor shall be appointed to the close of the following annual general meeting.

An auditor is entitled to receive notice of every meeting of Members and to attend and be heard at such meetings on matters relating to his duties as Auditor.

Proper books of account must be kept by the Company and generally an Accountant is appointed by the Board of Directors to keep such books.

11. **Registered Office**

The registered office of the Company will generally be situated at these offices unless the Board appoints another location. Notice of the registered office must be given to the Registrar of Companies. Any change in this address may be effected by resolution of the Directors and notice must be filed with the Registrar of Companies not later than twenty-one days after the change has been effected.

The Company's share register and register of directors and officers are kept at the registered office. Any member of the public may inspect the registers during reasonable hours but not less than two hours on every business day.

12. **Transaction of Business**

The Directors are responsible for the conduct of business by the Company. Meetings of Directors may be held at any place as long as a quorum is present. A quorum for Directors' meetings is normally but not necessarily "two". Reasonable notice of every Directors' meeting must be given to each director before the meeting is to be held. Generally a notice of the meeting of Directors should specify the business to be considered at the meeting. Any written resolution signed by all the Directors is as valid as if it had been passed at a meeting of the Directors.

13. **Members' Meetings**

Meetings of Members may be held at such place as the Directors may determine. A quorum for most meetings of Members is generally set at 'two'.

The Company is required to have an annual general meeting in each calendar year. At such meeting the Directors must lay financial statements before the Members and the Auditor must give a report. However, the laying of financial statements and the auditor's report may be waived if all the Members and Directors agree to such waiver either at the meeting or in writing. The Members must also elect Directors and appoint an auditor for the ensuing year.

Every individual Member is entitled to attend the meeting or to appoint a proxy who is also a member to attend the meeting and vote on his behalf.

A corporate member may appoint a corporate representative to attend the meeting and vote on its behalf.

A Member may in any manner waive notice of a meeting of Members and the attendance of any Member at a general meeting is a waiver of notice of the meeting unless the Member attends for the purpose of objecting to the transaction of business at the meeting on the grounds that it was not lawfully called.

14. **Execution of Instruments**

The Bye-laws generally provide that documents or instruments in writing required to be executed by the Company under the corporate seal may be signed on behalf of the Company by any two Directors or a Director and the Secretary. The Directors must direct from time to time the manner in which any person or persons may sign any particular document or instrument on behalf of the Company, whether or not under seal.

15. **Corporate Records and Seals**

A Company's corporate record book and corporate seal is kept at its registered office.

The Bye-laws also should provide for the Company to have a Company Seal.

16. **Mandatory Filings**

Under the Act, a local Company is required to file with the Registrar of Companies a Return of Shareholders in the Company as at 31st December in each year. This must be in the prescribed form and must be filed not later than the 31st of March in the year following the relevant year. The filing of this form attracts a filing fee of \$42.00.

17. **Annual Government Fee**

In March of every year the Company must pay an annual Government fee of at least \$650.00 which is based on the assessable capital of the Company being not more than \$50,000.00. This amount must be paid no later than the 31st of March in each year.

18. **Company Name**

The Company must use its full name in legible characters in all business letters of the Company and in all notices and other official publications of the Company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the Company and in all bills of parcels, invoices, receipts and letters of credit of the Company.

## Part 2

### **BERMUDA MONETARY AUTHORITY REQUIREMENTS**

The Bermuda Monetary Authority ("BMA") carefully scrutinizes the ownership of Bermuda companies and partnerships and has to be satisfied that the persons who wish to form companies and partnerships are persons of integrity and good financial standing.

Any information provided to the BMA is treated in the strictest of confidence under the provision of its Incorporating Act and under the provision of The Companies Act, 1981.

The BMA looks through the corporate veil to the ultimate owners. Set out below is the information which is usually required. The BMA has the right to request further information at its discretion.

1. Where an ultimate beneficial owner is an individual:-
  - (a) the name, address, nationality and occupation of the person;
  - (b) a Personal Declaration Form for each of the proposed Non-Bermudian beneficial owners (direct, intermediate and ultimate) who propose to have an equity interest of 5% or more in the Company. In respect of Partnerships, a Declaration is to be completed by the general partner(s), where the general partner is an individual.

**N.B. Where an insurance company is being formed with individuals as the beneficial owners each individual must also provide a statement of net worth.**

2. Where an ultimate beneficial owner is a publicly quoted company:-
  - (a) the latest Annual Report to shareholders.
3. Where an ultimate beneficial owner is a private company:-
  - (a) a copy of the latest financial statements of the private company;
  - (b) a complete list of shareholders giving names, addresses, nationalities, occupations and percentages of ownership;
  - (c) a Personal Declaration on each shareholder as described in 1(b) above.
4. Where an ultimate beneficial owner is a trust:-
  - (a) the name of the trust and the country in which it was created (and is domiciled, if different);
  - (b) the name and nationality of the Settlor (creator);
  - (c) the name(s) of the Trustee(s);
  - (d) the names, addresses, nationalities and occupations (if any) of the Beneficiaries;

(e) Personal Declarations as described in 1(b) above on the Beneficiaries (if these are minors then Personal Declarations by their parents).

5. Where an ultimate beneficial owner is a partnership:-

(a) full details (including names, addresses, nationalities, and occupations) of the partners, both limited and general;

(b) financial statements of the partnership;

(c) Personal Declarations as described in 1(b) above of the general partner(s).

6. Where an ultimate beneficial owner is a Non-profit Association:-

(a) financial statements of the Association;

(b) a list of the members of the Association;

(c) a copy of the Constitution and Bye-Laws of the Association.