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DOING BUSINESS IN LATIN AMERICA & THE CARIBBEAN

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Doing Business in Latin America and the Caribbean

This publication has been prepared by the lawyers of Meritas firms to provide an overview to foreign investors and business people who have an interest in conducting business in Latin America and the Caribbean. The material in this publication is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors familiar with the specifics of your particular matter.

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The following currency notations are used in this book.

ARS	Argentinian Peso	DOP	Dominican Republic Peso
BSD	Bahamian Dollar	GTQ	Guatemalan Quetzal
BRR	Brazilian Cruzeiro Real	HNL	Honduran Lempira
KYD	Cayman Dollar	MXN	Mexican New Peso
COP	Colombian Peso	USD	United States Dollar
CRC	Costa Rican Colón	VEB	Venezuelan Bolivar

Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.

Bahamas

The Commonwealth of the Bahamas is an archipelago spanning 100,000 square miles extending southeast from Florida to northern Hispaniola. The Bahamas has an estimated land area of 5,382 square miles made up of 700 islands and 2,400 cays. There are thirty islands which are inhabited with an estimated population of just over 300,000.

GOVERNMENT

The Bahamas is a constitutional, parliamentary democracy. As a fully independent member of the British Commonwealth of Nations, the nominal Head of State is Queen Elizabeth II, represented in the Bahamas by an appointed Governor General. The head of government is the Prime Minister. The 1973 Bahamian Constitution was enacted by a Parliament composed of the Senate and the House of Assembly

ECONOMY

The economy of the Bahamas is driven by tourism, international banking and other financial services. Retail and wholesale distributive trades, manufacturing, agriculture and fisheries are the other major sectors of the economy. The gross domestic product (GDP) of The Bahamas exceeds BSD3 billion, 60% of which comes from tourism related activities. More than five million visitors are attracted annually to the Bahamas. Tourism directly or indirectly employs approximately 50,000 people.

Second to tourism, the banking and finance industry represents 20% of the GDP and directly employs about 4,400 persons, 95% of them Bahamians. More than 300 financial institutions with domiciles in over 30 countries are licensed operators in the Bahamas.

The unit of currency is the Bahamian dollar (BSD) which has parity with the U.S. dollar (USD); the U.S. dollar is also accepted.

Under the Exchange Control Act 1952 and the Exchange Control Regulations 1956, exchange controls apply to resident individuals and companies, but non-residents and the offshore entities normally used by international businesses are not subject to them.

One of the most attractive elements of investing in the Bahamas is the tax-free status accorded to income. There is no direct or indirect taxation on Bahamian personal or corporate income, capital gains, profits or dividends, and no sales, gift, inheritance or estate duties. This tax freedom is available to all resident corporations, partnerships, individuals and trusts. The annual budget of the Bahamas government is funded primarily by customs duties, stamp taxes, real property taxes plus business and other licensing fees.

The per capita income is USD11,000 per annum.

FOREIGN INVESTMENT

The government welcomes foreign investment in various sectors of the economy and has created a number of incentives to attract foreign investment. The inducement of a tax-free environment and a stable currency are enhanced by a series of investment incentives that provide relief from customs duties on approved raw materials, equipment, and building supplies, as well as allowing exemptions from business licenses and real property taxes for up to 20 years.

- **The Hotels Encouragement Act** exempts hotel developers from customs duties on raw materials and equipment. Exemptions from real property tax and licensing fees are also available.
- **The Industries Encouragement Act** exempts exporters from import duties on raw materials, equipment and business license fees. This act is of particular benefit for manufacturers.
- **The Export Manufacturing Industries Encouragement Act** provides an approved manufacturer who intends to export or annually exports at least 95% of the total approved products produced with duty-free import of raw materials, equipment and building supplies used in the manufacture of the product or facilities for the same and duty-free export of those products.
- **The Agricultural Manufactories Act** provides subsidies to agricultural businesses in the form of interest-free loans for the purchase of supplies plus exemption from duties on a wide range of products, including building suppliers, processing materials and farm trucks. It also provides exemption from export taxes.
- **The Hawksbill Creek Agreement** created the Free Trade Zone of Freeport on Grand Bahama Island which gives businesses exemption from taxes on profits, capital gains, inheritance, income, earnings, distributions, gifts, imported and exported goods. In addition, import duties and taxes on real estate have been waived through 2054.
- **The Tariff Act** provides exemptions to approved manufacturers for the import of capital equipment and raw material for garment manufacturing, food processing, the production of handicraft and souvenir items, and cottage industries.
- **The Spirit and Beer Manufacture Act** provides duty-free import of raw material and equipment for spirits and beer manufacturers.

The government of the Bahamas is committed to building an economic environment in which free enterprise can flourish; where the government assumes its proper role as regulator and facilitator of economic development; where ideals of transparency, fair play

and equality of treatment are paramount; and policy that maintains a stable society in which all people are afforded the opportunity to realize their maximum potential. In this regard, the National Investment Policy is designed to support an investment friendly climate which promotes Bahamian and overseas investments; fosters appropriate linkages with all sectors of the economy, in particular, the tourism and financial services sectors; encourages the exploitation of our natural resources in an environmentally sound and sustainable manner; provides for the maximum level of employment; guarantees an acceptable level of economic security and generally fosters the economic growth and development of the Bahamas.

Areas Especially Targeted for Foreign Investors

- Tourist resorts
- Upscale condominium, time share and second home development
- Marinas
- Information and data processing services
- Assembly industries
- High-tech services
- Ship registration, repair and other services
- Light manufacturing for export
- Agro-industries
- Food processing
- Mariculture
- Banking and other financial services
- Captive insurance
- Aircraft services
- Pharmaceutical manufacture
- Off-shore medical centers

Note: This list is not exhaustive and investors interested in areas not included are encouraged to bring their interest to the attention of the Ministry of Financial Services & Investments. Please note that investments of less than BSD250,000 will not be considered.

Local Partners in Joint Ventures

International investors are encouraged to establish joint ventures with Bahamian partners. The choice of such Bahamian partners is in the absolute discretion of the investor.

Areas Reserved for Bahamians

- Wholesale and retail operations
- Commission agencies engaged in the import/export trade
- Real estate and domestic property management agencies
- Domestic newspapers and magazine publications
- Domestic advertising and public relations firms
- Nightclubs and restaurants, except specialty, gourmet and ethnic restaurants operating in a hotel, resort complex or tourist attractions
- Security services
- Domestic distribution of building supplies
- Construction companies, except for special structures which require international expertise
- Personal cosmetic/beauty establishments
- Shallow water scale-fish, crustacean, mollusks and sponge-fishing operations
- Auto and appliance service operations
- Public transportation inclusive of locally solicited charter boat tours
- Landscaping

Preferential Trade Incentives

Businesses located in the Bahamas may benefit from the following preferential trade arrangements:

- The Lome Convention
- General System of Preference (GSP)
- Caribcan
- Caribbean Basin Initiative

ACQUISITION OF LAND BY FOREIGNERS

The policy of the government, which is supported by the International Persons Landholding Act, encourages foreigners to purchase second homes and invest in real estate in the Bahamas. If a foreigner buys a single family dwelling or vacant land (less than five acres) to be used in the construction of such a dwelling, then the approval of the government prior to the purchase is not required. He only needs to obtain a Certificate of Registration from the Investments Board, subsequent to the purchase. Permanent residents of the Bahamas and foreigners who inherit property in the Bahamas do not have to obtain a permit before acquiring land but must obtain a Certificate of Registration.

However, a permit is needed to acquire property in the following cases:

- If the property is undeveloped and five acres in size or larger
- If the property is not a private residence for single-family use, or it is intended for commercial purposes or development as such

RESIDENCY REQUIREMENTS

Homeowners can obtain an annually-renewable Home Owner's Residence Card which acts as a visa for entry and residence during its validity.

Investors in real estate in the amount of USD500,000 or more are eligible to apply for economic permanent residence.

ENVIRONMENTAL REGULATIONS

An environmental impact assessment is required for all large development projects.

BUSINESS ENTITIES

Persons wishing to utilize a business entity may choose from a variety of options which include companies incorporated under the Companies Act 1992, foreign companies registered under the Companies Act 1992, the International Business Companies Act 2000 typically for offshore investments and Limited Duration Companies under Section 170 of the International Business Companies Act 2000.

COMPANIES ACT (1992)

Companies formed under the Companies Act 1992 can be private companies limited by shares or by guaranty, or can be public companies. For all these company types, there must be a minimum of two members.

Company Name

All companies are required to nominate or reserve a suitable name that is acceptable to the Registrar of Companies in the Bahamas. Reasons for refusal by the Registrar to accept the proposed name are

- a company with an identical or similar name exists on the Register
- the proposed name contains unacceptable words inferring connection to a government, statutory body, English or foreign Royal Family, or suggestion that the company is a bank or insurance company without meeting the necessary licensing requirements

The availability of any particular name can normally be confirmed within minutes through the Companies Registry's website.

Registered Office

All properly constituted companies are required to maintain a registered office in the Bahamas where they are able to accept the service of official notices. The registered office is not necessarily the location where the business is actually carried out.

There is a statutory requirement to appoint a “local registered agent,” customarily located at the registered office, who is responsible for accepting such process or service of official notices.

Directors

Companies Act 1992 companies must have a minimum of two directors. The company’s annual return must include a list of the members, and is kept on the public register.

Minimum Capital Stock

Companies Act 1992 companies have no minimum capital requirements, but the government fees required increase for larger levels of authorized capital.

Annual General Meeting

The first general meeting is to be held within three months of the date of incorporation. A general meeting is required once per year. Meetings may be held within or outside the Bahamas.

Formal Requirements

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. Shares may be issued without par value and, when paid up, need not have any distinguishing numbers.

INTERNATIONAL BUSINESS COMPANIES ACT 2000

The International Business Companies Act 2000 (the Act) replaced the International Business Companies Act 1989 of the Commonwealth of The Bahamas and came into effect on 29 December 2000, with a transitional period ending on 29 December 2001.

An International Business Company (IBC) is tailor-made for the needs of international business and has the attractive features of:

- Limited liability
- Minimal legal restrictions
- Ease of administration

- Speed of incorporation
- Exemption from exchange controls
- Not being subject to taxes, estate duties and stamp duties

The main features of an IBC are:

- An IBC is exempt from the Exchange Control Regulations and no application need be made to The Central Bank of The Bahamas in connection with its incorporation or the issue or transfer of its shares or other securities unless it is carrying on business in The Bahamas or leases or owns real estate in The Bahamas.
- Incorporation can take place immediately after the Registrar of Companies approves its name, usually within a few hours. The name of an IBC can end in the word “Limited”, “Corporation”, “Incorporated”, “*Societe Anonyme*” or “*Sociedad Anonima*”, or their respective abbreviations.
- The shareholders have limited liability.
- IBCs may now conduct business in the Bahamas subject to certain regulatory approvals, and may own an interest in real property in the Bahamas.
- An IBC may own real estate outside the Bahamas, and is well suited for this purpose.
- An IBC may only issue registered shares. Bearer shares that may have been issued by IBCs incorporated under the International Business Companies Act 1989 are now void for all purposes of law. An IBC may issue par value and no par value shares, unnumbered shares, shares of different classes, options and warrants, redeemable and convertible shares. Shares may be issued in any currency.
- An IBC may purchase, redeem or otherwise acquire and hold its own shares, provided the IBC meets the statutory tests afterwards.
- An IBC requires two subscribers, but after incorporation requires only one registered shareholder, and only one director, which may be a corporate director.
- Neither shareholders nor directors need be resident in the Bahamas, and there is no requirement that shareholders’ or directors’ meetings be held in the Bahamas.
- It is necessary to keep a Register of Shareholders and a Register of Directors and Officers but the registered shareholders, directors and officers may be nominees. The Register of Shareholders is only required to be kept at the Registered Office of the company. Ordinarily, only shareholders may inspect the register of shareholders. The Register of Directors and Officers, however, must be filed with the Registrar of Companies and is open to inspection.

- An IBC is not required to keep books and records in the Bahamas, other than as mentioned above.
- There is no requirement to hold an annual general meeting or to file an annual return with the Registrar General.
- The doctrine of *ultra vires* has no application to an IBC.
- An IBC may issue shares in payment of a dividend. Dividends may be paid out of any assets provided the company meets the statutory tests afterwards.
- There are no special requirements regarding loans and borrowings by an IBC (save for one doing domestic business, in which case exchange control regulations may apply) and it may guarantee the indebtedness of any other person and mortgage its assets as security.
- There is no requirement that an IBC shall appoint an auditor.
- Directors' meetings and shareholders' meetings may be held by telephone conference call. Resolutions of directors and of shareholders need not be passed at a meeting but may be consented to in writing or by means of electronic communication.
- The Act contains provisions for the protection of the assets of the company for the benefit of the company, its creditors and its shareholders.
- The Act contains provision for the protection of minority shareholders. Shareholders may requisition a meeting of shareholders.
- An IBC must have a registered office and a registered agent in the Bahamas.
- An IBC may continue in existence although its situs is transferred to another jurisdiction. Similarly, a foreign company which qualifies as an IBC may continue in existence as a company registered in the Bahamas. A company incorporated under the laws of a foreign jurisdiction which would satisfy the requirements for an IBC in the Bahamas may provisionally register as an IBC in order to become an IBC at a future date (see Foreign Companies on page 46.)
- An IBC may be incorporated as a Limited Duration Company. A Limited Duration IBC is a limited liability company which is treated as a partnership for United States tax purposes (see Limited Duration Companies on page 43).

COMPANIES LIMITED BY GUARANTY

This type of company has no authorized capital. Rather than subscribing for and being issued shares, members are elected into membership without any requirement to pay in any capital, although normally each new member is expected to pay an entry subscription fee upon election to membership at a rate as determined by the directors. Whether an entry subscription is paid or not, by virtue of election to membership, every member

guarantees to pay a set sum (determined by the Articles of Association) upon demand in the event of the company being insolvent upon its liquidation. A member's liability is limited to his guaranty. Usually this is USD 100.

Membership ceases on death or resignation (although, unless specific provision is made, a deceased member's estate may continue to have an equitable interest in the company. This can provide the basis of transferability of members' interests). The subscriptions that have been paid (both the initial entry subscriptions as well as any subsequent annual subscriptions) are not returnable upon a member ceasing to be a member. In principle, each member has equal voting rights and equal rights to income or capital distributions, should any be made, although flexibility in these matters can be provided to allow for different classes of membership (e.g. associate membership, non-voting membership, etc.). It is possible to draft transferability of membership rights, if required.

Guaranty companies can be designed to be capable of distributing profits only to members and for distributions to others to be void. The Articles of Association may provide for the rights to distribution to be held by one class of members, while the voting rights are held by a second class of members. Alternatively, the distribution rights may be separated altogether from membership as such, thereby enabling a member to sell his rights to a third party. Finally, companies limited by guaranty may be used for charitable purposes, as an alternative to a trust structure. In such a case, the company is not permitted to make distributions to its members, but can only make payments for charitable purposes, as its Objects shall direct. However, unless otherwise determined by the Articles of Association, each member participates equally in the assets of the company irrespective of any variation in subscriptions paid.

Within the framework of the guaranty company there is a great deal of flexibility available in structuring a company to achieve its objectives. The following are examples of some of the many benefits to the company limited by guaranty structure:

- Although the company must have at least one director to control the company, there may also be a Protector, as is often found in trusts, and it may be made obligatory for the directors to have the protector's consent before implementing defined decisions, such as the election of new members, or the disposing of company assets.
- There may be one or more classes of members with differing rights to vote or participate in income or capital distributions.
- There may be prohibitions on certain classes of members, or prohibitions on members resident in certain defined countries, from participating in income distributions, or from holding other rights.

- With regard to the transferability of membership, there is no doubt that membership is an “interest” in a company. Unless the Articles of Association make specific provision otherwise, a member may transfer his interest, while remaining a member. Although a member may cease to be a member by resignation or death, the “interest” may continue. While this can cause problems, it may also create opportunities for tax planning. But, of course, the Articles of Association can specifically state that upon the death or resignation of a member, his “interest” ceases. This would then be analogous to the position of a life interest in a trust.

SEGREGATED ACCOUNTS COMPANY

A Segregated Accounts Company (SAC) is a company registered under the provisions of Section 6 of the Segregated Accounts Companies Act 2004, unless the context otherwise requires. A SAC can be incorporated under the Companies Act or the International Business Companies Act and then registered as a SAC by filing a request with the Registrar of Companies. Written consent of the company’s primary regulator is required and, if the company has conducted business prior to registration, the consent of all known creditors must be received. The SAC is 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.

LIMITED DURATION COMPANIES

Section 170 of the International Business Companies Act allows for the creation of Limited Duration Companies (LDC), which are identical to IBCs in all requirements and stipulations, except that they have a limited life, which cannot exceed 30 years. The company name must also state its LDC status. The transfer of a share or interest of a member requires the unanimous resolution of all other members if stipulated in the articles of the company. The articles may also provide for certain members to manage the company based on their share or other ownership interest.

JOINT VENTURES

Joint Ventures are also permitted under Bahamian law. 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. However, the government of the Bahamas encourages joint ventures between Bahamians and foreign nationals. 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. Joint ventures involving non-Bahamians require the prior approval of the government of the Bahamas.

PARTNERSHIP

Bahamian law recognizes and permits both general and limited liability partnerships.

General 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. There are no Bahamian tax consequences to the investor for participating in a general partnership arrangement.

Limited Liability Partnership

Under the Partnership Limited Liability Act (1861) 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 this type partnership one or more of the members shall be called the general partners and the other members shall be called the special partners. The persons desirous of forming such partnerships shall make and severally sign a memorandum of co-partnership. The memorandum and the declaration with a certificate from the manager of a 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 and until the publication is made for that period. 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. 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

Limited Partnerships are regulated by the Exempted Limited Partnership Act 1995.

An Exempted Limited Partnership (ELP) may be formed for any lawful purpose to be carried out and undertaken either in or from within the Bahamas or elsewhere provided

that the ELP shall not undertake business with the public in the Bahamas other than so far as may be necessary for conducting the business of the ELP outside of the Bahamas.

An ELP must have at least one general partner and at least one limited partner. A company may be the general partner or a limited partner of an ELP. At least one general partner shall:

- if an individual, be resident in the Bahamas
- if a company, be incorporated either under the Companies Act 1992 (or registered under that Act) or the International Business Companies Act 2000

All ELPs must be registered with the Registrar of Exempted Limited Partnerships of the Bahamas and must maintain a registered office in the Bahamas.

Subject to any express or implied term of the partnership agreement, an ELP shall not be terminated or dissolved by:

- a change in any one or more of the limited partners or general partners
- the assignment of the whole or part of the partnership interest of a limited partner
- the death, bankruptcy, dissolution or winding up of a limited partner
- the incapacity of a limited partner
- any one or more of the limited partners granting a mortgage or charge or other form of security interest over the whole or part of his partnership interest
- the sale, exchange, lease, mortgage, pledge or other transfer of any of the assets of the exempted limited partnership

An ELP or any partner thereof (general or limited) shall not be subject to any business license fee, income tax, capital gains tax, or any other tax on income or distributions accruing to or derived from such partnership or in connection with any transaction to which that partnership or partner, as the case may be, is a party.

An ELP is exempt from the provisions of the Exchange Control Regulations for a period of 50 years from the date of registration of the ELP.

Interests in an ELP are exempt from any and all estate taxes, duties or levies whatsoever for a period of 50 years from the date of registration of the ELP.

All instruments relating to:

- transfers of property to or by an ELP
- transactions in respect of the interests of an ELP
- other transactions relating to the business of an ELP

shall be exempt from the payment of Stamp Duty for a period of 50 years from the date of registration of the ELP.

FOUNDATIONS

Foundations were introduced by the Foundations Act 2004 and accompanying regulations. The Act sets out the characteristics of a foundation, the method of establishing and registering it and the qualifications and duties of the officers and of any supervisory individuals. The Act also dictates the general conduct and method for the liquidation and winding up of a foundation.

There are no perpetuity period rules applicable to Bahamian foundations, which immediately provide for continual unending succession if the founder desires it. A Bahamian foundation is not subject to forced heirship laws of a foreign jurisdiction.

A Bahamian foundation is a distinct legal entity and assets placed within the foundation are owned solely by it. A change in a Bahamian foundation's governing body does not change the legal ownership of the foundation's assets. There is no statutory requirement for an external audit unless the foundation's charter so provides.

A foundation established in another country may re-domicile in the Bahamas and a Bahamian foundation may re-domicile into another country, provided such a move is permitted in that country.

The registration process for a Bahamian foundation is comparable to that of a company registration, making it a legal entity that must be filed with the Registrar General of the Bahamas. Like that of a company, the name of the Bahamian foundation must be reserved at the Registrar General's office prior to submission of the necessary documentation. The foundation's charter must contain a statement that the value of the assets of the foundation may not be less than BSD 10,000 or the equivalent in any other currency.

Officers of the foundation must keep proper records and accounts, which can be inspected by any officer, foundation council member, founder, auditor or any other supervisory person at any time. However, confidentiality provisions restrict any person acquiring information from disclosing such information relating to the foundation, without the expressed consent from the founder and the beneficiaries, or as required by law, or a Bahamian court.

FOREIGN COMPANIES

A company formed in another jurisdiction may continue as an IBC in the Bahamas upon the filing of Articles of Continuation with the Registrar, containing the name of the IBC,

the date it was incorporated, and the other information which is required of all companies to be filed in the Memorandum of Association and Articles of Association.

TRUSTS

Trusts are recognized in the Bahamas and are governed by the Trustee Act 1998. Bahamian trust law is based on English common law, and the Bahamian Trustee Act 1893. Later legislation includes The Trust (Choice of Governing Law) Act 1989, the Fraudulent Dispositions Act 1991 and the Trustee Act 1998, which repealed the Trustee Act 1893 and the Variation of Trusts Act 1983.

A trust under Bahamian law is a relationship between parties and is not an entity with a separate juristic existence. Bahamian law allows an investor to be the grantor or beneficiary under 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 nonresident beneficiaries in connection with the payment of taxes including stamp duty on transfers into the trusts. All trusts established after the commencement of the Trustee Act must be stamped with a USD50 revenue stamp. Some of the more important provisions of the Trustee Act 1998 are as follows:

- A settlor can retain a wide range of powers without falling foul of 'sham' trust legislation
- Trustees are given wide statutory investment and management powers unless the trust deed negates them
- Trustees' indemnities are recited in the statute
- A wide range of trust purposes are encompassed, including accumulation trusts
- The role of Protector is recognized
- There are extensive disclosure provisions
- Exemption from all taxes and from stamp duty (an initial USD50 stamp is required on all trust deeds)
- Exemption from registration except where an interest in Bahamian property is to be protected
- Exemption from exchange control regulations for nonresident beneficiaries

The Trust (Choice of Governing Law) Act 1998 gives protection to Bahamian trusts and their settlors in civil law countries against forced inheritance claims. The Act makes Bahamian law the proper law of a trust if the deed so declares, and makes the trust immune to foreign judgments.

The Fraudulent Dispositions Act 1991 establishes a two-year limitation period for creditors' attacks on asset protection trusts. The attacker must prove fraud against the settlor.

Most trust work in the Bahamas is handled by Public or Restricted Trust Administration companies, which are often affiliated to or owned by banks. Trust Administrators are licensed by the Governor of the Central Bank under the Banks and Trust Companies Regulation Act 2000. A foreign company can apply for a license as a branch, or with a subsidiary, which is necessarily a Bahamian-incorporated company (not an International Business Company).

PERPETUITY

The Perpetuities (Amendment) Act 2004 increased the period of perpetuity from 80 to 150 years.

TAXATION

The Bahamas is not a party to any double taxation agreements, but a Tax & Information Exchange Agreement (TIEA) has recently been entered into between the U.S. and the Bahamas.

LABOR LAW

Work-place relations and employment are governed by the Employment Act 2000 and the Industrial Relations Act 1970 as amended in 2000.

Written contracts of employment are not mandatory, but are often prepared, especially when a union is involved. Upon completion of each 12 months of employment, two weeks of vacation shall be given. Where an individual has been employed for six months or more but less than one year, he/she is entitled to one week of pay. Where an individual has been employed for one year or more but less than seven years, he/she shall be entitled to two weeks of pay. The law allows not less than 12 weeks of maternity leave (however, the individual must have been employed for 12 months).

According to the Employment Act 2000, there is a legal entitlement to notice on termination; however this varies according to the length and position of employment. There is also the option for an employer to dismiss an employee summarily without pay or notice when a fundamental breach of the contract has been committed. The grounds for summary dismissal include (but are not limited to) theft, fraudulent offenses, dishonesty, gross insubordination or insolence, gross indecency, and gross negligence.

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