International Trust Laws and Analysis 2019-4

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In the Trust Law section, this supplement contains updates to the chapters on Andorra, Anguilla, Austria, Bahamas, British Virgin Islands, Cayman Islands, Costa Rica, Dominica, Gibraltar, Guernsey, Hong Kong, Isle of Man, Macau, Mauritius, Seychelles and Switzerland.

In the Company Law section, this supplement contains updates to the chapters on Anguilla, Brazil, Greece, Pakistan and the charts on Brazil.

ANDORRA

This chapter is up-to-date as of August 2019

ANDORRA

ANALYSIS

ANDORRA
ANALYSIS OF TRUST LAWS*

After 700 years of being dominated by two co-princes, the French President and the Spanish Bishop of Seo de Urgel, the 180-square mile nation of Andorra wedged between two powerful neighbors in the Pyrenees has progressed towards greater self-rule with the adoption of its first constitution in 1993. This historic document affirms Andorra's right to have a parliamentary system of government having as its chief executive a *Cap de Govern* (Head of State).

During the period of princely rule going back to the Middle Ages, Andorran trusts have been used as an important vehicle in channeling assets under the civil law concept of *fideicomis*. *Fideicomis* is the Roman-origin word for what in common law countries is often referred to as a trust. It is the vehicle or entity through which a physical or legal person receives certain goods by gift with instructions to distribute these assets to third-party beneficiaries according to pre-established terms and conditions [*Dret Civil Vigent a Catalunya* (1923), §453, ¶100].

Andorra's almost pure tax haven status, with no tax on personal and corporate income including trust income, is of value to individual settlors of international trusts. The Foreign Investment Law, which came into effect on November 7, 2008, provides for the opening up of 200 sectors of the Andorran economy by entrepreneurs and businesses from other countries. Foreigners can now hold 100% of a business in one of the 200 designated economic sectors, including industrial production, research and development, e-commerce, and education and training. The previous limit was 33%.

Another point to consider before entering Andorra is that the country's official language is Catalan, with French and standard Castilian Spanish widely spoken. The use of English is not as prevalent as in other European countries. In December 1996, Andorra adopted a Passive Resident Law that allows foreigners to qualify for residence in the Principality if they reside within Andorra for at least 183 days in a year and do not practice or work in any professional activity. The Law on Passive Residence Permits November 2006 established that a quota would be determined periodically according to the "economic and social needs of the Principality of Andorra." An initial quota of 500 such permits was set. Passive residents do not work or carry out professional activity in the Principality. New entrants to the Principality must: show minimum annual income of 30,000 euros for the head of the family and 7,000 euros for each dependent family member; prove good conduct in their previous domicile; produce health insurance and a pension plan; own or rent a house or apartment in the Principality; pay a non-interest bearing deposit of 30,000 euros plus 7,000 for each dependent to the Andorran National Institute of Finances (INAF) which is refundable on departure.

Andorra's judicial system, based on Old Catalan and Roman Law, permits the establishment of trusts by using a trustee heir or *fideicomissario*, an individual or entity who accepts assets as a gift and distributes them to beneficiaries according to the settlor's instructions. Excellent confidentiality provisions in the *fideicomis* will probably make Andorra a much more desirable trust situs now that the Principality has emerged as a self-governing, although not yet fully sovereign, state. At present

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the country derives most of its income from serving as a free port that draws 9 million bargain-hungry shoppers a year chiefly from neighboring France and Spain.

The OECD requested in 2019 stakeholders' input on the dispute resolution process. It is reviewing Andorra's implementation of the base erosion and profit shifting (BEPS) Action Plan minimum standard on tax treaty dispute resolution under Action 14. Andorra is subject to a Stage 1 review, which focuses on changes that have been made to implement the standard.

[¶1] Legislative background. In view of the fact that the Andorran government has not approved or adopted a trust law since the first trusts appeared in the Principality and Old Catalan concepts have never been codified, the principal corpus of doctrinal reference consists of books written by famous jurists. Since 1923, the book entitled *Dret Civil Vigent a Catalunya*, by Antoni M. Borrell i Soler, has been the authoritative compendium traditionally used as a legal reference by Andorran jurists. Roman and old Catalan concepts still apply in the Principality, and various legal references discuss the law as derived from those eras. The *Code de Successions* of December 30, 1991, was adopted by the Province of Catalan and applies only to that Province and not to Andorra generally, though Andorra may well incorporate certain aspects of it in the future.

Andorran *fideicomis* or trust law is among the most complex and subtle in the world. In practice only a nominal legislative background exists since the principles of the *fideicomis*, including family foundations, fiduciary gifts, and other quasitrust devices have not been codified to any great extent. The relevant principles are derived from Old Catalan, French, Spanish, and Roman theory and practice, with the most useful formulations of these principles to be found generally in publications by recognized legal scholars. These scholarly papers often represent in practice the foundation of judicial proceedings for the establishment and functioning of devices similar to trusts and will likely continue to fulfill that role in the Principality until a codification is compiled, if ever. Insofar as can be ascertained, the English version of the Borrell i Soler text on the *fideicomis* accompanying this analysis represents the first translation ever made into English.

Andorra substantially revised its anti-money laundering regime in December 2000 with the passage of its Law on International Criminal Co-operation and the Fight against the Laundering of Money and Securities Deriving from International Delinquency (December 2000 Act). Subsequent amendments to the Andorran Criminal Code extend the predicate offenses for money laundering to all serious offenses that are punishable by a prison term of at least six months. Tax evasion is not a crime in Andorra. In 2008, Andorra ratified the UN Convention for the Suppression of the Financing of Terrorism. The implementation of the Convention led to a separate offense of terrorism financing within the Andorran Criminal Code-Article 366bis. Banks and other financial institutions are required to know, record and report the identity of customers engaging in significant transactions. Customer identification, including identification of the beneficial owner, is required at the time a business relationship is established and before any applicable transaction. The December 2000 Act imposes reporting obligations upon Andorran financial institutions, insurance and re-insurance companies, and natural persons or entities whose professions or business activities involve the movement of money or securities that may be susceptible to laundering. It specifically covers external accountants and tax advisors, real estate agents, notaries, and other legal professionals when they are acting in certain professional capacities, as well as casinos and dealers in precious stones and metals. Obligated entities must report suspicious transactions regardless of the amount involved. Reports of suspicious

transactions are made to the Unit for the Prevention of Laundering Operations, Andorra's financial intelligence unit. The government has signed asset sharing agreements with France, Spain and Switzerland. The FIU is able to exchange information with the US FinCEN. Andorra has signed cooperation agreements with the FIUs of Spain, France, Belgium, Portugal, Luxembourg, Monaco, Poland, Netherlands Antilles, Bahamas, Thailand, Albania, Mexico, Panama and Peru. Mandatory declaration forms are used at the borders. Andorra is a party to the UN Convention for the Suppression of the Financing of Terrorism, the UN Convention against Transnational Organized Crime, the 1988 UN Drug Convention but not the UN Convention against Corruption. Andorra is a member of MONEYVAL, a Financial Action Task Force-style regional body. Its most recent evaluation report is at <http://www.coe.int/t/dghl/monitoring/moneyval/ Countries/Andorra_en.asp>.

In 2013, the Council of Ministers approved two bills to strengthen the financial system. The first bill relates to the organizational requirements and operating conditions of entities, the protection of investors, market abuse and financial guarantee accords. The second bill relates to the legal status of entities. The first bill provides for the regulation of insider information and market manipulation. Andorra signed the Monetary Agreement with the European Union and the International Organization of Securities Commission (IOSCO) protocol for multilateral agreement on consultations and the information exchange. The global financial crisis forced Andorra to create a new tax regime, including the introduction of direct taxes and a value-added tax regime of 4.5%, and an 8% rate for banking and financial services.

[¶2] Formation. An international *fideicomis* or trust organized in Andorra is formed through designation of a corporation or individual as trustee or "trustee heir." The trustee heir (*fideicomissario*) is charged with the proper distribution of trust assets in accordance with the instructions of the testator-settlor [*Dret Civil Vigent a Catalunya* (1923), §453, ¶100].

Instructions may be given orally or in an entrustment provision (*clausula de confianza*) separate from the will itself and often prepared by the testator's attorneys. This provision also may decree who is authorized to name additional trustees and/or be named trustee heir. These entrustment provisions do not require any specific formalities, although it is advisable that they be in writing and notarized, with the writing serving as evidence of the testator's wishes in the event of a dispute. Other confidential and nonconfidential documents may be prepared by the settlor outside the will for executors and nontrustee heirs. Supplementary documents that are authorized or referred to by the will may set out the testator's instructions or wishes as to specific matters.

A notable aspect of the Andorran *fideicomis* is that the trustee heir is for all intents and purposes an heir as any other heir. Outside parties generally are not aware of the trustee heir's special and highly confidential duties, which are among the most sensitive in Andorran law.

Fiduciary donation is another Andorran trust device of Roman derivation. It is centered on the contractual transfer of assets by the donor to the trustee subject to the terms of the contract and for the benefit of the physical persons named in it. The donor may retain an income interest in the properties transferred.

Andorran family foundations are established through irrevocable transfers of family assets to legal entities set up to manage them and distribute income and capital to indicated family members. The foundation's managing board has flexibility in administration of the trust.

[¶3] Tax status. Andorra does not impose any individual, corporate, real estate, gift, or inheritance taxes on its residents or foreigners residing in the Principality. With scrupulous planning and professional advice on the implications of the intended dispositions in the trust, transfer of assets into the trust, accretions to them, and distribution of them can be designed so as to be nontaxable events in the Principality. There are no taxes for individuals or companies though there are annual registration fees, municipal rates, property transaction taxes and a sliding scale capital gains tax introduced in 2007. The government anticipates the adoption of two additional laws. One is intended to establish a tax rate on the profits of companies of between 5% and 10%. The other will create a value-added tax if around 4% that will replace all of the existing indirect taxes.

In June 2004, Andorra accepted the Savings Tax Directive of the European Union and from July 2005, Andorra is imposing a withholding tax of 15% (20% from July 1, 2008) on returns on savings paid to citizens of the Member States of the EU, of which 75% is remitted onwards to the states concerned. In March 2009, Andorra announced that it would cooperate with OECD principles by reaching tax information exchange agreements by November 2009, when it will pass legislation to ease its bank secrecy controls. Andorra remains on the OECD's list of "uncooperative tax havens."

Government leaders held talks with European Tax Commissioner on the mandate of the European Council of Ministers for negotiations with third countries on extending the savings tax directive. Andorra is willing to participate in the savings tax negotiations. Andorra has concluded tax information exchange agreements and negotiated its first double taxation accord. Changes to the savings tax agreement will have to enter into force simultaneously in other third countries involved in the negotiations, i.e., Liechtenstein, Switzerland, Monaco, and San Marino. Andorra plans to introduce a tax on individual income. An agreement on the automatic exchange of information was discussed.

[¶4] Minimum assets. Except as noted in this section, the Principality does not place a minimum asset requirement on heirship trusts or the other quasitrust devices at their inception. If a corporation or a corporate-style entity is formed to hold trust assets, the limiting rules of Andorran foreign participation apply. Non-Andorran nationals or foreigners not permanently resident in the Principality for at least 20 years may own only up to 33% control of a company. In the case of a corporate-style entity, minimum capital of 250,000 French francs (US$49,700) is required for joint stock companies. No minimum capital is required for limited liability companies, although a maximum of 250,000 French francs (US$49,700) has been established. Company registration fees ranging from US$400 to US$750 apply, varying according to the extent of business activities in which the company engages in the Principality.

[¶5] Residency requirement. Local residency is not required for testators (settlors) establishing Andorran *fideicomis*.

[¶6] Registration. For noncorporate trust devices, registration is not mandatory and a general registry of trusts does not exist. However, the trust fiduciary of an heirship trust retains a right to have any real property in the trust registered in his or her name as long as the filing also sets out the conditional obligation to transfer the property to the subsequent heir or beneficiary. When the trustee heir remains unidentified at the time of the settlor's death, any property of the trust still can be registered in the name of the interim fiduciary. For corporations, registration in the Company Registry is required. In the case of

fiduciary gifts, neither the donor's name as original owner nor the names of beneficiaries have to appear on any public document. Moreover, names of beneficiaries of family foundations need not be listed in public records [see generally *Dret Civil Vigent a Catalunya* (1923), §457, ¶100].

[¶7] Revocable or irrevocable; void or voidable. The Andorran *fideicomis* is revocable by the testator in the sense that the terms of the confidential directions to the trustee heir(s) as well as the testator's will may be altered at any time before the testator's death unless and to the extent that irreversible transactions have taken place at the testator's instance and in furtherance of his or her wishes. On the demise of the testator, the heirship trust becomes irrevocable. Fiduciary gift trusts are revocable if they are stated to be so. If they are not specifically so stated, they are not. Family foundations are generally irrevocable, as actual ownership of the assets is transferred, whereas inter vivos fiduciary gift trusts, even when a postmortem disposition is anticipated, are purely contractual in nature [see generally *Dret Civil Vigent a Catalunya* (1923), §454, ¶100].

Andorran testamentary heirship trusts are void at inception in several instances. The testamentary instrument must be free of any taint of fraud or suspicion as to its authenticity. The latter could arise if, for example, a named or eventual inheritor is deemed unworthy or the terms of the instrument are in conflict with applicable law or pre-existing binding commitments. A presumption of invalidity might also arise when trustee heirs claim the trust provisions grant them ultimate inheritance rights. However, a *fideicomis* may authorize trustee heirs to designate their own replacements in the event of their death before fulfillment of trust terms, and this designation is effective. A testamentary heirship trust may also be annulled when the deed establishing the *fideicomis* is itself of no effect. If the trust is not clear and operable according to its terms, the testamentary document that is the subject of the trust may be voided.

For voidable trusts, specific substitutions under a trust are invalid when (1) a condition in a conditional trust is not fulfilled; (2) all trustee heirs predecease fulfillment of the condition (at least when the trust is "pure," that is, intended to be carried out on the testator's death or for a term [*Dret Civil Vigent a Catalunya* (1923), §454, ¶100]); or (3) all trustee heirs die without revealing the trust's existence or its

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ANGUILLA

This chapter is up-to-date as of August 2019

ANGUILLA
ANALYSIS OF TRUST LAWS

Renowned for rejecting independence in 1967, Anguilla voted against membership as an Associated State of the United Kingdom and, after a military victory, reverted to its former status as a British Crown Colony. Two years later, the tiny Caribbean island of Anguilla adopted a policy of not collecting taxes from residents and soon afterward invited offshore investors to take advantage of its pure zero tax haven status. Although Anguilla allows international companies to conduct operations on the island and deal with residents, response initially had been disappointing until 1991 when a progressive administration reversed its approach to the financial sector with a package of legislation that included adoption of liberal trust company laws and regulations. Until then comparatively few offshore trusts had been established, since creation and operation of trusts originally had been based on English common law.

Today Anguilla's aggressive program to attract offshore investors has been among the more successful in the Caribbean as the rapid growth has resulted as an offshore base for approximately 4500 companies. Anguilla gained considerable prestige as a progressive offshore jurisdiction in late 1998 when it began operation of its rapid Anguilla Commercial Online Registration Network (ACORN). The nation's state-of-the-art companies registration system, developed with financial assistance from the British government, permits all types of entities, including trusts to be incorporated and registered electronically in Anguilla within 24 hours. Working closely with the Anguilla registry, ACORN helps practitioners in handling trusts by ensuring security, reliability and that regulatory issues are fully addressed.

Motivated by its desire to make Anguilla less dependent on financial aid from the mother country, the United Kingdom is trying to make Anguilla a more effective center for offshore trusts and international business. In response to the recommendations of the Bank of England's Gallagher Report calling for Anguilla to revise its offshore legislation, the British Minister for Overseas Development arranged a three-year US$15 million grant to evolve a Country Development Plan. As a result, Anguilla approved an attractive legislative package effective January 1, 1995 containing six acts, including one on trusts based largely on Belizean legislation and another on fraudulent dispositions offering an asset protection program.

The OECD requested in 2019 stakeholders' input on the dispute resolution process. It is reviewing Anguilla's implementation of the base erosion and profit shifting (BEPS) Action Plan minimum standard on tax treaty dispute resolution under Action 14. Anguilla is subject to a Stage 1 review, which focuses on changes that have been made to implement the standard.

[¶1] Legislative background. Anguilla's reformation of its offshore financial services sector started with passage of the Offshore Banks and Trust Companies Ordinance 1991, supplemented by the Offshore Banks and Trust Companies Regulations. This legislation deals mostly with licensing of companies managing trusts. To bar unethical, fly-by-night practitioners, a trust company must apply to the Governor for a license and have a high minimum capital. At one time Anguillan trusts were subject to English common law, making them inflexible, difficult to use, and easy to defeat. However, passage of the Trusts Ordinance, 1994, and the Fraudulent Dispositions Ordinance changed the status of Anguilla's trust approach. Availability of qualified financial professional people to facilitate efficient trust

operations is encouraged by an immigration policy enabling skilled personnel to obtain work permits for three years or more.

The Financial Services Commission Act 2003 gives powers to the Commission to license, adminsiter and monitor the financial service industry.

A long-sought Insurance Act passed in 2004 and effective as of 2005 is especially strengthened by approval of The Protected Cell Company Act of 2004 as trust companies frequently provide their services to the insurance sector and depend upon it as a helpful vehicle.

The Foundation Act entered into force on December 12, 2008. One or more natural persons may establish a foundation. It must be in writing and signed by one or more founders, or in a testamentary of a single founder complying with the Wills Act and probated in court. An initial endowment of property in legal tender of $10,000 and registered with the Registrar Agent is necessary. Particulars of a foundation consist of the usual requirements that include the name and address of the registered agent, the purpose of the foundation, the method of appointing and changing Foundation Council members, the appointment of auditors, the terms of property endowment, such duties as the management of assets, administration, buying and selling of assets as followed under law, by-laws, amendments, name reservation, registration procedure, acquisitions, registered agent rules and offenses, cessation and Foundation Council duties and obligations. The by-laws must adhere to indemnification specifics, legal fees and other expenses, with concurrence of the Guardian's opinion and court proceedings when relieving Foundation Council members. Limitation of liability must be established in the by-laws when the Foundation Council exercises certain powers provided by the Guardian. Judicial removal of Council members is spelled out in detail as well as the Guardian's appointment and his or her powers and the laws covering disputed rights. Restrictions against alienation is described along with enforcement terms and forfeiture of benefits. Accounts and records must be precisely maintained and continuous as the foundation is prescribed. The Articles of Continuance must be accompanied by a certified translation into the English language. In addition to completing several basic questions on the formation of the foundation, the Articles of Continuance must be duly signed by all members of its governing board of the Foundation Council.

The Proceeds of Criminal Conduct Act, Revised Statutes of Anguilla 2002 (Chapter P100) and regulations constituted all-crimes anti-money legislation that covers trustees, trust companies and financial service providers. The anti-money laundering legislation was amended in 2006.

The Anguilla Foundation Act was passed by the Assembly on June 13, 2008 and came into effect on December 12, 2008. The Act provides Anguilla with just the flexibility it needs to compete with more limited offerings elsewhere through a degree of flexibility that is essentially unmatched.

[¶2] Formation. Adoption of the Trusts Act of 1992 and the 1994 Trusts and Fraudulent Dispositions Ordinances with asset protection features has brought trust practice into line with many of the more progressive theories of trust practice in management and safeguarding of wealth.

An oral declaration of trust, a specific written deed of trust or a clause or codicil of a will, or conduct implying formation of a trust will create a trust in Anguilla. Unit trusts and trusts in respect of land located in Anguilla must be created according to a written trust deed [Trusts Ordinance, §5, ¶103].

Private funds including hedge funds can be established in 24 hours by using ACORN in conjunction with a qualified fund administrator (QFA).

[¶3] Tax status. Anguilla does not levy income taxes at present. Therefore, all income to trusts from domestic or foreign sources is free of tax. A stamp tax of 20 East Caribbean dollars (US$7.55) is payable upon creation of a trust. Anguilla

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AUSTRIA

This chapter is up-to-date as of August 2019

AUSTRIA

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ANALYSIS OF TRUST LAWS

A strategic geographic location in the center of Europe allowed Austria's rulers to play a dominant role in the continent's affairs from the Habsburg Dynasty's rise to power in 1273, with the election of Duke Rudolf as Holy Roman Emperor, until the dissolution at the end of the First World War of an Austro-Hungarian Empire that stretched from Venice to Poland and from Liechtenstein to the Ukraine. Present-day Austria is about 360 miles long and has an area of 32,378 square miles, extending from the Alps to the Danube plain.

Austria's economy is primarily industrial and has been largely in private hands following extensive denationalizations in the late 1980s and early 1990s. Membership in the European Union beginning in 1995 has brought the promise of growing prosperity to a country already benefiting from its strategic proximity and historic connections with the former Communist countries of Central and Eastern Europe.

Austria is a Republic headed by a President elected by universal suffrage of citizens 18 years old and older. The powers of the President are mainly ceremonial. Under the 1920 Constitution, legislative power resides in a Parliament consisting of a popularly-elected lower house, the *Nationalrat* (National Council), consisting of 183 members elected for five-year terms. The Chancellor (Prime Minister), selected by the majority party in the *Nationalrat*, appoints the Cabinet. The upper house, the *Bundestrat* (Federal Council), has primarily advisory powers. It consists of 64 members chosen by the provincial legislatures in proportion to population for terms ranging from four to six years, depending on the length of terms of the provincial legislatures they represent.

Roman law, as interpreted by the Napoleonic Code, forms the basis for jurisprudence in Austria. Judicial power is exercised in the first instance by local courts. Appeals are taken to Provincial or District Courts, with the Supreme Judicial Court hearing cases of last resort. A Supreme Administrative Court hears appeals of cases arising in the country's federal administrative departments. The Austrian Constitutional Court assesses the constitutionality of regulations and statutes.

Economic growth in Austria, the "Gateway to Eastern Europe", has become the envy of the other members of the Organization for Economic Cooperation and Development. Price stability and full employment mark the high degree of successful economic policy. Manufacturing operations lead all sectors, and many contemporary industries from computer hardware and software to foodstuffs and optical goods have made substantial contributions. Austria's reputation as the leading center for facilitating operations in Eastern Europe has been built from its rapid gains in productivity, efficiency, and product quality.

In recent years Austria has also been discovered by Arab, Russian, Indian and Chinese investors as a "gateway to the European Union". Oil and gas producers as well as financial groups have set up regional headquarters and holding companies in Austria with a view to benefit from both the location and Austria's tax exemption on foreign corporate dividends and capital gains.

As a result of the economic and bank crises traditional financial centers like London, New York and Switzerland have lost quite some of their business and their customers to Vienna. Austria is now considered as an emerging financial center, its banks offer excellent and reliable services to foreigners and nonresidents. Bank secrecy still exists but is limited to OECD exchange of information standards.

Austria, along with Luxembourg and Belgium are the only EU countries which are not required to report foreign owned bank accounts. The reporting is replaced by a withholding tax levied on the interest earned on such accounts.

When an Austrian holding company owns at least 10% of the shares of a foreign company for at least 12 months, then the profits representing its share are exempt from corporate and trade taxes as well as from capital gains taxes on the sale of the shares. Holding companies have become popular in Austria as a vehicle for international corporate tax planning. Since 1989, foreign entities have set up more than 3,000 companies in Austria.

Although trusts are unknown to legal practice in Austria, a civil law jurisdiction, the 1993 enacted Private Foundation Act enables creation of a legal entity to administer donated property for distribution to third party beneficiaries. By its effects the private foundation is a trust in form of a corporate entity.

Austria's bilateral tax agreement with Switzerland has already borne fruit, even before it enters into force at the beginning of 2013, with the finance ministry reporting a spike in voluntary declarations.

Based on the tax treaties concluded between Switzerland and the UK and Switzerland and Germany, the Swiss-Austrian tax deal signed in April provides similarly for a withholding tax levied on undisclosed assets held by Austrian residents in Swiss banks to regularize the accounts. The agreement also contains plans to impose an annual withholding tax on future investment income.

According to the Austrian finance ministry, 210 voluntary declarations have been submitted this year to the country's tax authorities from Austrians with undeclared accounts held in Switzerland. These voluntary declarations are expected to lead to additional tax revenues totalling around EUR59.3m (USD75.5m).

Overall, Austria has set a revenue target for this so-called "black money tax" of approximately EUR1bn. The aim is that the full effects of the tax treaty, due to take effect on January 1, 2013, will be seen in 2013.

Since 2008, 433 voluntary declarations have been submitted from Austrians with undeclared Swiss bank accounts, compared with just 124 declarations from Austrians with accounts held in Liechtenstein, the finance ministry reported.

Determined to ensure that all of Austria's double taxation agreement (DTA) network is in accordance with the Organization for Economic Cooperation and Development's (OECD) Model Convention, the Austrian government has revised 21 DTAs since 2009, to include provision for the OECD's internationally-agreed standard, including with the Netherlands, Switzerland and Singapore.

Austria has concluded nine new DTAs and negotiated tax information exchange agreements with Monaco, Andorra, Gibraltar and Saint Vincent and the Grenadines.

The existing DTA with Liechtenstein is also due to be revised to ensure compliance with the OECD standard.

On April 13, 2015, the government announced cuts to the individual income tax. The lowest rate of tax will be reduced from 36.5 percent to 25 percent with a rise in the threshold for the highest rate of 50 percent, from EUR 60,000 (USD 64,800) to EUR 90,000. There will be increased social security reliefs for the lowest earners and pensioners and an increase in child and family allowances. Increases in the capital gains tax rate to 27.5 percent and property tax from 25 percent to 30 percent will occur. The 10 percent reduced rate of value-added tax will be raised to 13 percent.

The new reduced value-added tax (VAT) rate of 13 percent will be effective from January 1, 2016. These cover the following: hotel accommodation; agricultural inputs, such as live animals, feed, and seeds; residential property letting; and

printed books, magazines, and newspapers. Food and medicine will remain subject to a 10 percent rate. The highest personal income tax rate of 55 percent will be retained for no more than five years.

The European Commission approved an Austrian tax incentive for mid-sized business financing companies. The measure offers tax incentives to private individual investors for investing in early phase companies. The measure will apply to applications submitted before December 31, 2023, and will be in effect until December 31, 2029.

[¶1] Legislative background. Many functions of a common law trust are available to Austrian settlors in the operation of private foundations established under the Private Foundation Act of 1993, as amended in 2001.

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BAHAMAS

This chapter is up-to-date as of August 2019

BAHAMAS

BAHAMAS

ANALYSIS OF TRUST LAWS

Once synonymous with offshore financial activities, the Bahamas lost some of its luster in the 1980s due to aggressive competition by other centers and uncertainties about government policy toward foreign investment. The country has now regained its previous high reputation, with Bahamian banks trading around 200 billion in Eurodollars annually. A series of recent amendments to the trust laws, including the incorporation of asset protection features, have drawn increasing numbers of trusts to the country's sophisticated banks, trust companies, and professional firms. Although Bahamian practices in the creation and operation of trusts have grown up through generations of common law experience, the country is now enacting more statutory requirements for trusts.

Bahamas is making progress towards the introduction of value-added tax from January 1, 2015. Registration began in September. The VAT unit underwent four weeks of legislative training from VAT experts from the Isle of Man and England. The VAT Team's registration strategy involved the following steps: corporate services firms and the top 100 large taxpayers were catered to, specifically for VAT registration purposes, from September 2014; workshops from October 2014 for small and medium taxpayers in New Providence and selected Family Islands; permanent registration venues in New Providence and Grand Bahamas from September 2014; and taxpayers registered on the internet from September 2014. The government's decision to go ahead with a lower VAT rate than had been initially planned, of 7.5%, means that extensive tariff reductions will no longer be possible. There will be selective reductions in certain areas, as set out in the amendments to the Tariff and Excise Acts that were tabled at the same time as the VAT Bill. These reductions will generally apply to certain foodstuffs, building materials, items generally sold to tourists, clothing and footwear, and medical equipment.

The Bahamas saw its budget deficit fall by more than 60 percent in the first three months of the fiscal year, which began on July 1, 2015 following the introduction of VAT. The new VAT regime was introduced, with a 7.5 percent rate, on January 1, 2015. The measure is one of a number taken in recent years to support the Bahamas's objective of becoming a member of the World Trade Organization.

Bahamas was removed from the EU blacklist at the ECOFIN meeting. The remaining blacklisted nations are American Samoa, Namibia, Samoa, Trinidad and Tobago and the US Virgin Islands.

A recent FATF report stated that the Bahamas is most effective in supervision and preventive measures reflecting the robust AML/CFT supervisory regime and the level of compliance of FIs and DNFBPs. Significant weaknesses in effectiveness are in the areas of ML/TF confiscations, investigations, prosecutions and convictions, the identification of national ML/TF risks and development of appropriate AML/CFT strategies.

Total assets of the banking industry were USD 279.2 billion, approximately 44 times the country's GDP, with 96% of assets in the offshore sector. There are 67 investment fund administrators holding USD 134.6 billion under administration and 849 investment funds. Additionally, there were 105 private trust companies, 310 financial corporate service providers, 694 registered foundations and 173,907 registered IBCs. IBCs can be formed in one to two days. The Bahamas does not

maintain official records of company beneficial ownership, or require resident paying agents to tell the domestic tax authorities about payments to non-residents.

The OECD requested in 2019 stakeholders' input on the dispute resolution process. It is reviewing the Bahamas' implementation of the base erosion and profit shifting (BEPS) Action Plan minimum standard on tax treaty dispute resolution under Action 14. The Bahamas is subject to a Stage 1 review, which focuses on changes that have been made to implement the standard.

[¶1] Legislative Background. After promising extensive revisions to its trust legislation in 1995, the Bahamas legislature kept its word in 1998 when it repealed the basic Trustee Act, 1893 [¶100] along with the single-page Variation of Trusts Act, 1961 [¶101]. The replacement for this venerable legislation is the Trustee Act, 1998 [¶107], which deals extensively with such matters as trustees' general powers, court powers, options enabling appointment of a trust protector and managing trustee, and exemption from registration of documents except for land sales. The 1998 Act supplements other modern legislation passed between 1989 and 1995. The Trusts (Choice of Governing Law) Act of 1989 [see ¶103] allows foreign persons to elect Bahamian law to govern the trust no matter where they reside. Under the Fraudulent Dispositions Act of 1991 [see ¶104], asset protection features were added to trusts in the Bahamas, so that virtually all trusts now being organized in the Bahamas are relying on the asset protection device. Trust business activities also are described in the Banks and Trust Companies Regulation Act (as Amended, 1989) [see ¶102]. The Perpetuities Act 1995 [released as Appendix O in the Money Laundering (Proceeds of Crime) Act 1995, see ¶106 for text] supplements common law to define by statute the life span of a trust. It would allow a trust to be revocable and purpose trusts to be established. The Money Laundering (Proceeds of Crime) Act 1995 [¶105] requires banks and trust companies and other financial service institutions to maintain records relating to financial services.

The Perpetuities (Amendment) Act 2004 [108] altered the existing law of perpetuities by increasing the perpetuity period from eighty years to one and hundred and fifty years. The previous law, The Perpetuities Act, 1995 had a period of 21 years or 80 years. The significance of this change is that now families can plan for five generations. The Trustee (Amendment) Act, 2004 [109] clarified the scope of purposes under the Purpose Trusts Act, 2004 [110]. The Purpose Trust Act 2004 [110] established that a purpose trust may create trusts for one or more purposes and one or more individuals, corporations or charitable purposes. Authorized purpose trusts must have a purpose that is not only possible but sufficiently certain to allow the trust to be implemented and that is not contrary to the law or public policy. The trust instrument must specify the event upon the happening of which the trust terminates and provide for the disposition of surplus assets of the trust upon its termination. Authorized applicants, i.e., persons appointed under the trust instrument or the settlor or court-appointed person, may make applications to the courts including administrative hearings, breach of trust proceedings and rights to information. The rule against perpetuities does not apply to purpose trusts. Under the Foundations Act, 2004 [111] a foundation is a distinct registered legal entity. Once registered, a foundation is deemed to be resident and domiciled in The Bahamas. Foundations may redomicile to and from The Bahamas. Foundations are exempt from taxes and business license fees. The Foundations Regulations, 2004 [112] contains the list of fees. The Purpose Trust (Amendment) Act, 2005 [113] clarified that persons can benefit from an authorized purpose trust irrespective of whether they are connected or associated with any of the authorized purposes and ensured that the authorized purpose trusts meet commercial needs.

The Foundations (Amendment) Act, 2005 [114] clarified the rights and powers of the founder and the passing of resolutions at formal meetings. Under the Banks and Trust Companies Regulation Act, 2000 [115] and the Central Bank of The Bahamas Act, 2000, the Central Bank of The Bahamas is responsible for the licensing, regulation and supervision of banks and trust companies operating in and from within The Bahamas. Trust companies' activities are regulated by the Central Bank of The Bahamas under the Central Bank of The Bahamas (Amendment) Act, 2006 (the CBA), the Banks and Trust Companies Regulation (Amendment) Act, 2006 (the BTCRA) [116] and the Banks and Trust Companies (Private Trust Companies) Regulations, 2007 (the PTCR) [117]. A private trust company allows a settlor to appoint his own trustee as a separate legal person and have more participation in the administration of the trust. The representatives of the beneficiaries and the settlors on the board of directors of the private trust company will reduce some of the conflicts between the interested parties. The private trust company may be created as a company under the Companies Act (1992) or the International Business Companies Act 2000. The Purpose Trust (Amendment) Act, 2007 [118] clarified the purposes of the trust instrument. Foundations (Amendment) Act 2007 [119] provided for the appointment of a foundation agent with responsibilities similar to those of a Registered Agent of an IBC. The Act made a foundation council mandatory in the event that a foundation agent but no officer was appointed and made provision for the foundation agent to be excused from all liability except fraud. The Act clarified that initial assets can be transferred to a foundation after registration, limited a beneficiary's access to information and documents to those relating to his own vested interest and simplified accounts for the foundation. It also provided that the names of the founder and foundation council need not be of public record. (See Section 28 on other types of Trusts).

[¶2] Formation. Bahamian trusts are available to resident or nonresident persons and cannot be avoided on the grounds that their provisions are contrary to the laws of the settlor's domicile or that transfers to them would defeat laws of inheritance in the settlor's domicile. Oral trusts are recognized as valid pursuant to the definition of "trust instrument," which can include "any oral declaration creating [a] trust" [Trustee Act, 1998, §2, ¶107].

[¶3] Tax Status. The Bahamas does not levy taxes on income accruing to persons resident in the country or on trusts or other legal entities domiciled there. Furthermore, there are no income, estate, gift or transfer taxes in connection with distributions to beneficiaries who are deemed nonresidents for exchange control purposes. Likewise, there are no stamp duties on trusts in which all beneficiaries are nonresidents [Trustee Act, 1998, §93, ¶107]. However, a "trust duty" of 50 Bahamanian dollars (US$50) is due on every trust governed by Bahamanian law [Trustee Act, 1998, §92]. This trust duty is in lieu of stamp duty [Trustee Act, 1998, §92(1)]. Nonpayment of the trust duty results in exclusion of the trust instrument from evidence in connection with civil proceedingsy [Trustee Act, 1998, §92(6)].

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BRITISH VIRGIN ISLANDS

This chapter is up-to-date as of August 2019

BRITISH VIRGIN ISLANDS
ANALYSIS OF TRUST LAWS

After benefits to U.S. investors in the British Virgin Islands (BVI) under the U.S.-U.K. income tax treaty terminated on January 1, 1983, the BVI suffered a setback in its drive to create a major offshore business center. However, passage of modern exempt company taxation laws, which became effective on August 1, 1984, and subsequent amendments, has returned the BVI to the forefront among jurisdictions offering tax-free domicile for international business companies (IBCs). Approximately 350,000 IBCs now call the BVI home, reflecting a rush that was reinforced by the exodus of foreign companies from Panama during the Noriega years. Modernization of the BVI's trust laws in 1993, including clarification of non-residents' tax-free status, is attracting substantial new trust business to the BVI.

Responding to criticism of its once overly lenient offshore financial activities, the BVI is improving its reputation as a "quality financial center" with three new trust laws. The Special Trusts Act 2003 enables shareholders of BVI companies to establish "VISTA" trusts disengaging trustees from management responsibilities, which are turned over to directors. To avoid the occasional obstacles to the detriment of the settlor-trustee coordination, the BVI Special Trusts Act 2003 also lays down a number of rules to protect the settlor: (1) trustees cannot intervene in a company's affairs unless an intervention call is made; (2) grounds for intervention are set out in the trust deed; (3) company law duties of directors may not be altered; (4) trust deeds must state clearly the requirements of the trust regarding directors' appointments and removal; (5) enforcement rules must be followed in respect to beneficiaries, directors and officers; and (6) trustees must be granted duties only subject to their ability and expertise. The Trustee Amendment Act includes new rules for charities, an altered regime for purpose trusts, and procedures for avoiding abuse by accounting firms.

BVI's status as a leading international financial center was confirmed by the BVI's inclusion for the first time in the Global Financial Centres Index published by the City of London. The BVIs entered the list of top centres as 27th among 69 leading international financial centres.

The Organization for Economic Cooperation and Development has announced that the British Virgin Islands has been removed from the "grey list" and added to the so-called "white list." The announcement followed BVI's signing its twelfth Tax Information Exchange Agreement, this one with New Zealand on August 13, 2009. BVI's new bearer share regime takes effect at the end of 2010. Bearer shares which are not deposited with a custodian by December 31, 2009 will be disabled. Bearer shares must be exchanged for registered shares or deposited with a custodian. On October 30, 2009, the new Commercial Court building for the Eastern Caribbean Supreme Court was opened in the British Virgin Islands. The Commercial Division will provide for specialist cross-border litigation. On December 17, 2009, the British Virgin Islands (BVI) Financial Services Commission (FSC) announced that BVI incorporated companies would now be allowed to list on the Hong Kong Stock Exchange (HKSE). BVI companies are listed on the New York Stock Exchange, Nasdaq, Frankfurt Stock Exchange, AIM market of the London Stock Exchange, Toronto Stock Exchange and the Singapore Stock Exchange.

The public register policy is an amendment to the UK's Sanctions and Anti-Money Laundering Act, which forces the BVI and other Overseas Territories

to disclose the names of owners of offshore companies. The government has not decided if it will pursue legal action against the United Kingdom. The BVI has until December 2020 to implement the public registers of beneficial ownership.

The OECD requested in 2019 stakeholders' input on the dispute resolution process. It is reviewing the British Virgin Islands' implementation of the base erosion and profit shifting (BEPS) Action Plan minimum standard on tax treaty dispute resolution under Action 14. The British Virgin Islands is subject to a Stage 1 review, which focuses on changes that have been made to implement the standard.

[¶1] Legislative background. Although the original Trustee Ordinance of 1961, modeled on the English Trustee Act of 1925, continues to govern trust formation and operation in the BVI, modernizing amendments were enacted in the Trustee (Amendment) Act of 1993 and incorporated into it to make the trust vehicle more attractive to offshore settlors. The BVI prepared asset protection legislation in a bill called the Prohibition of Fraudulent Dispositions Act of 1993 but decided to defer its adoption until a complete review of its bankruptcy legislation could be carried out. Companies serving as trustees in the BVI are regulated under the Banks and Trust Companies Act of 1990.

In an effort to make the BVI a jurisdiction and to enhance its "quality financial center," in 2003 the Government adopted three trust laws in response to the OECD, FATF and IMF criticisms of its once loose offshore activities. These are: Virgin Islands Special Trust Act 2003; Trustee (Amendment) Act 2003, which amends the Trustee Ordinance 1961, Property (Miscellaneous Provisions) Act 2003; and the Insolvency Act 2003. Drawn up by the Trust and Succession Law Review Committee of the British Virgin Islands Branch of STEP (Society of Trust and Estate Practitioners), with the assistance of eminent English and Canadian trust specialists, the Special Trusts Act 2003 aims to enable shareholders of BVI companies to establish trusts that disengage trustees from management responsibilities to the directors, allowing the company to be retained as long as the directors are fit. Known as "VISTA" trusts, these Special Trusts are unique.

The Trustee (Amendment) Act includes provisions relating to variation of trusts, transactions between trustees and third parties, with some desirable rules relating to charities, a new regime for "purpose trusts." Other sections of the Act cover "conflict of laws" rules for trusts, suggesting a comprehensive set of instructions that focus on procedures for avoiding abuse by accounting firms such as those that recently came to light in the BVI.

The Property (Miscellaneous Provisions) Act 2003 modernizes BVI law in several areas, one of which is abolishing the requirement that deeds executed by individuals must be sealed.

Under the Insolvency Act 2003, the environment for companies in liquidation or receivership have been modified to give the creditor protection. Among the provisions are those prohibiting a foreign receiver to act without a BVI receiver and granting creditors the right to appoint an administrative receiver.

The BVI Business Companies Act, 2004 (No. 16 of 2004) approved by the Legislative Council on January 1, 2005, revises the tax treatment of income tax, including trust income, when a 15% tax is imposed on domestic corporations as of January 1, 2007.

The Financial Services (Exemptions) Regulations 2007 came into force on August 1, 2007, providing that private trust companies which carry out only unremunerated trust business or related trust business do not need to obtain a trust license under the Bank and Trust Companies Act 1990. The 2007 Regulations replace the Bank and Trust Companies (Application Procedures) Directions 1991.

A related trust business is defined as a "trust business provided in respect of a single qualifying trust or a group of related qualifying trusts." A qualifying trust is where the beneficiaries are connected persons, again as defined in the regulations. Trusts are related where their settlors are connected persons. Trustees carrying out their duties in respect of a family trust, where the beneficiaries are all related or

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CAYMAN ISLANDS

This chapter is up-to-date as of August 2019

CAYMAN ISLANDS

CAYMAN ISLANDS
ANALYSIS OF TRUST LAWS

Building on historic zero tax privileges granted by King George III 200 years ago for its people's services in rescuing shipwrecked sailors, the British Crown Colony of the Cayman Islands, located south of Cuba in the Caribbean Sea, offers a full range of financial services to businesses and investors around the world.

Shell banks are prohibited, as are anonymous accounts. Bearer shares can only be issued by exempt companies and must be immobilized.

The government has announced that it will establish the legislative regime for the Cayman Enterprise City (CEC), a special economic zone that will attract science, technology, and commercial activities. On July 18, 2011, an agreement was signed that provided that the CEC will have the exclusive right to build and operate the zone. CEC will create five parks: Cayman Internet Park, Cayman Media Park, Cayman Biotech Park, Cayman Commodities Park, and Cayman International Academic Park.

Cayman Islands has adopted more than twenty global financial standards and adheres to both the US FATCA rules and the OECD's Common Reporting Standard. The Cayman Islands any laws or regulations like double taxation treaties or foreign incentives that support the shifting of a tax base by foreign entities to avoid corporate taxes in their home jurisdictions.

The Cayman Islands in 2017 introduced a beneficial ownership registry to respond to law enforcement requests within twenty-four hours. The Foreign and Commonwealth Office contended that the Cayman Islands government had pulled out of this agreement in reaction to the Parliament's decision to impose publicly accessible beneficial ownership registries. The Cayman Islands and the UK have contested a decision by the UK parliament to insert a clause in the UK Sanctions and Anti-Money Laundering Act to impose publicly accessible registers.

The fund industry is facing changes under new AML regulations. The Anti-Money Laundering Regulations now apply to financial businesses: entities that conduct investing, administering or managing funds or money on behalf of other persons. The definition includes certain previously unregulated, closed-ended investment funds and structured finance vehicles. The regulations determine that both regulated and unregulated funds must nominate anti-money laundering officers.

In 2018, the EU listed the Cayman Islands, Bermuda, Jersey, Guernsey, the Isle of Man and Vanuatu as jurisdictions that needed to abolish harmful tax practices. The EU has accused this grey list as having tax regimes that facilitate offshore structures.

The Cayman Islands, a UK overseas territory, is an international financial center that provides a wide range of services, including banking, structured finance, investment funds, trusts, and company formation and management. The banking sector had USD 934 billion in international assets. There are 147 banks, 146 trust company licenses, 139 licenses for company management and corporate service providers, 821 insurance-related licenses, and five MSBs. There are 103,759 companies incorporated or registered in the Cayman Islands and 10,708 licensed/registered mutual funds.

The OECD requested in 2019 stakeholders' input on the dispute resolution process. It is reviewing Cayman Islands' implementation of the base erosion and profit shifting (BEPS) Action Plan minimum standard on tax treaty dispute

resolution under Action 14. The Cayman Islands is subject to a Stage 1 review, which focuses on changes that have been made to implement the standard.

[¶1] Legislative background. The Trusts Law (Revised) of 1967 [¶100] and the Confidential Relationships (Preservation) Law of 1976 [¶101], as amended by the Confidential Relationships (Preservation) (Amendment) Law of 1979, and again revised 1995, adopted a modernized practice under England's Trustees Law of 1925. Protective features were added to Cayman Islands trust administration by the Trusts Law (Revised), ¶100] as amended by the Trusts Amendment Law of 1986, as amended by Trust Laws (2001 Revisions) [¶118] replacing the 1998 Revision and the Special Trusts (Alternative Regime) Law 1997 [¶111] and elaborating on the powers of trustees as well as the appointment and discharge of trustees, the Trusts (Foreign Element) Law of 1987, amended in 1995 [¶102], the Fraudulent Dispositions Law of 1989 and revised 1996 [¶103], and the Perpetuities Law 1995 [¶109]. The latter three laws are credited with enhancing the worldwide acceptance of asset protection trusts. Trust companies are regulated by the Banks and Trust Companies Law of 1989 [¶105], as amended by the Banks and Trust Companies Law (2000 Revision) [¶117] introducing legislation known as "fit and proper" criteria in the management of licensed entities. Section 3 of the Property (Miscellaneous Provisions) Law, 1994 [¶110] allows a debt to be placed in trust even though the debtor is to be the trustee, overcoming a technical legal objection to banks' performance of trustee duties.

In October 1997, the government adopted a special trust law to permit the "creation of non-charitable purpose trusts" that covered "incidental and connected purposes" known as The Special Trusts (Alternative Regime) Law, 1997 (Law 18 of 1997), §1–6 [¶111]. This law was amended and incorporated into the Trusts Law (2001 Revision) [¶118]. Prior to adoption of this law, Cayman Islands trusts were established only for individual or corporate beneficiaries or for charitable purposes. Special trusts now may be created for any object, not necessarily charitable or non-charitable purposes, for individual or juridical persons, as long as they are "lawful and not contrary to public policy." Under this alternative regime, settlors and their advisors enjoy greater flexibility in planning. A significant facet of alternative regime legislation is that it provides for enforcers who have standing to enforce a special trust, whether or not they are beneficiaries. Under the Special Trusts (Alternative Regime) Law, certain sections of the Trust Law (1996 Revision) [¶112] covering ordinary trusts do not apply to special trusts unless authorized by the court, including repeal of Section 85(4)(b) by substituting a clause on the validity of enforcers and in regard to holding land by a special trust so that a special trust may hold an interest in a company, partnership or other entity holding land.

With no taxation a traditional incentive and exemptions from possible future taxes available for up to 50 years, Cayman Islands trusts have long been a favorite planning vehicle for financial advisors in the United States and elsewhere who structure operations in offshore jurisdictions. In addition to usual wealth transfer functions, creative uses have been found for trusts in the Islands. Most of the mutual funds based in the Cayman Islands are trusts, while U.S. companies have found the trusts useful for avoiding taxation on assignments of patent rights. If the intellectual property is held by a trust controlled by a foreign trustee, U.S. tax is payable only on proceeds paid directly to the assignor and not on the trust's total income.

Assets held by a trust that are assets of a segregated portfolio company must be treated under the Companies (Amendment) (Segregated Portfolio Companies Law,

1998) [¶113] as replaced by Segregated Portfolio Companies §§232–247 of Companies Law (2001 Second Revision) [¶119].

The Banks and Trust Companies (Amendment) Law, 2006 introduced a capital funds and capital adequacy requirement, additional statutory responsibilities for auditors of license holders, a broader scope of prohibited activities applicable to licensees and a statutory requirement to segregate trust and proprietary assets. Prior to the Amendment, all bank and trust companies wishing to carry on business from within the Cayman Islands had to be licensed by the Cayman Islands Monetary Authority before they could operate. The 2006 Amendment added one exception to the requirements to be licensed. A trust company that is a controlled subsidiary does not require a license to carry on the business of issuing debt instruments (s2)(a) of the law. The Banks and Trust Companies (Amendment) Law, 2008 amended the Banks and Trust Companies Law (2007 Revision) with further restrictions on banks and duties on trust companies.

The Tax Information Authority (Amendment) Bill, 2008 creates mechanisms which allow the Cayman Islands' Tax Information Authority to provide tax information to approved jurisdictions in accordance with international co-operation protocols in specific tax matters. These mechanisms will support the bilateral treaties considered by the Tax Information Authority Law, 2005.

The Cayman Islands' Grand Court has created a Financial Services Division to be governed by the Grand Court (Amendment) Rules 2009. The Financial Services Division will hear disputes including the enforcement of a foreign judgment, bankruptcies, proceedings against a professional services provider, company law matters, trust law issues and breaches of trust fiduciary duties. The fees are up to CID 15,000 (USD 18,293) for commencing proceedings in the Financial Services Division.

The Confidential Relationships (Preservation) Law (2009 Revision) [¶124] constitutes the disclosure guidelines for confidential information held by Cayman Islands professionals. The CRPL requires information to be conveyed to the Authority from the trustee on the condition that the information must be treated as confidential by the recipient. The information can be disclosed only to persons or authorities officially concerned with the information for tax purposes.

The Companies Law (Amendment) Bill, 2011 includes the following: amendments to the merger provisions; changes to treasury shares, share redemption and repurchase, and paperless share transfer; updates to foreign company

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COSTA RICA

This chapter is up-to-date as of August 2019

COSTA RICA

COSTA RICA
ANALYSIS OF TRUST LAWS

Costa Rica's flexible and lenient tax laws have attracted capital from all corners of the globe. Businesses have been established by U.S. interests particularly in a chain of modern free trade zones. In addition, retired persons from all over the world have moved to Costa Rica to enjoy exemption for themselves and their families from taxes on income received from abroad, free customs duty on imported household goods worth up to $7,000; and four months' additional exemption from duties and taxes on items imported for a new home in Costa Rica.

The offshore sector offers banking, corporate and trust formation services. Foreign-domiciled offshore banks can only conduct transactions under a service contract with a domestic bank, and they do not engage directly in financial operations in Costa Rica. They must have a license to operate in their country of origin. They must comply with Article 146 of the Central Bank's Organic Law, which requires offshore banks to have assets of at least $3 million dollars, a physical presence in Costa Rica, and be subject to supervision by the banking authorities of their registered country. Shell banks are not allowed in Costa Rica and regulated institutions are forbidden from having any direct or indirect relationships with institutions that may be described as shell or fictitious banks. Bearer shares are not permitted in Costa Rica. Six offshore banks maintain correspondent operations in Costa Rica; three from the Bahamas and three from Panama. There are memoranda of understanding between Costa Rica, Panama and the Bahamas to allow easy information exchanges.

Costa Rica signed the OECD's Multilateral Competent Authority Agreement, committing to exchange tax information with other nations' tax authorities on an automatic basis. The MCAA implements the OECD's new Standard for Automatic Exchange of Financial Information in Tax Matters. Under the agreement, Costa Rica will make available certain financial account information, including information on balances, interest income, dividends income, and sales proceeds from financial assets. The agreement covers accounts held by individuals and entities, including trusts and foundations. Ninety-four jurisdictions have committed to implement the Standard and begin the first automatic information exchanges either in 2017 or 2018.

Standard & Poor's Ratings Services lowered its long-term foreign and local currency sovereign credit ratings for Costa Rica because of a lack of tax reform in 2016. The ratings were lowered from 'BB' to 'BB-' and the outlook is negative. The downgrade reflects continued fiscal deterioration that has resulted in a growing debt burden and rising interest payments.

Costa Rica introduced a value-added tax regime in place of sales tax, on July 1, 2019. The VAT will have a broader scope than the current sales tax, applying to services as well as goods. Law No. 9635 of December 3, 2018 created the change. The regime will feature a 13 percent headline rate, and three reduced rates, of four, two, and one percent.

The tax authority released new online forms for declaring value-added tax, capital income, and capital gains.

[¶1] Legislative background. Costa Rica is rare among civil law jurisdictions in that it recognizes the concept of the trust and has incorporated trust enabling provisions into its 1964 Commercial Code. Articles 633 to 662 [¶100] contain the provisions regulating the establishment and operation of trusts.

Costa Rican trusts (fideicomisos) are available to individuals or companies with legal personality. Once a trust is established, its assets are separate and independent property for purposes of the trust [Commercial Code, Art. 634, ¶100].

In 2002, the government enacted Law 8204 that superseded a prior law that only criminalized narcotics-related money laundering. Law 8204 criminalized the laundering of proceeds from all serious crimes. The law does not cover casinos, dealers in jewelry and precious metals, insurance companies, intermediaries such as lawyers, accountants or broker/dealers, as their primary business is not the transfer of funds. Articles 33 and 34 of Law 8204 cover asset forfeiture and stipulates that all movable or immovable property used in the commission of crimes covered by the Act are subject to preventive seizure.

Costa Rica has KYC and STR requirements that have broadened since 2017 changes to legislation, which established reporting and supervision requirements for DNFBPs. Entities subject to reporting and supervision requirements include banks; savings and loan cooperatives; pension funds; insurance companies and intermediaries; money exchangers; securities brokers/dealers; credit issuers and sellers/redeemers of traveller's checks and money orders; trust administrators; financial intermediaries and asset managers; real estate developers/agents; manufacturers, sellers, and distributors of weapons; art, jewelry, and precious metals dealers; pawnshops; automotive dealers; casinos and electronic gaming entities; NGOs that receive funds from high-risk jurisdictions; lawyers; notaries public; and accountants. The impact of these changes became clear in 2018 as STRs increased 40 percent over the same period in 2017, with 2018 STRs valued at over $3.4 billion. Costa Rica and the United States do not have an MLAT, nor is one under negotiation at this time. Costa Rica cooperates effectively with U.S. law enforcement through international cooperation offices at key institutions and is party to several inter-American agreements on criminal matters and UN conventions. Costa Rica provided assistance on over 40 international AML investigations in 2018.

Costa Rica is a member of the GAFILAT, a FATF-style regional body. Its most recent MER is available at: http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-costa-rica2015.html.

In 2019, the United States Department of State cited Costa Rica as a country for major money laundering and illicit drug trafficking in the 2019 International Narcotics Control Strategy Report. Costa Rica was grouped along with the Bahamas, Belize and Panama.

[¶2] Formation. Trusts may be established by means of a written instrument, conduct between individuals, or by a will [Commercial Code, Art. 635, ¶100]. The settlor must have the capacity to make the transfer.

[¶3] Tax status. Trusts are treated as legal persons under Costa Rican law and are subject to normal income tax of 30% on income derived within Costa Rica. Income earned abroad is free of Costa Rican tax. Although Costa Rica was not labeled as a "harmful" tax haven in the OECD report, to protect its image as an industrial country with attractive investment incentives as well as practicing the territoriality tax system, in 2001 the nation adopted a 10% withholding tax to the detriment of its offshore activities. Under Article 59 of the Costa Rican Income Tax Law non-residents are exempt from the current 15% withholding tax on interest, commission fees and other financial expenses if they are paid to foreign banks and financial institutions approved by the Central Bank. Trusts are not required to register as taxpayers or to file tax returns if the trusts are established to act as a

guarantee for an economic transaction not considered as taxpayers for tax purposes provided the trusts do not engage in trade or business. Certain trusts also are exempt from taxation, including those where there is no transfer of property to the trustees and the settlor retains control of the trust property when the settlor and the beneficiary are the same person (Administrative Ruling 2002).

[¶4] Minimum capital. Costa Rica does not require a minimum amount of property to be placed in a trust at its inception or to remain in it during its existence. Trustees are required to diversify trust investments and may not place more than one-third of the assets of a trust in a single company's shares [Commercial Code, Art. 649, ¶100]. Trust assets may not be mortgaged except in emergency cases with judicial approval [Commercial Code, Art. 652, ¶100].

[¶5] Residency requirement. The settlor of a Costa Rican trust is not required to be resident in Costa Rica.

[¶6] Registration. Trust assets consisting of realty, which must be registered in the official Registry, must be registered in the name of the trustee with the notation that the registrant is acting as trustee. Registration of nominative shares in companies is likewise subject to listing in the trustee's name, as trustee [Commercial Code, Art. 636, ¶100].

[¶7] Revocable or irrevocable; void or voidable. Trusts that are created for impossible or illegal purposes or that would create a perpetuity are invalid [Commercial Code, Art. 655, ¶100]. Settlors and beneficiaries may mutually agree to terminate a trust. In this case, the trustees may seek indemnification for third parties born during performance of the trust who would have been entitled to trust proceeds. Settlors may create revocable trusts, to be annulled when they opt to do so. Third parties whose rights in trust proceeds have arisen during the performance of the trust must be indemnified [Commercial Code, Art. 659, ¶100].

[¶8] Settlor as beneficiary. A settlor may be a beneficiary of a Costa Rican trust. However, under Costa Rican law a creditor seeking to invade trust assets on the grounds that they were fraudulently transferred will be granted the presumption that fraud did occur if the settlor is the sole or principal beneficiary of the trust [Commercial Code, Art. 658, ¶100].

[¶9] Perpetuity period. Costa Rican trusts for the benefit of individuals must terminate with the decease of the beneficiary unless their terms provide for inheritance by another individual who is either alive or conceived at the time of the trust's creation. Trusts benefiting legal persons are limited to an existence of thirty years unless the beneficiary is a welfare institution or a nonprofit scientific, cultural, or artistic organization [Commercial Code, Art. 661, ¶100].

[¶10] Wait-and-see provision. Costa Rican law contains no "wait-and-see" provision to protect transfers to a trust against avoidance until it is sure that they would have violated the rule against perpetuities.

[¶11] Accumulations. No rules limit the accumulation of income in a Costa Rican trust.

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DOMINICA

This chapter is up-to-date as of August 2019

DOMINICA

DOMINICA
ANALYSIS OF TRUST LAWS

Searching for ways to alleviate a high trade deficit and a foreign debt, the leaders of the independent Caribbean nation of Dominica have transformed their 400-square-mile volcanic island into an offshore financial center. Initial legislation passed in 1996 allows overseas investors to form international business companies exempted from Dominican taxes for 20 years. The Offshore Banking Act [**¶101**] forbids levying of an income, capital gains and any other direct tax on offshore banking business. Under another 1996 law, foreigners may obtain "economic citizenship" in Dominica and gain exemption from tax on income earned outside the country either by purchasing Government bonds or making a direct cash contribution.

A year later the unicameral National Assembly rounded out the program with passage of the International Exempt Trust Act, 1997 [**¶102**] granting exemption from income tax and from stamp duties on all instruments relating to trust property or to transactions carried out by the trustee on behalf of the trust. Common law trusts can still be created and managed in this former British territory. Bills currently under consideration by the National Assembly will provide shipowners with a flag of convenience, allow activities of offshore insurance companies, and establish a free trade zone for transit cargo or manufacturing operations.

Dominica's financial sector includes two offshore banks, 14,955 IBCs, twenty-one insurance companies, nine money services businesses, and four internet gaming companies.

Dominica reduced real estate taxes and introduced a number of VAT concessions in the 2015/2016 budget to stimulate the tourism and real estate sectors. The stamp duty will be reduced from four percent to 2.5 percent. The vendors' fee will be reduced from 2.5 percent to zero percent. The judicial fee will be reduced from 2.5 percent to one percent. The government proposed new legislation to allow for timeshares, condominiums and fractional ownership arrangements.

The budget, released on July 30, 2019, included value-added tax changes and tax relief for home owners.

[¶1] Legislative background. The International Exempt Trust Act, 1997 [¶102] with asset protection features has been passed and is in effect. Banks and trust companies serving as corporate trustees are subject to the Offshore Banking Act (No. 8 of 1996), as amended by the Offshore Banking (Amendment) Act (No. 2 of 1997, ¶101). The International Business Company Act (No. 10 of 1996, ¶100), regulates relationships between trusts and companies formed under it.

[¶2] Formation. An international trust must have at least one trustee and is restricted to a maximum of four except for a charitable trust. At least one trustee must be either a corporation incorporated under the 1994 Companies Act or 1996 IBC Act, or a licensed bank or trust company doing business in Dominica [International Exempt Trust Act, 1997, §2), ¶102]. Except for acknowledging that a trust can be formed by a testamentary disposition, the 1997 Dominica Act refrains from describing the means by which a trust can be formed. Under common law, a trust can be formed by oral grant or authority to a trustee, or a written declaration of trust, indenture of settlement, or provision in a will.

[¶3] Tax status. Trusts registered under the Act are exempt from all income tax and from stamp duty on all instruments relating to trust property or to transactions carried out by the trustee on behalf of the trust (International Exempt Trust Act, 1997, §42, ¶102). The law is silent about estate, inheritance, succession, gift, and capital appreciation taxation. If a trust company requires services of specially qualified persons to do its offshore business and it cannot acquire those services in Dominica or elsewhere without offering special benefits, the Minister of Finance can grant these employees exemption from specified Dominican taxes and allow payment in foreign currency into a trust account without taxation on interest and payment in a currency other than East Caribbean dollars. A Property Transfer Tax applies on the sale or voluntary disposition of any property except stock and debentures, with a 4% rate in effect on the value of the transfer, which 2% is paid by transferor and transferee.

Dominica has tax information exchange agreements with Canada and the United Kingdom. Dominica signed a tax treaty with Spain in 2013.

[¶4] Minimum assets. Dominica does not require a minimum amount of property to be placed in a trust at its inception or to remain in it during its existence. Offshore trusts will not be eligible to hold shares in Dominican international business companies in their own name [International Business Company Act (No. 10 of 1996), §28, ¶100].

[¶5] Residency requirement. The settlor and beneficiaries of a trust in Dominica must at all times be nonresidents [International Exempt Trust Act, 1997, §2, ¶102].

[¶6] Registration. All international trusts must be registered with the Registrar. An application for entry on the register should be accompanied by the prescribed fee; a notice of the name and registered office of the trust; and a certificate from a barrister or solicitor certifying that the trust upon registration will be an international trust. The certificate of registration is valid for only one year and must be renewed annually by repeating the original procedure. Documents must be written in English or accompanied by a certified translation. [International Exempt Trust Act, 1997, §37, 49, ¶102.].

[¶7] Revocable or irrevocable; void or voidable. A settlor has the right to declare a trust revocable [International Exempt Trust Act, 1997, §46, ¶102.]. When an international trust property is held for a charitable purpose, on application of the trustee the court may approve any arrangement varying or revoking the purpose or terms of the trust, or enlarging or modifying the trustee's powers of management or administration, if the court believes that the arrangement is not suitable or expedient, or is inconsistent with the settlor's original intention [International Exempt Trust Act, 1997, §11, ¶102]. Under Article 22 of the Act, the court also has the power: to make a declaration as to the invalidity or enforceability of a trust; direct the trustee to distribute or not distribute trust property; and make any order respecting termination of trust and distribution of property [International Exempt Trust Act, 1997, §22, ¶102]. The court may declare an international trust to be invalid when the terms of the trust are so uncertain that its performance is rendered impossible, except that a charitable purpose shall always be deemed to be capable of performance [International Exempt Trust Act, 1997, §21, ¶102]. When an international trust is created for two or more purposes, some lawful and others not, or when some terms are lawful and others not, if the purposes or terms cannot be separated, the trust is invalid; if they can be separated, the court may declare that the

trust is valid with respect to the lawful terms and purposes [International Exempt Trust Act, 1997, §22, ¶102]. An international trust is not void or voidable in the event of the settlor's bankruptcy, insolvency or liquidation other than an

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GIBRALTAR

This chapter is up-to-date as of August 2019

GIBRALTAR

GIBRALTAR
ANALYSIS OF TRUST LAWS

In an effort to overcome the adverse effects of a Spanish blockade while the United Kingdom and Spain disputed sovereignty over its territory, Gibraltar set about creating a major offshore financial center with the passage of the Exempt Companies act in 1967 giving offshore companies a pledge of 25-year tax exemptions. However, it was the 1990 asset protection trust legislation that revitalized Gibraltar as a leading European offshore financial center. Additional favorable legislation affecting banking and insurance companies has helped Gibraltar move closer toward its goal of becoming the "Hong Kong of the Mediterranean."

It should be noted that an International Monetary Fund report issued after Gibraltar volunteered to be investigated by an international team of experts that the Island is "at the forefront of the development of good practice". Likewise, in response to the widely publicized Financial Action Task Force study entitled a "Mutual Evaluation Report on Gibraltar" prepared under the aegis of the Offshore Group of the Banking Supervisors, focusing on the criticism of the Financial Services Commission, summarized its study on Gibraltar by declaring the FSC "carried out its duties diligently" and indicated that "Gibraltar ranks among the highest as having a well-developed supervisory agency".

Gibraltar is an overseas territory of the United Kingdom. A November 2006 referendum resulted in constitutional reforms transferring powers exercised by the UK government to Gibraltar.

Residents of Gibraltar pay significantly high income taxes and estate duties. Non-residents are taxable on their income in Gibraltar, unless it is directed through a trust. Bank interest is exempt from tax, though the EU's Savings Tax Directive (effective July 2005) requires that payments of interest and other savings returns made to EU citizens be reported to their home tax jurisdictions. Residents utilize high net-worth individual (HNWI) status, and expatriate executives are given tax privileges.

The government's regulations transpose the EU's new tax dispute resolution mechanisms, set out in EU Council Directive 2017/1852, into domestic tax law. The provisions in Gibraltar's Tax Dispute Resolution Regulations 2019 apply to complaints submitted from July 1, 2019, relating to questions of dispute in matters of income or capital earned in a tax year commencing on or after January 1, 2018.

[¶1] Legislative background. Gibraltar's Trustees Ordinance of 1895, the foundation stone of the Territory's trust policy, is based on the English Trustee Act of 1893. Modernizing legislation to amend the awkward common law rule against perpetuities and allow accumulation of income in a trust for 100 years was passed as the Perpetuities and Accumulations Ordinance of 1986 [¶103]. Protection of transfers of assets to a trust while the settlor is solvent is provided by the Bankruptcy (Amendment) Ordinance of 1990 [¶104]**.** Exemption from taxation of trusts for the benefit of offshore persons has been in effect since the Income Tax (Amendment) Ordinance enacted in 1983 [¶101]**.**

Gibraltar was one of the first jurisdictions to introduce and implement money laundering legislation that covers all crime. The Gibraltar Criminal Justice Ordinance to Combat Money Laundering, which relates to all crimes, entered into effect in 1998. The Drug Offenses Ordinance of 1995 and Criminal Justice

Ordinance of 1995, amended in June 2007 as the Criminal Justice Act, criminalized money laundering related to all crimes.

Gibraltar extended the Criminal Justice Act to include non-financial sectors. The Act covers banks, mutual savings companies, insurance companies, financial consultants, postal services, exchange bureaus, attorneys, accountants, financial regulatory agencies, unions, casinos, charities, lotteries, car dealerships, yacht brokers, company formation agents, dealers in gold bullion and political parties. The law mandates reporting of suspicious transaction. Authorities issued comprehensive anti-money laundering Guidance Notes, which have the force of law, to clarify the obligations of Gibraltar's financial service providers. Gibraltar issued its most recent Guidance Notes in December 2007 with amendments based on the Criminal Justice (Amendment) Act 2007 and Terrorist (Amendment) Act 2007. Legislation requires all businesses to establish the beneficial owner of any company or asset before undertaking a relationship or incorporating any company or asset. The Financial Services Commission Act 2007, which became effective in May 2007, repealed and replaced the Financial Services Commission Act of 1989. Gibraltar's 2001 Terrorism (United Nations Measures) (Overseas Territories) Order criminalized terrorist financing. Application of the 1998 U.S.-U.K. Agreement Concerning the Investigation of Drug Trafficking Offenses and the Seizure and Forfeiture of Proceeds and Instrumentalities of Drug Trafficking was extended to Gibraltar in 1992.

[¶2] Formation. Gibraltar trusts may be easily formed as they follow England's 1893 Trustee Act. A popular vehicle for establishing a trust no longer available in England but frequently used in Gibraltar because of its flexibility and anonymity is the company limited by guarantee which issues shares. As protection for trusts, a guardian may be named in the Articles of Association.

A written declaration of trust or indenture of settlement is not needed to convey authority to a trustee to administer a trust in Gibraltar.

[¶3] Tax status. Gibraltar does not levy taxes on income accruing to trusts created by or for the benefit of nonresident persons that accrues from outside Gibraltar or would have been free of tax if received directly by the beneficiary [Income Tax (Amendment) Ordinance, §3, ¶101]. Certain trusts are exempt from stamp duties [Finance Ordinance, 1985, §10].

The Council of Ministers of Belgium ratified the tax information exchange agreement with Gibraltar. The TIEA provides for the exchange of fiscal information upon request, including banking information. The agreement cover four types of taxes on income in Belgium, including individual income tax, corporation tax, the tax on legal entities, and non-resident income tax and value-added tax (VAT). The agreement provides for the exchange of information held by banks and other financial establishments. The TIEA covers taxes collected on behalf of the federal entities and provides for the exchange of information held by trusts, foundations, partnerships, and other collective investment organizations.

[¶4] Minimum assets. Gibraltar does not require a minimum amount of property to be placed in a trust at its inception or to remain in it during its existence.

[¶5] Residency requirement. The settlor of a Gibraltar trust does not need to be a resident of Gibraltar.

[¶6] Registration. A voluntary confidential register is maintained for administration of asset protection defenses in which the name of the trust and the

dates and amounts of transfers to it are filed [Bankruptcy Ordinance, 1964, §42A, ¶l04]. Gibraltar does not otherwise require registration of trusts except for charitable trusts. A trust need not file a copy of the written trust instrument with any agency.

To register an asset protection trust, the trustees must be (1) the sole corporate trustee of the disposition, (2) be considered by the Financial and Development Secretary to have adequate financial and administrative resources, (3) obtain other prior approval of the Financial and Development and have indemnity insurance of at least 1,000,000 English pounds ($1.87 million). These strict requirements are responsible for a paucity of litigation related to asset protection trusts in Gibraltar.

The Registered Trust Ordinance 1999 created a public trust register. The main purpose of the Register was that many persons within the industry (especially those from civil law jurisdictions) expressed the view that formal confirmation of the details of the trust from a government register, could prove to be useful.

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GUERNSEY

This chapter is up-to-date as of August 2019

GUERNSEY

interpreted under, and governed by, its own governing law [Trusts (Guernsey) Law, §59, ¶100].

[¶19] Government and private fees. There is no fee or official charge to establish a private Guernsey trust. Unit trusts are assessed an annual registration fee of 1,300 English pounds (US$2,028) plus corporation tax of 500 English pounds (US$780). Management fees to establish a private trust are between 300 English pounds (US$468) and 500 English pounds (US$780), with annual maintenance fees of around 850 English pounds (US$1,326) to 1,000 English pounds (US$1,560).

[¶20] Exchange control. The currency unit of the Channel Islands is the British pound, with local banknotes issued in Guernsey accepted only in the Channel Islands. There are no controls on transfers of foreign exchange but some imports require licenses or are admitted under quota restrictions.

[¶21] Tax treaties. Guernsey has double taxation treaties with Denmark, Faroe Islands, Finland, Greenland, Iceland, Jersey, Norway, Sweden, and the United Kingdom. Guernsey has signed Tax Information Exchange Agreements with Australia, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, Netherlands, New Zealand, Norway, Sweden, the United Kingdom and the United States. Guernsey is a party to the EU Savings Tax Agreements and has a Mutual Legal Assistance Law that allows for assistance including the exchange of information in criminal tax matters which do not involve serious or complex fraud or money laundering with all countries.

The Guernsey government announced the signing of a TIEA with Mexico that raises the total number of TIEAs signed by Guernsey to 24. Of these, 10 are members of the G-20 group of the world's major advanced and emerging economies. The text of the TIEA noted that Guernsey already provided for co-operation and the exchange of information in criminal tax matters. Under the terms of the TIEA, Guernsey will on request exchange bank and other information relating to both criminal and civil tax matters.

The Guernsey government announced that it received a Chinese delegation, headed by the Commissioner of the State Administration of Taxation on October 27, 2010 to co-sign a Tax Information Exchange Agreement. Guernesy has signed a tax information exchange agreement with the Swiss. The deal will see the Swiss swap information in a form that meets standards set by the OECD.

Hong Kong signed an agreement with Guernsey to automatically exchange financial account information in tax matters. The agreement expands Hong Kong's Automatic Exchange of Information network. The agreement was signed under the OECD's latest international tax transparency standard and the Common Reporting Standard. The Revenue Department will begin exchanging information automatically in 2018.

Jersey and Guernsey signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing on July 6, 2017.

New Zealand expects to soon conclude a tax information exchange agreement with Guernsey.

[¶22] Restrictions. Noncharitable Guernsey trusts are invalid to the extent that they do not have an ascertainable beneficiary or purport to do anything or confer a right contrary to Guernsey law. Trusts are not enforceable to the extent that a court finds the settlor lacked capacity to create a trust; declares a trust to have been established by fraud or misrepresentation or under mistake, duress, or undue

influence; or declares their terms immoral or against public policy or too uncertain to be performed [Trusts (Guernsey) Law, §11, ¶100].

When a trust fails because an interest lapses, the trust terminates. It also could be ended if (1) there is no beneficiary and no one is available who could become a beneficiary or (2) property is conveyed to a trustee without the necessary powers to hold it in trust. In the latter case, the trust assets are to be held in trust for the settlor or the settlor's estate [Trusts (Guernsey) Law, §47, ¶100]. Trusts governed by foreign law with Guernsey trustees or property located in Guernsey will not be enforced if they purport to do anything or confer a right contrary to Guernsey law or if a Guernsey court declares their purposes immoral or against public policy [Trusts (Guernsey) Law, §59, ¶100].

[¶23] Asset protection. The 1990 amendment to Guernsey's Trust Law added a provision safeguarding Guernsey trusts from attack based on foreign rules of heirship.

[¶24] Fraudulent dispositions. While Guernsey has not passed specific legislation delimiting attacks on trusts domiciled there by creditors of a settlor, legal experts are generally of the opinion that a trust formed or a transfer made when there are no known creditors will withstand a challenge, while transfers made with the appearance of an attempt to evade a known creditor would not be upheld by the courts.

[¶25] Time limit to bring suit. Guernsey trust legislation does not specify a time after creation of a trust or a transfer to one for a creditor to bring suit.

[¶26] Foreign court awards. Guernsey courts have jurisdiction over Guernsey trusts and foreign trusts having a trustee or property located in Guernsey [Trusts (Guernsey) Law, §4, ¶100]

[¶27] Forced heirship. A Guernsey trust remains valid despite attacks alleging that the settlor transferred property to it contrary to a foreign law of forced heirship or lack of recognition of the concept of a trust in a foreign jurisdiction [Trusts (Guernsey) Law, §11A, from Trusts (Amendment) (Guernsey) Law, §1(c)].

[¶28] Other types of trust. Guernsey law allows the creation of charitable trusts and unit trusts.

Charitable trusts. Charitable trusts may exist despite the lack of a definitely ascer-tainable beneficiary [Trusts (Guernsey) Law, §11, ¶100] and for an indefinite period [Trusts (Guernsey) Law, §12, ¶100]. Charitable trusts can be varied by court order according to the principle of cy pres, allowing a gift to be applied other than as specified by the donor as long as the new purpose is consistent with the original intent. Charitable trusts may be varied when, for instance, they have fulfilled their stated purposes, their purposes cannot be carried out as directed in the gift or require use of only part of their assets, or their objects are already being fulfilled by other means. Trusts whose property can be more effectively used in conjunction with other trusts' assets for similar purposes may have their benefits dedicated to the common purpose. Variation of charitable trusts is also allowed if the area originally intended to be aided has ceased to exist or a class of persons or location that was the object is no longer suitable. Trusts that have ceased to be charitable because fulfillment of their aims would be useless or harmful to the community may also have their purposes changed by court order to another one consistent with the settlors' intentions [Trusts (Guernsey) Law, §54].

Unit trusts. Unit trusts, which operate as mutual funds to generate income for a group of investors, must be created by a written instrument [Trusts (Guernsey) Law, §6]. Unit trusts are assessed an annual registration fee of 1,300 English pounds (US$2,028) plus corporation tax of 500 English pounds (US$780).

[¶29] Government control and anti-money laundering. Located just off the Norman coast of France in the English Channel, the picturesque Channel Islands are politically part of the British Isles but are not included in the United Kingdom. Joined to England by the Norman Conquest of 1066, Islanders decided not to return to French domination when the Duchy of Normandy reverted to French rule in 1204. King John of England rewarded the Islanders for their loyalty by granting them the right of self-government. Since then the channel Islands have continued to be ruled by english monarchs as Dukes of Normandy. A succession of charters granted by England's Monarchy has assured the Channel Islands continued self-government with separate fiscal and judicial systems outside the reach of English writs.

Guernsey is the smaller of the Channel Islands' two administrative divisions, or Bailiwicks. In addition to 26-square mile Guernsey with its 55,000 inhabitants, the Bailiwick of Guernsey consists of an additional six islands, one of which, Sark, enjoys local autonomy. Language of the Islands is English but some rural people still speak a French *patois*. Financial services account for 47% of Guernsey's gross domestic product, followed by tourism, agriculture, horticulture, fishing, and light industry.

The Channel Islands are considered self-governing dependencies of the English Crown. Their inhabitants enjoy full British citizenship rights. The United Kingdom manages foreign affairs, defense policy, merchant shipping, air navigation, and telecommunications. Guernsey is ruled by the English Monarch in the role of hereditary successor to the Dukes of Normandy and is represented by a Lieutenant-Governor. The actual Head of State is the Bailiff, nominated by Royal appointment, who acts as Guernsey's liaison with the Crown.

The Bailiff presides over the Bailiwick's Royal Court and its unicameral legislative bodies, the 55-member States of Deliberation on Guernsey and the 52-member Chief of Pleas on Sark. Members of the Guernsey States are elected, while 40 of the seats in Sark's legislature are hereditary fiefdoms of the Island's original tenants and 12 are filled by popularly elected deputies. Bills passed by the respective legislatures are referred to the Privy Council in London and are enacted as Orders in Council by the British Crown as Duke of Normandy. The legal system is based on Norman common law primarily affecting land tenure and inheritance. Commercial matters are regulated by legislation based on English common law. Magistrate's courts in Guernsey hear minor cases, while more substantial civil and criminal matters are brought before the Royal Courts. A Court of Appeal for the Bailiwick hears appeals; its decisions may be contested before the Judicial Committee of the Privy Council. The magistrate on Sark retains the medieval title of Sénéchal. Clerk of the Court is the Greffier, while the Prévôt functions as a sheriff in carrying out court decrees.

The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bail-wick of Guernsey) Regulations, 2007, criminalized money laundering. The Disclosure (Bailwick of Guernsey) Law 2007 made the failure to disclose the knowledge or suspicion of money laundering a criminal offense. The duty to disclose suspicious activity extends to all businesses, not only financial services businesses. The original 1999 money laundering law created a system of suspicious transaction reporting including suspicion of tax evasion to the FIU. Guernsey's laws

include search and seizure powers, customer information orders and account monitoring orders. The Transfer of Funds (Guernsey) Ordinance 2007 required parties that offer funds transfer services to provide verified identification information for any person transferring funds electronically. Guernsey enacted the Prevention of Corruption (Bailwick of Guernsey) Law of 2003 and the Regulation of Fiduciaries, Administration Businesses, and Company Directors, etc. (Bailwick of Guernsey) Law of 2000 (the Fiduciary Law) to license, regulate and supervise company and trust service providers. Pursuant to Section 35 of the Fiduciary Law, the FSC must license all fiduciaries, corporate service providers and persons acting as company directors on behalf of any business. The FSC created Codes of Practice for corporate and trust service providers and company directors. To receive licenses, these agencies must follow strict standards, including client identification and know your customer requirements. The Bailwick is fully compliant with the Offshore Group of Banking Supervisors Statement of Best Practices for Company and Trust Service Providers. The FSC regulates the Bailwick's financial banks, insurance companies, mutual funds and other collective investment schemes, investment firms, fiduciaries, company administrators and company directors. The Bailwick does not permit bank accounts to be opened unless there has been a KYC inquiry and the customer provides verifications details. The Bailwick narcotics trafficking, money laundering and terrorism laws designate the same foreign countries as the UK to enforce foreign restraint and confiscation orders.

HONG KONG

This chapter is up-to-date as of August 2019

HONG KONG

HONG KONG
ANALYSIS OF TRUST LAWS

As the traditional point of contact for commerce between China and the rest of the world, Hong Kong accounts for more than one-third of China's foreign exchange income and 60% of foreign investment. With socialism now barred from Hong Kong for a century instead of the 50 years originally agreed to and optimism on the rise, investors, traders, and manufacturers are keeping one of the world's busiest economies prosperous and growing. Because Hong Kong's legal system is derived from the English system, Hong Kong's trust law follows the traditional common law pattern. Trust income generated and distributed outside of Hong Kong is not taxed there. Hong Kong has not been placed on the Financial Action Task Force blacklist of jurisdictions with lax anti-laundering laws. The Territory does not have any extraordinary secrecy laws, and instead relies on common law precepts of confidentiality. Additionally, Hong Kong has two significant laws aimed at money laundering: the Organized and Serious Crimes Ordinance and the Drug Trafficking (Recovery of Proceeds) Ordinance. These measures criminalize money laundering and contain provisions for forfeiture and confiscation of proceeds.

Official statements emphasize that "the simple tax system and absence of exchange controls" are the most important reasons investors are attracted to Hong Kong. However, the Government also admits that costly residential and business accommodations remain the primary negative issue when multinationals consider designating Hong Kong as their headquarters and trustee company locations.

As noted in the national 12th Five-Year Plan announced on March 5, 2011, the central government will continue to provide support for Hong Kong in developing it into an offshore Renminbi (RMB) business center and international assets management center.

The government in 2015 aims to make Hong Kong a global center for trust services as Hong Kong can offer its services to high net worth Chinese individuals. The goal is to develop Hong Kong as the key wealth management business center in Asia. The government launched a trust law reform exercise in 2008, which sought to modernize the Trustee Ordinance and the Perpetuities and Accumulations Ordinance, the two main pieces of legislation in Hong Kong's trust law regime. The passage of the Trust Law (Amendment) Ordinance 2013 in July 2013 has placed Hong Kong's trust law on par with those of other major comparable common law jurisdictions. It will enhance trustees' default powers and introduce measures to protect beneficiaries. Through the abolition of the Rule against Perpetuities, settlors will be able create perpetual trusts in Hong Kong (which is still not possible in most major common law jurisdictions), and, through the introduction of the anti-forced heirship rule, settlors will not need to worry that the assets in the trusts would be clawed back by their heirs against their wishes in the future.

The Inland Revenue Department released guidance notes on the deduction of foreign taxes. Outgoings and expenses are allowed as deductions, as set out in Section 16 of the Inland Revenue Ordinance.

[¶1] Legislative background. Hong Kong's Trustee Ordinance (Cap. 29) of 1934, the foundation of the Territory's trust policy, is based on the English Trustee Act of 1925. Modernizing legislation to amend the awkward common law rule against perpetuities and allow accumulation of income in a trust was passed as the Perpetuities and Accumulations Ordinance (Cap. 257), last amended in 1970. Rules allowing interested parties seeking to amend trusts for protecting interests of

minors or other actual or potential beneficiaries are contained in the Variation of Trusts Ordinance (Cap. 253) codified in 1980. Rules for transfer of title to real property and for claims that seek to avoid fraudulent transfers of any property are contained in the Conveyancing and Property Ordinance (Cap. 219) as revised in 1988. Choice of the proper law of certain foreign trusts is to be determined under the Recognition of Trusts Ordinance (Cap. 76) of 1989.

On July 14, 2006, the Supreme People's Court of the People's Republic of China and the Secretary of Justice of the Hong Kong Special Administrative Region (HKSAR) signed an agreement to put in place an arrangement for the reciprocal recognition and enforcement of judgments in civil and commercial matters by the courts of the Mainland and the HKSAR ("the Arrangement"). Under the Arrangement, where a designated court in mainland China or Hong Kong has made a final judgment requiring the payment of money in a civil or commercial case pursuant to a choice of court agreement in a commercial contract, any party concerned may apply to the People's Court of the mainland or a court in Hong Kong for recognition and enforcement of the judgment. Judgment debtors will no longer be able to shield their assets from cross-border judgments.

In 2013, the Securities and Futures Commission began a consultation on proposals on the professional investor regime and the client agreement requirements in its Code of Conduct. The proposals would require intermediaries to comply with all Code of Conduct requirements, including the Suitability Requirement that should ensure the suitability of a recommendation or solicitation for a client is reasonable in all circumstances, when dealing with all investors who are individuals, including their wholly owned investment vehicles and family trusts. No changes are proposed to the laws concerning access to private placements of investments by those who fulfill existing wealth criteria.

The Trust Law (Amendment) Bill 2013, gazetted on February 8, 2013, modernized the law by enhancing trustees' default powers while providing for appropriate checks and balances. In 2011, Hong Kong's trust industry held assets of an HKD2.6 trillion (USD335bn), and more than 60% of the city's asset management business originated from funds from non-Hong Kong investors. Trust law is based on common law, supplemented by the Trustee Ordinance and the Perpetuities & Accumulations Ordinance, which have not been modified since they were enacted in 1934 and 1970. The legislation clarifies trustees' duties and powers and better protect beneficiaries' interests. The proposal introduces a statutory duty of care on trustees; provides trustees with general powers to appoint agents, nominees and custodians, and insure trust property against risks of loss; allow professional trustees to receive remuneration; provide for a court-free process for the retirement of trustees on beneficiaries' directions; and impose statutory control on exemption clauses that seek to relieve professional trustees from liabilities. The bill allows settlors to reserve to themselves limited power; abolish rules against perpetuities and excessive accumulations of income; and relax the mark et capitalization and dividend requirements for investment in the equity market.

The law of trusts in Hong Kong is about to undergo significant amendment via the Trust Law (Amendment) Bill 2013 ("the Amendment Bill"). However, at the time of writing, the Amendment Bill is still before the Bills Committee of the Hong Kong Legislative Council so its final form is not known. The Amendment Bill is fairly uncontroversial so it is likely to survive intact although technical amendments are inevitable.

[¶2] Formation. Hong Kong trusts may be easily formed as they follow England's 1893 Trustee Act. Trusts neither creating nor distributing wealth in the

Territory are exempt from profits tax. A written declaration of trust or indenture of settlement is not needed to convey authority to a trustee to administer a trust in Hong Kong. However, trusts affecting interests in land must be created by a written trust instrument or by a will [Conveyancing and Property Ordinance, §5, ¶103].

[¶3] Tax status. Hong Kong does not levy taxes on income accruing to trusts created by or for the benefit of nonresident persons when the income arises from outside of Hong Kong or would have been free of tax if received directly by the beneficiary. Corporate profits, dividends, and real estate income sourced in Hong Kong are subject to a 16V2% tax. The dividend tax does not apply if the dividends are paid out of profits previously subject to the corporate tax. Individuals and unincorporated businesses pay a 15% tax if income arises within Hong Kong. Interest and royalty payments also are subject to the 16V2% rate if earned outside of Hong Kong but nonresidents are not subject to interest withholding tax. The 16V2% rate on corporate profits applies to interest earned by Hong Kong banks on their offshore financing operations no matter where it is generated or from where the capital came. However, the Financial Service and Treasury Bureau is now studying a proposed amendment to the Inland Revenue Ordinance that would reduce income tax on offshore funds in order to offset the outflow of hedged funds and asset managers to Singapore. Hong Kong funds and non-fund entities resident outside the territory would be exempt from tax on income from transactions undertaken by approved Hong Kong brokers or advisers. Hong Kong applies an estate tax on assets situated in Hong Kong, provided the assets exceed 7,500,000 Hong Kong dollars (US$ 975,000). Rates range from a low of 7% to a high of 19% over 10,000,000 Hong Kong dollars (US$ 1,300,000). Furthermore, money on deposit in Hong Kong is subject to estate tax regardless of the decedent's residence at death. Shares in locally incorporated companies are also subject to estate duties. Insurance proceeds are exempt from the estate duty.

The double taxation agreement between Hong Kong and Jersey came into force on July 3, 2013. The agreement was signed in February 2012 and covers corporate and personal incomes, including business profits, dividends, interest, royalties, income from employment and pensions. The agreement is based on the OECD standard on exchange of information relating to tax matters.

[¶4] Minimum assets. Hong Kong does not require a minimum amount of property to be placed in a trust at its inception or to remain in it during its existence.

[¶5] Residency requirement. The settlor of a Hong Kong trust does not need to be a resident of Hong Kong.

[¶6] Registration. Hong Kong does not require registration of trusts. No copy of a written trust instrument need be filed with any agency.

[¶7] Revocable or irrevocable; void or voidable. Under common law, Hong Kong trusts are presumed irrevocable unless the settlor retained a power of revocation at the time of its creation. Transfers to a Hong Kong trust may be declared void by court order if a creditor proves that the transfer was made with intent to defraud the creditor [Conveyancing and Property Ordinance, §60, ¶103]. Transfers to a trust can be declared void up to 10 years after they are made if the settlor becomes bankrupt unless the settlor had been able to pay all debts at the time of the transfer [Bankruptcy Ordinance, §47]. Trusts established to benefit unborn illegitimate persons as a class are considered illegal and may be declared void. A

bonafide purchase of property made without fraud may not be set aside on the ground of it being undervalued [Conveyancing and Property Ordinance, §59, ¶103].

[¶8] Settlor as beneficiary. Although under common law practice the settlor may be the beneficiary of a Hong Kong trust, the statutes are silent on that point.

[¶9] Perpetuity period. Hong Kong has modified the common law rule against perpetuities, allowing trusts to remain valid if transfers or powers become effective within any time stipulated in the trust instrument up to 80 years [Perpetuities and Accumulations Ordinance, §6, ¶101].

[¶10] Wait-and-see provision. A "wait-and-see" provision allows dispositions to a Hong Kong trust to continue to be regarded as valid until it is certain that they will not be carried out until after the perpetuity period lapses [Perpetuities and Accumulations Ordinance, §8, ¶101]. When an age greater than 21 years is specified for a disposition's becoming effective and it then seems that the disposition would fall beyond the perpetuities period, the age at delivery may be reduced to allow the gift to be made [Perpetuities and Accumulations Ordinance, §9, ¶101].

[¶11] Accumulations. According to instructions given by the settlor, income from dispositions to Hong Kong trusts may be accumulated for varying periods including the lifetime of the settlor, 21 years after the settlor's death, 21 years from the making of the transfer from which income is to be accumulated, or during the minority of anyone alive at the time of the disposition, of anyone entitled to become a beneficiary on coming of age, or anyone alive at the time of the death of the settlor. Accumulations to pay the settlor's debts or to assemble assets for the settlor's or beneficiaries' descendants are exempt from time limits under the law [Perpetuities and Accumulations Ordinance, §17, ¶101].

[¶12] Beneficiaries. There are no specific requirements that need to be met to become a beneficiary of a Hong Kong trust. Potential members of a class of beneficiaries may be excluded from benefits if necessary for other members of the class to enjoy trust benefits that otherwise would fail for extending past the perpetuities period [Perpetuities and Accumulations Ordinance, §9, ¶101]. Trust income may be applied for the education, maintenance, or other benefit of a beneficiary who is a minor [Trustees Ordinance, §33, ¶100]. Subject to approval of persons with prior life interests in the assets, trustees may advance up to one-half of a beneficiary's vested share of liquid trust assets to a beneficiary who ultimately will come into the right to receive it [Trustees Ordinance, §34, ¶100]. Hong Kong trusts may be discretionary, thus denying a beneficiary the right to invade trust assets. A beneficiary may not demand a trustee, even a bare trustee, to execute a power of attorney in his or her favor *(Hong Kong v Ho Yuan Ki* (CACV 315/2002).

[¶13] Trustees and trustee companies. Hong Kong trusts may have no more than four trustees [Trustee Ordinance, §36, ¶100]. Trustees may be individuals or Hong Kong trust companies [Trustee Ordinance, §85, ¶100]. Corporations formed as professional trust companies must have minimum capital of 1 million Hong Kong

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ISLE OF MAN

This chapter is up-to-date as of August 2019

ISLE OF MAN

and are subject to fines for failing to fulfil their statutory recordkeeping duties [Purpose Trusts Act, §6, ¶109].

A trustee leaving the Isle of Man for more than one month may delegate duties and discretion by power of attorney to anyone other than a co-trustee (unless the co-trustee is a trust corporation) [Trustee Act, §24, ¶100]. Trustees may appoint attorneys and bankers' agents to perform duties and receive funds on behalf of the trust [Trustee Act, 2001, §§11–27, ¶120]. Trustees have broad discretion to invest trust funds. This has been changed from formerly a specified list of securities to a "general power of investment" [Trustee Act 2001, §3, ¶120], subject to the duty of care [Trustee Act 2001 §§1, 2, ¶120] and standard investment criteria of suitability and diversification [Trustee Act 2001 §4, ¶120]. When beneficiaries compel trustees to commit breaches of trust, a court may order indemnification of the trustees out of trust assets for losses they incur as a result of the breach [Trustee Act, §60, ¶100]. Under the Trustee Act, 2001, the treatment of trustees was made much tougher and they are now required to exercise "due care" in all activities relating to corporate and bank loans and are obligated to keep close watch on investments [Trustee Act, 2001, ¶120]. Any investment in land made by a trust that is outside the Isle of Man or United Kingdom must be made only through a company owned by the trustees. The Trustee Act, 2001 permits the trust to delegate to agents or approved non-agents or custodians. Specific rules are set out regarding management of third parties whereby trustees must prepare a policy explaining the managers' functions [Trustee Act 2001, ¶120].

[¶14] Enforcers. A purpose trust must have from its inception an enforcer supervising the carrying out of its terms acting independently of the trustees. The trust instrument must provide a mechanism for replacing an enforcer who is incapacitated or who ceases to act independently of the trustees [Purpose Trusts Act, §1, ¶109].

[¶15] Protectors. Settlors may appoint persons to oversee trust operation and consent to the manner in which trust funds are invested [Trustee Act, §2, ¶100]. A 1995 decision of the Manx High Court held that a protector has a fiduciary duty to trust beneficiaries equivalent to that of a trustee. A protector who has failed to inform himself or herself of a trustee's conduct regarding a trust that results in a breach of trust can be found liable to beneficiaries for damages arising from the breach.

[¶16] Confidentiality rules. Trustees generally are required, as fiduciaries, to respect confidentiality of trust information. Data released to inspectors in the context of an investigation of a collective investment scheme may not be released except under court order, subject to criminal sanctions [Financial Supervision Act, §23, ¶106].

[¶17] Financial disclosure. Beyond the common law requirement for trustees to render accounts of their activities to a trust's beneficiaries, no provision in Manx law for disclosure of financial information about ordinary trust operations exists. Corporate managers of unit trusts must provide the government with information about their operations if ordered to do so. A court may order investigation and inspection of a unit trust's operations if it grants the petition of the Financial Supervision Commission [Financial Supervision Act, §19, ¶106]. "Designated persons" who are trustees of Manx purpose trusts must maintain the trusts' financial records and make them available for inspection by the Attorney General

of the Isle of Man. Access of persons with no interest in a Manx purpose trust to its records is to be denied by the recordkeeper [Purpose Trusts Act, §2, ¶109].

The Criminal Justice (Money Laundering Offences) Bill, 1998, effective July 1, 1998, assigned the Isle of Man Police Force the full responsibility for enforcing and administering the rigid anti-money laundering measure, including the handling of all suspicious money-laundering activities reported to the Police Department. This Act was strengthened still further when the Anti-Money Laundering Code, 1998, went into effect on December l of that year requiring all related matters of reporting, recordkeeping, education, and training to be carefully maintained by individuals in virtually all types of business. Under the revised anti-money laundering regulations, among the rigid requirements are the need of settlors of trusts to provide the trustees of a certified copy of his or her verification of place of birth, nationality, organization and the origin of the funds invested. Stiff penalties are levied on guilty offenders, including imprisonment and fines. Despite the Isle of Man's anti-money laundering legislation and efforts to halt any abuse of its high standards of morality of the island's major industrial operations, Valet (Isle of Man) Ltd., has been accused of using its offshore corporations to shield its clients from taxes and to circumvent regulations. The failed Russian banking institution, Bank Menatep, owned 20% of Valet's parent company, the Valet Group, which is based in Bermuda. Bank Menatep is the key player in the Russian money laundering investigation that used Bank of New York contacts.

[¶18] Redomiciliation. Under the Trusts Act 1995, a trust term electing Manx law to govern a trust will be held unconditionally valid, effective and conclusive [Trusts Act 1995, §2, ¶107]. A trust's governing law may be changed from or to that of the Isle of Man if the change is allowed by the terms of the trust and if the new governing law recognizes the change [Trusts Act 1995, §3, ¶107]. Offshore companies may apply by written request to the Treasury to be continued in the island as a company subject to the relevant laws of the Isle of Man [Companies (Transfer of Domicile) Act, 1998, Part I Continuation of Offshore Companies §2(1), (2), and (3), ¶113]. Not more than three months before application, the offshore company must publish the application in two newspapers circulating in the island and in one newspaper in the country or territory in which the offshore company is incorporated. Part II covering Discontinuation of Isle of Man Offshore Companies, allows an Isle of Man company to apply to the Treasury for consent to be continued in the country or territory outside the island as if it had been incorporated under the laws of that other country or territory. The application must be accompanied by a certified copy of a resolution of the members' vote confirming approval by a majority vote of 75% of each class of members authorizing continuance of the company in a named country outside the island. A copy of the notice must be published at least 14 days prior to application in two newspapers circulating in the island and one in the country or territory in which the company is to be continued [Companies (Transfer of Domicile) Act, 1998, Part II Discontinuation of Isle of Man Companies §§8(1) and (2), ¶113]. The Act excludes banking, insurance, Investment Business Act, and other classes of companies as may be prescribed.

[¶19] Government and private fees. No official fee is required to establish a Manx trust. Tax-exempt trusts for nonresidents are not required to pay stamp duty at inception. Private legal and banking fees are around $400 to start a trust and a percentage of the trust's value, usually with a minimum of $1,500 or more per year, for maintaining a trust.

[¶20] Exchange control. The Isle of Man is in the sterling zone and uses the English pound as currency. Except for licenses that are required for certain imports and quotas placed on others, foreign exchange may be freely transferred into and out of Manx territory.

[¶21] Tax treaties. The Isle of Man has double taxation agreements with Australia, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, New Zealand, Norway, Sweden and the United Kingdom. The Isle of Man has Tax Information Exchange Agreements with Australia, Faroe Islands, Denmark, Finland, France, Germany, Greenland, Iceland, Ireland, Netherlands, New Zealand, Norway, Sweden, the United Kingdom and the United States. The Isle of Man is a party to the EU Savings Tax Agreements.

The government announced the signing of a TIEA and a convention for the avoidance of double taxation and fiscal evasion with respect to income taxes with Slovenia on June 27, 2011. The TIEA signed with Slovenia is the Isle of Man's 24th agreement for tax information exchange and the 28th agreement concluded by the territory that meets the OECD's standard on tax cooperation and transparency.

A tax information exchange agreement was signed with Spain in December, 2015. The Isle of Man was one of the first countries to commit to sharing information in accordance with the OECD Common Reporting Standard.

Isle of Man signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing on July 6, 2017.

The Inland Revenue Authority of Singapore announced that the BEPS multilateral instrument entered into force for several of its double tax treaties on April 1, 2019 including the Isle of Man.

[¶22] Restrictions. Other than the limitations placed on the scope of investing funds by trustees [Trustee Act, Part I, ¶100], the Isle of Man has no specific restrictions on private trusts. Unit trusts are tightly regulated as to the form their advertising may take [Prevention of Fraud (Investments) Act, §2, ¶103; Financial Supervision Act, §1, ¶105].

[¶23] Asset protection. The Isle of Man has not enacted legislation aimed at protecting assets in trusts from attacks by settlors' creditors and the government does not intend to adopt a corresponding measure. The Isle of Man's first asset protection trust measure overrides forced heirship laws of foreign countries and avoids or defeats any right conferred by foreign law on any person by means of a personal relationship. [Trusts Act 1995, §5, ¶107].

[¶24] Fraudulent dispositions. Transfer of property to a trust or elsewhere found by a court to have been fraudulently made to defeat a creditor's just claim will be declared void by Manx courts [Act of 1737, ¶108].

[¶25] Time limit to bring suit. Manx trust laws do not set up a specific limitation on suits seeking to avoid a trust.

[¶26] Foreign court awards. Sections 4 and 5 of the Isle of Man's Trusts Act 1995 apply to trusts created on or after January 17, 1996 or earlier trusts whose governing law is changed to Manx law after that date. Section 4 confirms the wide extent of the application of Manx law where Manx law is the governing law. Section 5 excludes the effect of foreign law and any supporting foreign court or administrative rule.

[¶27] Forced heirship. A Manx trust will be declared valid even if its dispositions run counter to a foreign jurisdiction's laws of heirship or personal relationships [Trusts Act 1995, §5, ¶107].

[¶28] Other types of trusts. Manx law recognizes charitable trusts, protective trusts, and unit trusts.

Charitable trusts. Manx law recognizes charitable purpose trusts and grants their trustees the same powers as those of other trusts [Trustee Act, §52, ¶100]. An office holder who is trustee of a charitable trust can be replaced as trustee by the successors in office unless the successor declines the trusteeship [Trustee Act, §40, ¶100].

Protective trusts. The Trustee Act authorizes the use of protective or spendthrift trusts for beneficiaries who are believed likely to invade trust assets to pay their debts. Beneficiaries' interests may be made subject to termination, to restrictions on beneficiaries dealing in all or part of their income or future rights in the trust property, or to reduction or termination if a beneficiary becomes insolvent or exposed to seizure of property for the benefit of creditors.

Property in a protective trust will be used to generate income for a beneficiary until the beneficiary's interest terminates. Should the beneficiary authorize trust income to be paid to a third party, the trustee will have absolute discretion to disregard the request and to pay the trust income to the beneficiary and the beneficiary's spouse and children or, if the beneficiary does not have a wife or children, to the beneficiary or any successors as defined under Manx laws of intestate succession [Trustee Act, §33, ¶100].

Unit trusts. Unit trusts acting as mutual funds in which a single trustee manages assets for numerous unrelated investors are regulated as "collective investment schemes" under the 1988 Financial Supervision Act. The legislation covers "open-ended investment companies" that operate as corporate fund managers [Financial Supervision Act, §31, ¶105] as well as private unit trusts with fewer than 50 participants, which are exempt from the full regulatory plan of the Act [Financial Supervision Act, §11, ¶105].

Collective investment schemes open to the public may be "authorized" with power to offer participations anywhere in the world [Financial Supervision Act, §3, ¶105] or "recognized schemes" managed from the United Kingdom or another country approved by the Manx Treasury [Financial Supervision Act, §12, ¶105] or approved by the Financial Supervision Commission on a case by case basis [Financial Supervision Act, §13, ¶106]. "Restricted schemes" operated from the Isle of Man may be unit trusts or approved collective investment schemes that offer participations overseas. They are less stringently regulated than authorized or recognized schemes [Financial Supervision Act, §11, ¶105].

Under a 1996 ruling of the Isle of Man's Financial Services Commission, a unit trust may be the vehicle for establishing a professional investor fund (PIF). Units may be sold to corporations, trusts or other entities, or individuals having a net worth of US$2.5 million or more. Other corporations already active in the investment business also may purchase units. Minimum investment in a PIF is US$100,000. Although a PIF does not need a trustee, a licensed manager or management company whose net worth is at least 150,000 English pounds (US$240,000) must administer the fund. A PIF is exempt from all Manx taxes except value-added tax if no Manx person other than a tax-exempt entity has invested in it.

Purpose trusts. Trusts without ascertainable individual beneficiaries for charitable or noncharitable purposes are allowed in the Isle of Man. Purposes of a

trust must be certain, reasonable, and possible and may not be unlawful, against public policy, or immoral. Purpose trusts are to be created by written deed or a provision of a will admitted to probate or able to be administered in the Isle. A purpose trust must have an enforcer who is independent of the trustees [Purpose Trusts Act, §1, ¶109] and must be replaced if unable to act or having ceased to act independently [Purpose Trusts Act, §3, ¶109]. Manx purpose trusts may not own land in the Isle [Purpose Trusts Act, §5, ¶109].

Other International Schemes. As of August 1, 2004, Isle of Man investment funds constituted as "International Schemes," excluding exempt international entities, may incorporate or convert to protected cell companies (PCCs). This allows assets of each cell or sub-fund to be legally "ring-fenced" under Isle of Man law in order to protect against liabilities created in other cells or sub-funds.

[¶29] Government control and anti-money laundering. Located in the Irish Sea, the 227 square mile Isle of Man is equally distant from the coasts of Ireland, Scotland, and England. Its Celtic inhabitants suffered frequent Viking raids for around 150 years starting in 800 A.D., after which Norsemen settled in the Isle and founded Tynwald, the legislative body that celebrated its 1,000th anniversary in 1979. Following nearly 300 years under the Norwegian Crown, domination passed back and forth between Scotland and England until the Isle of Man became the province of a succession of English noble families starting in 1405. In 1765 the title of Lord of Man was acquired for the British Crown and today the Lord of Man is Queen Elizabeth II. Although the Isle's revenue and customs functions were assumed by the United Kingdom in the eighteenth and nineteenth centuries to eliminate smuggling through its territory, it has retained its independence under supervision of the English Crown. The Isle of Man has a strong voice in domestic matters, since United Kingdom legislation does not apply without previous consultation and insertion of special clauses in the laws. International defense and foreign diplomacy are the responsibility of the United Kingdom. Under Protocol 3 of the United Kingdom's Treaty of Accession as relating to the European Union (EU), the Isle of Man is in a class of its own, neither a member state nor an associate member. It neither contributes to nor receives from funds of the EU. Any change in the Isle of Man statutes has to be approved by all member states.

The rugged picturesque beauty of its western coast makes the Isle of Man a favorite resort for British vacationers. In summer half a million visitors arrive to enjoy the island's beaches and Grand Prix motorcycle races. Although tourism remains an important sector in the Manx economy, its share of gross national product has fallen to 10% while financial services have advanced to more than one-quarter of gross national product. Farming and fishing also contribute substantially to the Isle's activities. The capital and commercial center of the Isle of Man is Douglas, located on the Isle's southeastern coast.

The Isle of Man is not part of the United Kingdom but a self-governing dependency of the British Crown. Head of state is the English Monarch, represented by a lieutenant governor who heads the executive function and presides over the legislature. The Chief Minister chosen by the lower house of Parliament sits at the head of an eight-member Executive Council made up mostly of the heads of the boards (ministries) selected by the majority party in the legislature.

The Manx parliament, Tynwald, consists of a 24-member lower house, the Keys (Norse for "chosen") whose members are elected to five-year terms, and an upper house, the Legislative Council. Eight members of the Legislative Council are elected by the Keys from outside its ranks, while the Bishop of Sodor and Man and the Attorney General participate *ex-offcio*. Before bills passed by Tynwald become

effective they require Royal assent, which can be granted by the Lieutenant Governor for domestic legislation.

Manx law is based on common law derived from local custom but English influence is strong in commercial legislation and practice. Magistrates Courts have jurisdiction of all matters in first instance and are reviewed by the Court of Appeals. Cases are heard in last resort by the High Court consisting of two judges having the title of Deemsters.

Money Laundering

The Isle of Man criminalized money laundering related narcotics trafficking in 1987. The Criminal Justice (Money Laundering Offenses) Act 1998, extended the definition of money laundering to cover all serious crimes and led to the creation of the Anti-Money Laundering Code which came into force on December 1998. The AML Code has been replaced by the Criminal Justice (Money Laundering) Code 2007 enacted in September 2007. The 2007 Code applies to banking, investment, collective investment schemes, fiduciary services business, insurance, building societies, credit unions, bureaux de change, estate agents, bookmakers and casinos, accountants, notaries and legal practitioners, insurance intermediaries, retirement benefit schemes, administrators and trustees, auditors and any activity involving money transmission services or check encashment facilities. The Code required that obligated entities implement AML policies, procedures and practices, including employing them for countering terrorist financing. The Code mandates customer identification requirements, reporting of suspicious transactions and adequate records and internal controls. The Financial Services Commission, which regulates the financial sector, has AML Guidance Notes which the FSC rewrote in 2007 and which reflect the new licensee status of corporate and trust service providers. Money service businesses not already regulated by the FSC or the Insurance and Pension Authority must register with the Customs and Excise. The Companies (Amendment) Act 2003 provided for additional supervision for all licensable businesses, e.g. banking, investment, insurance and corporate service providers. The Act abolished bearer shares after April 1, 2004 and mandated that all existing bearer shares be registered before the bearer can exercise any rights relating to the shares. The Criminal Justice Acts of 1990 and 1991, as amended, extended the power to freeze and confiscate assets to a wider range of crimes and increased the penalties for a breach of the money laundering codes. The Protection of Terrorism Act 1990 made it an offense to contribute to terrorist organizations or to assist a terrorist organization in the control of terrorist funds. In October 2007, the Isle of Man signed TIEAs with each member of the Nordic Council. The European Communities (Cash Controls) (Application) Order 2008 and Cash Controls (Penalties) Regulations 2008 came into force in the Isle of Man on June 1, 2008. These laws require persons entering or leaving the Isle of Man to declare cash amounts to a value of EUR 10,000 or more (approximately GBP 7,700). The term "cash" includes currency in any denomination, bankers' drafts, travelers' cheques and incomplete negotiable instruments (that are signed, but with the payee's name omitted). Declarations must be made to the Manx Customs and Excise Department in writing (using a form made available on the department's website) and may be submitted by post or electronically at least 24 hours prior to an individual's departure from the Isle of Man. The new cash declarations rules came into effect across the European Union (EU) on June 15, 2007 with the goal of achieving an EU-wide common approach to controlling cash movements into and out of the EU, while complementing the EU's Money Laundering Directive

IOM legislation provides powers to constables, including customs officers, to investigate whether a person has benefited from any criminal conduct. These powers allow information to be obtained about that person's financial affairs. These powers can be used to assist in criminal investigations abroad as well as in the IOM. The Terrorism (Finance) Act 2009 allows the IOM authorities to compile their own list of suspects subject to sanctions when appropriate.

Know your customer rules apply to banks; building societies; credit issuers; financial leasing companies; money exchanges and remitters; issuers of checks, traveler's checks, money orders, electronic money, or payment cards; guarantors; securities and commodities futures brokers; safekeeping, portfolio and asset managers; estate agents; auditors, accountants, lawyers and notaries; insurance companies and intermediaries; casinos and bookmakers; high-value goods dealers and auctioneers. Suspicious transaction reporting requirements apply to banks; building societies; credit issuers; financial leasing companies; money exchanges and remitters; issuers of checks, traveler's checks, money orders, electronic money, or payment cards; guarantors; securities and commodities futures brokers; safekeeping, portfolio and asset managers; estate agents; auditors, accountants, lawyers and notaries; insurance brokers and companies and intermediaries; casinos and bookmakers; high-value goods dealers and auctioneers.

In 2003, the U.S. and the UK agreed to extend to the IOM the U.S.-UK Treaty on Mutual Legal Assistance in Criminal Matters. The UK's ratification of the 1988 UN Drug Convention was extended to include IOM on December 2, 1993; its ratification of the UN Convention against Corruption was extended to include the IOM on November 9, 2009; and its ratification of the International Convention for the Suppression of the Financing of Terrorism was extended to IOM on September 25, 2008. The UK has not extended the UN Convention against Transnational Organized Crime to the IOM.

Compliance with international standards was evaluated in a report prepared by the International Monetary Fund's Financial Sector Assessment Program. The report can be found here: http://www.imf.org/external/pubs/ft/scr/2009/cr09275.pdf.

The Isle of Man Insurance and Pensions Authority has produced guidance on the Prevention of Terrorist Financing Code 2011 to assist regulated entities. The Prevention of Terrorist Financing Code 2011 (the CTF Code) is issued by the Department of Home Affairs under the provisions of the Terrorism (Finance) Act 2009. The CFT Code contains similar provisions to those set out in the Proceeds of Crime (Money Laundering) Code 2010.

MACAU

This chapter is up-to-date as of August 2019

MACAU

ANALYSIS OF TRUST LAWS

Macau is a former Portuguese colony that is now a special administrative region of mainland China. This change in Macau's status took place in December 1999. Previously, Macau had been subject to Portuguese rule since the sixteenth century. Macau contains a mere 21 square kilometers of land, which is approximately one tenth the size of the city of Washington, D.C. Macau is located near Hong Kong on the other side of a common harbor. The north of Macau is part of the Asian continental land mass and is contiguous to mainland China. The balance of Macau consists of two islands, Coloane and Taipa, which are attached to the mainland by causeway and bridges. Macau is primarily an urban jurisdiction, with a population of approximately 520,400, and also has one airport. The population has a high literacy rate (approximately 90%) and is very heterogeneous, comprised of 95% Chinese and Macanese (mixed Portuguese and Asian ancestry). The religious make-up of Macau is roughly 50% Buddhist, 15% Roman Catholic, and 35% other. The primary languages are Portuguese and Chinese (Cantonese).

As part of the arrangement ceding Macau to China, the mainland government has promised a "one country, two systems" formula, which is similar to the mainland's promise to Hong Kong. Under this formula, which applies for 50 years, China will not impose its socialist economic system on Macau and will instead give Macau a high degree of autonomy in all matters except foreign policy and defence. Macau is home to an outpost garrison of the Chinese People's Liberation Army which, according to published Central Intelligence Agency data, consists of about 500 regular military personnel.

Macau's legal system is founded primarily on Portuguese civil law. Legislative powers are vested in a unicameral Legislative Council ("LEGCO") consisting of 23 members, of whom eight are elected by popular vote, eight are chosen by indirect vote, and seven are appointed by the chief executive. LEGCO members serve four-year terms. The executive branch is bifurcated so that the head of state is the President of mainland China, while the head of government is a chief executive. The chief executive is selected by China.

Macau's economy is based largely on tourism, gambling and manufacturing textiles and fireworks. Other small industries, such as toys, artificial flowers, and electronics have appeared in recent years. Tourism accounts for roughly 25% of GDP, and gambling represents an estimated 40% of GDP. Clothing sales generate about 75% of export earnings, with the United States being the primary export market. Overall growth expansion was 4% in 2000 and has now stabilized at a 2% annual rate. Despite political unrest, Macau's leadership has remained in firm command. Crime has fallen sharply and international investors continue to explore the growing market, with approximately 200 new firms being established annually. Macau's currency, the pataca, consistently trades at about 8 patacas per one USD ($0.125) and is pegged to the Hong Kong dollar at the rate of 1.03 patacas per one Hong Kong dollar ($0.12028).

In an effort to diversify its economy and to participate in the global financial services sector, Macau enacted Decree-Law no. 58/99/M of 18th of October, known as the "Offshore law." This statute, which is detailed below insofar as it relates to trusts, is the cornerstone of Macau's efforts to make itself a viable offshore financial center.

Under the one country/two systems principle that underlies Macau's 1999 reversion to The People's Republic of China, Macau has substantial autonomy in all areas of governance except defense and foreign affairs. Macau's free port, a lack of foreign exchange controls and a rapidly expanding economy based on gambling and tourism create a dynamic offshore financial center.

The OECD requested in 2019 stakeholders' input on the dispute resolution process. It is reviewing Macau's implementation of the base erosion and profit shifting (BEPS) Action Plan minimum standard on tax treaty dispute resolution under Action 14. Macau is subject to a Stage 1 review, which focuses on changes that have been made to implement the standard.

[¶1] Legislative background. Macau enacted an offshore law in October 1999, which is more formally known as Decree-Law no. 58/99/M of 18th of October. This statute is riddled with ambiguity and uncertainty and is plainly in need of improved drafting. However, despite these weaknesses, it is nonetheless clear that the Decree Law seeks to make Macau a viable offshore trust jurisdiction. The new law generally does not allow offshore trust companies to do business with Macau residents or to conduct trade in the Macau pataca. It does, however, provide an income tax exemption for any income derived from offshore trust administration, thus making Macau a potentially attractive base of operations for trustees and trust companies.

The Decree Law recognizes and gives effect to any foreign law that a trust instrument designates as governing the trust [Arts. 43, 44(c), 48(b), {100]. It gives non-Macanese trust law viable legal status in Macau. This is the linchpin of Macau's fledgling asset protection trust business, which is not based on its own asset protection laws but which is instead based on making Macau a hospitable host for trusts organized in other jurisdictions. Additionally, it appears that foreign judgments regarding trusts are generally not recognized, thus providing some limited asset protection against court actions prosecuted outside Macau, although the exact meaning of the statutory non-recognition clause is unclear and, upon judicial review, may not provide the non-recognition effect that many planners seek. The statute also sets forth various technical requirements that a trust must satisfy, such as rules regarding signature and execution, and also imposes significant confidentiality duties on trustees.

On 23 of March of 2006 the Macau Special Administrative Region Government passed a 12-Article Bill on the prevention and suppression of money laundering, including the extension of the obligation of suspicious transaction reporting to lawyers, notaries, accountants, auditors, tax consultants and offshore companies. The Macau criminal code (Decree Law 58/95/M of 14 of November of 1995, Articles 22, 26, 27 and 286) criminalized terrorist financing.

On March 23, 2006, the Macau Special Administrative Region passed a 12-article bill on the prevention and repression of money laundering that incorporated aspects of the FATF Forty Recommendations, included provisions on due diligence and included all serious predicate crimes. The 2006 law extends the obligation of suspicious transaction reporting to lawyers, notaries, accountants, auditors, tax consultants, and offshore companies. Macau's financial system is governed by the 1993 Financial System Act and its amendments. The Act imposed requirements for the mandatory identification and and registration of financial

institution shareholders, customer identification and external audits. The 1997 Law on Organized Crime criminalized money laundering and contained provisions for the freezing of suspect assets and instrumentalities of crime. The 1998 Ordinance on Money Laundering set forth requirements for reporting suspicious transactions to the Judiciary Police. These

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MAURITIUS

This chapter is up-to-date as of August 2019

MAURITIUS

MAURITIUS
ANALYSIS OF TRUST LAWS

Although Mauritius's legal heritage is French, its legislation has broken away from the French Civil Code to allow the use of trusts both for residents of the country and offshore settlors who benefit from exemption from Mauritian taxes. Creation of an export processing zone in 1970 by Mauritius and its continuing success in aiding a cash crop-based economy to industrialize and diversify have drawn worldwide attention to the island nation in the Indian Ocean off the African coast. Legislation in the late 1980s and early 1990s, followed by a more liberal Offshore Companies Bill in 1994 creating a sophisticated offshore financial center, includes acts to allow businesses, banks, and insurance companies to operate abroad from a Mauritian base exempted from all taxes and restrictions on movement of funds. In the first year of operation under the Mauritius Offshore Business Activities Act 1992 [¶100], 150 enterprises opened registered offices in Mauritius, and by 1995 there were more than 3,000. Ship registrations have been increasing since the country amended its Merchant Shipping Act to create a Mauritian flag of convenience.

The Mauritius-India-South Africa axis is critical in understanding the practice of offshore trust and company practice in the region. Investors have seen Mauritius as the entry into India in terms of inward investment because to its attractive double tax treaty. Historically, Mauritius had been slow to expand as a trust jurisdiction with the greater part of the offshore activity on company formation and administration. The South African tax and exchange control amnesty in 2003 increased the role of Mauritius in offshore trust activity. Numerous South Africans had created offshore trusts for security though such structures were not compliant with the South African tax and exchange controls. Prior to the tax amnesty, the choice of trustee location was an issue of for confidentiality. In the post-amnesty period, this is not a concern. The significant South African expatriate community and the understanding of the cultural needs of this South African community are the foundation for a large percentage of the practice conducted by trust practitioners in Mauritius for South Africans.

The government will introduce a SME Development Scheme, which will provide tax incentives. In addition to a subsidized interest rate on credit, eligible SMEs will obtain tax exemptions for the first eight years of their operations, together with value-added tax and import duty exemptions on purchases of productive equipment.

The first exchanges of information under the Common Reporting Standard will take place from September 2018. The OECD's CRS obliges nations to obtain financial information from their financial institutions and exchange the information with other jurisdictions. The requirement for financial institutions to apply due diligence procedures to record the tax residence of clients opening new accounts will take effect from January 1, 2017. The due diligence procedures for identifying high-value pre-existing individual accounts was required to be completed by December 31, 2016, while the due diligence for low-value pre-existing individual accounts will be required to be completed by December 31, 2017.

Mauritius published in its Official Gazette legislation to enact measures announced in the territory's latest budget contained in The Finance (Miscellaneous Provisions) Act 2019. The measures include international tax reforms, value-added tax changes, corporate tax relief measures including a patent box regime, a regime for peer-to-peer lending, individual tax breaks and a tax amnesty scheme.

[¶1] Legislative background. The Trusts Act 2001 repealed the Trusts Act 1989, the Trust Companies Act 1989, and the Offshore Trusts Act 1992, and consolidated many of the repealed provisions into a single trust statute governing all Mauritian trusts formed after December 2002 [Trusts Act 2001, §5, ¶105]. Trusts formed before the effective date of the new law continue to be governed by the old statutes [Trusts Act 2001, §71(1), ¶105]. In general, the Trusts Act 2001 codifies many basic principles of English trust law. Among other things, the 2001 law recognizes fiduciary concepts [Trusts Act 2001, §37, ¶105] and the related principles of dividing legal and equitable ownership [Trusts Act 2001, §2, ¶105 (defining "beneficiary" and "trust"); §§3, 7(1) (regarding existence and nature of trust and transfers on trust)]. The Trusts Act 2001 also dispenses with the need to follow certain legal formalities that apply to other instruments [Trusts Act 2001, §6(3), ¶105], and, by repealing the Offshore Trusts Act 1992, thereby eliminating the old categorization of certain trusts as "offshore trusts," apparently eliminates the need to register "offshore trusts" that formerly existed under §29 of the Mauritius Offshore Business Activities Act 1992 ("MOBBA") [see ¶6 *infra* (regarding current registration rules); MOBBA, ¶101, §29 (regarding old registration rules)]. Nonresident beneficiaries are exempt from income tax on any amounts distributed to them, and, pursuant to amendments under the Trusts Act 2001, non-resident trusts are wholly exempt from income tax [see ¶3 *infra*].

The Trusts Act 1989, as replaced by the Trusts Act 2001 encompasses some features of the repealed Offshore Trusts Act [¶102]. However, it introduced changes relating to domestic trusts by amending relevant provisions of the Civil Code. Under the legislation there is no mandatory disclosure when creating a trust. It also provides for income tax exemption for trusts.

The Financial Services Development Act 2001 adopts a foundation for the integration of offshore and domestic business activities and provides a single regulatory authority known as the Financial Services Commission and covers all non-banking services, including trusts. Companies previously incorporated as offshore companies or as international companies are considered licensed by the Financial Services Commission.

A major revision in the Companies Act 2001 is the replacement of the Articles of Association and the Memorandum of Association by a single document called the "Constitution". A company is not required to have a Constitution but if it does not, the standard provisions of the Act apply. Companies may be incorporated with a single shareholder and have a single director, issue shares with disproportionate rights or repurchase its shares. If it is a domestic company, it may hold 15% of the repurchased shares as treasury shares and an entity with a Global Business Company license may hold all the repurchased shares.

The Companies Act 2001 consolidates and amends legislation governing companies (including trust companies) in effect since 1984 with the exception of liquidations. As of December 1, 2001, the new ACT allows Global Business Companies (GBCs) to be exempt from certain provisions of the Companies Act 2001.

The Financial Services Act 2007 came into force on September 28, 2007. The Financial Services (Consolidated Licensing and Fees) Rules 2008 were made by the Financial Services Commission under section 93 of the Financial Services Act 2007 and apply to all financial services other than banking licensed and regulated by the Commission. The Rules provide a fee schedule for all new activities and will not change existing licensees. The Financial Services (Other financial business activity) Rules 2008 were released by the Commission and became effective on March 22,

2008. Accordingly, the Financial Services Development Act 2001, the Financial Services Development (Amendment) Act 2005 and the Unit Trust Act 1989 were repealed. These new Acts provide an enhanced integrated framework for both domestic and global business and a revamped fee structure for new licenses. The Acts will encourage the creation of collective investment schemes including real estate investment trusts and alternative financial services, e.g., Islamic financial services. Companies incorporated in Mauritius for the purpose of doing business primarily outside of Mauritius are called global business companies, or GBCs and are governed by the FSA.

The Securities (Collective Investment Schemes and Closed-end Funds) Regulations 2008 applies to collective investment schemes including those established under a protected cell company. The investment scheme administrator must have a place of business in Mauritius, though the regulations allow for a scheme manager to be

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SEYCHELLES

This chapter is up-to-date as of August 2019

SEYCHELLES

SEYCHELLES

ANALYSIS OF TRUST LAWS

Despite a socialist cast to its domestic politics for most of the time since its independence in 1976, the Indian Ocean Republic of Seychelles has promoted foreign investment by creating and augmenting legislation allowing the formation of zero tax corporations. However, unstable political conditions early in its independence and high fees rubbed off some of the luster from the Seychelles' promise as an attractive offshore financial center. Nonetheless, the Investment Promotion Act, enacted in 1994, was part of an effort to make Seychelles' investment climate more conducive and hospitable to direct investment. Its proposals, adopted by the National Assembly, complement the International Business Companies Act 1994 [¶103]. As a civil law jurisdiction, the concept of the trust is alien to Seychelles practice. Still, the country has followed the lead of other countries with no common law heritage and made it possible to create trusts under the International Trusts Act, 1994 [¶102].

Meanwhile, following discussions with the International Monetary Fund, the Financial Action Task Force and the OECD, the Seychelles Government has three new measures designed to improve its international business sector and raise official revenues. International trustee services providers must maintain separate registers of licensed persons. Seychelles has expanded its company formation offerings. Under the Protected Cell Companies Act 2003, the Limited Partnerships Act 2003, and the Companies (Special Licenses) Act 2003, firms may now register with the Seychelles International Business Authority as holding companies, limited liability partnerships, or as protected cell companies. A Special License Company is a domestic Seychelles entity with concessions and favorable tax treatment. Seychelles also adopted the Interactive Gambling Act 2003 to license and regulate internet gaming activities. In 2003, Seychelles also adopted the International Corporate Service Providers Act, 2003, which requires the licensing and regulation of providers of international corporate services and international trustee services. Seychelles has also adopted the Electronic Transactions Act, 2001, as well as terrorism prevention and anti-money laundering laws, including the Anti-Money Laundering Act 1996, the Mutual Assistance in Criminal Matters Act 1997, and the Prevention of Terrorism Act 2004.

There are 34,000 registered international business companies and 160 trusts that pay no taxes in Seychelles. Seychelles has one offshore bank and three offshore insurance companies. 14,800 IBCs were registered in 2010. The Seychelles IBCs are now ranked third in the global tax-exempt company market after BVI and Panama.

Trusts in Seychelles are governed by the Seychelles International Trusts Act of 1994.

Amendments to the original act were made in 2011 by the International Trusts (Amendment) Act of 2011, which introduced greater flexibility into Seychelles International Trusts. The government drafted the Act after a thorough study of best practices in other top trust jurisdictions, and incorporated all of the best features of other trust legislation, including stronger asset protection.

Trusts in Seychelles are governed by the Seychelles International Trusts Act of 1994.

Amendments to the original act were made in 2011 by the International Trusts (Amendment) Act of 2011, which served to increase the desirability of Seychelles

as an international trust jurisdiction by introducing greater flexibility into Seychelles International Trusts. The government of Seychelles drafted the Act after a thorough study of best practices in other top trust jurisdictions, and incorporated all of the best features of other trust legislation, while also including various modifications and innovations that allowed for greater flexibility and stronger asset protection. As a result, Seychelles law is an exemplar of premier asset protection trust legislation.

Changes will be made to the personal income tax system to reduce the tax burden on low-income earners. From July 2016, individuals earning up to SCR8,555.50 (USD553.74) per month will not pay any income tax. From January 2017, the first SCR8,555.50 in earnings will be subject to tax at 0 percent.

The introduction of a progressive personal income tax regime from 1 July 2017, rather than 1 January 2017 will occur. Income tax above a threshold will be subject to progressive rates of either 15 percent, 20 percent, or 30 percent. From 1 July 2017, a new property tax will be introduced on land ownership to be levied only on foreigners.

The OECD found the nation made sufficient reforms to comply with its BEPS Action 5 standard on harmful tax regimes. The regimes reviewed were: International Business Companies, Companies (Special Licenses), export services under the International Trade Zone, offshore banking, non-domestic insurance business, reinsurance business, securities business under the Securities Act, and fund administration. Seychelles enacted numerous legislative amendments to enable Seychelles to comply with the OECD's base erosion and profit shifting (BEPS) minimum standards: The Seychelles Pension Fund (Amendment) Act, 2018; The International Trade Zone (Amendment) Act, 2018; The International Business Companies (Amendment) Act, 2018; The Companies (Special Licences) (Amendment) Act, 2018; The Securities (Amendment) Act, 2018;The Insurance (Amendment) Act, 2018; The Mutual Fund and Hedge Fund (Amendment) Act, 2018; and The Business Tax (Amendment) Act, 2018. Seychelles signed the BEPS multilateral instrument in June 2017.

The government launched a consultation to seek views on an overhaul of the business tax regime with a new regime proposed to be implemented from 2020. The government will consider whether there should be a single or several rates of corporate tax on different sectors, whether the government should introduce special schemes for specific industries, investment incentives; and how to support micro businesses.

On July 3, 2019, the government signed an intergovernmental agreement (IGA) with the U.S. to implement the requirements of the US Foreign Account Tax Compliance Act (FATCA). Under the Model 1 IGA signed by the Seychelles and the U.S., FFIs in the foreign jurisdiction are required to report tax information about US account holders directly to the government which will relay the information to the IRS.

[¶1] Legislative background. Decree No. 45 of September 4, 1978, the Non-Resident Bodies Corporate (Special Provision) Decree [¶101], formerly governed the creation and operation of tax-exempt offshore corporations and family trusts. The Act was replaced by the International Trusts Act, 1994 [¶102]. Original legislation governing the use of a trust to manage the issuance and repayment of corporate debentures is contained in Sections 69 to 82 of the Companies Ordinance, No. 4 of 1972 [¶100]. As of December 27,1994, international trusts must be created and managed according to the provisions of the International Trusts Act, 1994. Assets of foundations organized under the 1978 Non-Resident Bodies

Corporate Decree had to be transferred to a trust under the International Trusts Act 1994 by June 30, 1995, or they would be declared invalid. The International Trusts Act, 1994 was amended in 2000 to provide for the licensing, under the License Act, of trustees performing services as international trustees [International Trusts Act, 1994 (as amended, 2000), §78A, ¶102]. The subsequent International Corporate Service Providers Act, 2003 provides broad, comprehensive regulation and supervision of trustees, including requiring any provider of international corporate services or international trustee services to obtain a license from the Seychelles International Business Authority [International Corporate Service Providers Act, 2003, ¶104]. Providers of international corporate services and of international trustee services must be separately licensed under the act to provide such services [International Corporate Service Providers Act, 2003, §(5)(1), ¶104].

The International Corporate Service Providers Act, 2003 required that those providing international company or trustee services must be licensed by the Authority (SIBA). The activities which require a license are as follows: international corporate services providing in or from the Seychelles for remuneration for services connected with the formation, management or administration of a specified entity; serving as a registered agent, director or similar officer of a specified entity; provision of a registered office, place of business or address for a specified entity; serving as a nominee shareholder in a specified entity; and such other services as may be prescribed. International trust services means the services provided in or from the Seychelles for remuneration for services connected with the formation, management or administration of an international trust; serving as a resident trustee of an international trust; and such other services as may be prescribed. As through Section 2 of the International Corporate Service Providers Act, "specified entity" means: an international business company, a company incorporated in accordance with the Companies (Special Licenses) Act, or a limited partnership established under the Limited Partnership Act.

[¶2] Formation. An international trust may be created by oral declaration, a written instrument, or buy a will or codicil of a will. It will not be enforceable unless a declaration of trust is duly registered with the Seychelles International Business Authority appointed by the Ministry of Finance [International Trusts Act, §15, ¶102]. Property received by anyone as profit from a breach of an international trust is deemed to be held in constructive trust by the recipient for immediate return to the persons entitled to it [International Trusts Act, §48, 1994 (as amended, 2000) ¶102]. Under the International Business Companies Act 1994, a company may transfer any of its asset in trust to one or more trustees by the authority of the directors, permitting the company, its creditors, and it members to beneficiaries, creditors, members, certificate holders and partners. However, provisions in the trust law regarding fraudulent disposition must not be violated [International Business Companies Act 1994, §9, ¶103].

Formerly, a family foundation could be created by persons of any nationality over the age of 21 signing and filing a written memorandum of foundation [Non-Resident Bodies Corporate (Special Provision) Decree, §115, ¶101]. Existing

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SWITZERLAND

This chapter is up-to-date as of August 2019

SWITZERLAND

SWITZERLAND
ANALYSIS OF TRUST LAWS

Switzerland still attracts many foreign investors despite the disappearance of many of the factors that once made it Europe's most popular tax haven. It is estimated that 30% of all cross-border private assets invested globally are managed by Swiss banks with a value of customers securities exceeding 3.5 trillion Swiss france ($2.58 trillion). The country is now facing the negative consequences of its voters' decision to remain outside the European Union, as many projects that would once have been installed in Switzerland seek locations that will allow their products duty-free access to most European markets. Stronger competition from European neighbors as well as from the United States caused Switzerland to suffer an economic setback in 1998 when its traditional trade surplus reversed into a sizable deficit. Nevertheless, the Swiss franc remains one of the strongest currencies in the world and tax advantages can still be found by careful shopping among the 22 cantons for the right combination of rates and incentives. Although Switzerland is a civil law jurisdiction, Swiss financial service providers have long used trusts formed in other countries as part of the estate planning packages they provide. Most Swiss tax planners create trusts in other jurisdictions for their clients and provide them with Swiss trustees.

Switzerland also allows the use of the tax-free foundation as a vehicle for distribution of property in a family, charitable donations, or pension plans. However, Swiss foundations are seldom used as trusts since they are vulnerable to attacks by the settlor's creditors and heirs.

With the ratification of the Trust Hague Convention in July 2007, followed by the introduction of the Circular on the Taxation of Trusts, Switzerland offers an attractive legal and tax framework for carrying out offshore trust management and administration by Swiss-based trustees. The Swiss government adopted the OECD standard on administrative assistance in tax matters according to Article 26 of the OECD's Model Tax Convention. Following the signing of a 12th double taxation treaty with Qatar on September 24, 2009, Switzerland joined the OECD "white list" countries.

Switzerland is one of the world's largest offshore financial centres, with estimates that the country manages as much as one-third of the estimated seven trillion of the offshore money worldwide. While Switzerland's banking industry offers the same account services for both residents and non-residents, many Swiss banks offer additional offshore services, including permitting non-residents to form offshore companies to conduct business. However, Swiss commercial law does not recognize any offshore mechanism per se and its provisions apply equally to residents and nonresidents. In April 2009, the OECD placed Switzerland on its grey list of tax havens. The country was subsequently removed from the list in September 2009 after having to renegotiate a series of double tax agreements. The agreements include provisions for extended administrative assistance in tax matters.

On August 10, 2011, Germany and Switzerland signed an agreement for a framework for the taxation of monies deposited in Switzerland by citizens of Germany. Persons resident in Germany can retrospectively tax their existing banking relationships in Switzerland by making a tax payment or by disclosing their accounts to authorities. Future investment income and capital gains of German bank clients in Switzerland will be subject to a final withholding tax with payment to German authorities. The single tax rate will be 26.375%. To prohibit new and

undeclared funds from being deposited in Switzerland, German authorities can submit requests for information that must state the name of the client, but not the name of the bank. The agreement will enter into force at the beginning of 2013.

The United Kingdom joined Germany in securing a tax agreement with Switzerland. The agreement will impose a 50% with holding tax on income from Swiss bank accounts. A withholding tax would be levied on income retained in Swiss financial institutions, including dividends, interest and capital gains. This would be collected by Swiss banks, forwarded to the Swiss tax authority and then remitted to HM Revenue and Customs. Investors face demands for retrospective payments to settle unpaid tax debts.

In 2017, the Swiss Federal Council announced the entry into force dates for new rules on the automatic exchange of country-by-country, CbC reports. The Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals (CbC Act) entered into force on December 1, 2017. Multinationals operating in Switzerland will be required to draw up CbC reports from the 2018 fiscal year. Switzerland and its partner states will exchange the CbCs from 2020. The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country reports (CbC MCAA) will enter into force in December.

The government will implement the recommendations made by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes. On November 21, 2018 the Federal Council adopted the dispatch on a bill that provides for the conversion of bearer shares into registered shares and introduces a sanction system for breaches of the duty to report beneficial ownership. Parliament will discuss the proposals in spring 2019.

A federal referendum will be held on May 19, 2019 to reform the corporate tax code. The referendum will decide the fate of the Federal Act on Tax reform and AHV Financing which will enter into force on January 1, 2020. It will abolish the special arrangements for cantonal status companies, along with the federal practices on tax allocation for principal companies and Swiss finance branches. Switzerland was obligated to change its corporate tax regime after pressure from the EU, which led to the country accepting the EU Code of Conduct on Business Taxation in June 2014. Tax reform proposals were developed to abolish special tax arrangements at the cantonal level, i.e., holding, domiciliary, and mixed company formats, which allow foreign companies to pay little or no corporate tax. These regimes have been criticized for facilitating the shifting of profits from EU member states to Switzerland.

On August 5, 2019, the U.S. Department of Justice announced that Swiss bank LLB Verwaltung (Switzerland) AG has agreed to pay a penalty of 10.6 million dollars to resolve a case in which it was accused of helping US clients to conceal income. LLB-Switzerland (formerly known as Liechtensteinische Landesbank (Schweiz) AG) and some of its employees, including members of the bank's management, conspired with a Swiss asset manager and U.S. clients to conceal those clients' assets and income from the I.R.S.

The Federal Council announced that the Federal Act on Tax Reform and AHV Financing (TRAF) will enter into force on January 1, 2020. The TRAF was approved in a referendum on May 19, 2019. The TRAF will abolish special arrangements for cantonal status companies and introduce a mandatory patent box regime for all cantons. It sets a minimum level of taxation for dividends from qualified participants, introduces additional depreciation measures for companies relocating to Switzerland, and extends the application of the flat-rate tax credit.

[¶1] Legislative background. Foundations are regulated by Sections 80 to 89 of the "Law of Persons" division of the Swiss Civil Code. Family foundations are allowed under section 335. Switzerland's anti-money laundering legislation, officially known as the "Combat of Money Laundering in the Financial Sector" (or LBA) [¶10l], effective as of April 1, 1998, is especially designed to regulate individuals and entities called "financial intermediaries," which would include trusts or trustees. However, because Switzerland's domestic laws do not refer to trusts or trustees as such, but instead cover foundations, the anti-money laundering act does not mention trusts or trustees nor does it include specific provisions dealing with trusts or related institutions.

Financial intermediaries are listed in Article 2 of the Act as banks, mutual funds, insurance companies, and traders in securities as defined by the statute on stock exchange and securities trading. The legislation covers due diligence obligations, general dispositions, surveillance institutions, organization, administration, collaboration with other states, treatment of personal gifts, and sanctions.

On July 1,2007, a few months before the 100th anniversary of the enactment of the Swiss Civil Code (December 10, 1907), the Hague Convention on the Law Applicable to Trusts and on their Recognition (the Hague Trust Convention) came into force in Switzerland. A new civil law jurisdiction has joined the league of nations admitting trusts in their legal system. A Federal Decree to that effect was unanimously approved by both Chambers on December 20, 2006. The Federal Council's instruments of ratification of the Hague Convention and the related amendments to some provisions of Swiss law came into force. The consequential changes are to the Swiss private international law act of December 18, 1987 (the SPILA) and the Swiss debt enforcement and bankruptcy act of April 11, 1889). Article 6 of the Convention gives settlors the freedom to choose the governing law of their trust.

The Federal Council decided in 2013 not to revise the laws on foundations. The Federal Council rejected the idea of aligning the civil and tax laws on foundations with the current developments. The Federal Council had tasked the Federal Department of Justice and Police (DFJP), the Federal Department of Finance, the Swiss cantons and interested parties, with studying the idea of reform. It is more advantageous for taxation to create a foundation in Germany than in Switzerland

[¶2] Formation. A separate fund set aside for a specific object is a prerequisite for forming a Swiss foundation [Civil Code, §80, ¶100]. A deed or will authenticated by a notary is required [Civil Code, §81, ¶100]. The founding instrument must state the foundation's organization and method of administration. If the document does not define those terms sufficiently, the communal, cantonal, or federal authority to which the foundation is subject must make the necessary provisions. If the instrument forming the foundation does not provide to the contrary, the supervisory governmental authority must apply a foundation's assets to another foundation with similar goals if the first foundation's funds are insufficient to achieve its goals and the instrument of foundation contains no contrary provision [Civil Code, §83, ¶100].

[¶3] Tax status. Charitable foundations or those created to manage employee welfare schemes are exempt from tax. Family foundations incur no tax liability on their own income or assets, which are attributed to the settlor or

beneficiaries. Distributions are taxed to beneficiaries. Individual federal income tax for a single person ranges from 0.77% between 9,000 Swiss Francs (US$5,940) and 19,600 Swiss francs (US$12,936) to 13.2% between 109,300 Swiss francs (US$72,138) and 468,000 Swiss francs

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The Swiss Federal Council opened consultations on the implementation of new automatic tax information exchange agreements with Hong Kong and Singapore. The agreement with Hong Kong was signed on October 13, 2017 the same day as the Federal Council launched the consultation. The agreement with Singapore was signed in July, 2017. The Federal Council intends to introduce the AEOI with Singapore and Hong Kong in 2018.

The governments of Switzerland and Brazil will begin exchanging tax information from January 1, 2020. A tax information exchange agreement between the two nations entered into force on January 4, 2019. It is Switzerland's 10th tax information exchange and provides for the exchange of information on request. The agreement covers tax years beginning on or after January 1, 2020. Parliament is currently considering another agreement with Brazil, for the avoidance of double tax, which would become effective from 2020 if finalized this year.

A new double taxation agreement between Switzerland and Pakistan entered into force on November 29, 2018. Its provisions will apply from January 1, 2019. The agreement was signed in March 2017. Withholding taxes on dividends will be capped at 20 percent. The DTA caps the withholding tax rate for both interest and royalties income at 10 percent.

According to the US State Department, as of 2 January 2019, the following tax agreements signed by the US were pending in the Senate: a Protocol amending the tax treaty with Switzerland, signed on 23 September 2009, and submitted to the Senate on 26 January 2011.

A protocol to bring the administrative assistance clause in the double tax agreement between Switzerland and Ecuador into line has entered into force. The protocol was signed in July 2017. The provisions will apply to requests for information concerning tax years from 1 January 2020.

New Zealand and Switzerland signed a protocol to their double tax agreement that will introduce provisions to prevent treaty abuse and enhance tax disputes resolutions. The DTA was signed in 1980. The protocol will enter into force once the nations have completed their domestic ratification procedures.

The Federal Council adopted a dispatch on the introduction of the automatic exchange of financial account information (AEOI) with a further nineteen states. The Council said that of the 108 states and territories that are currently committed to the international AEOI standard, nineteen are not yet part of Switzerland's AEOI network. Federal decrees will be submitted to the Swiss Parliament for approval in the 2019 autumn and winter sessions. The rules are expected to enter into force in 2020. At the end of September 2018, Switzerland automatically exchanged financial account information with 36 states and territories for the first time.

The U.S. Senate approved the protocol to the tax treaty with Switzerland on July 17, 2019. The protocol includes the adoption of mandatory arbitration procedures when disputes cannot be resolved within a specific time frame and the adoption of language pertaining to information exchange that comports with the OECD model convention Switzerland and the Netherlands have signed a protocol to their double tax agreement. The protocol was signed in The Hague on June 12, 2019. The protocol contains an anti-abuse clause which refers to the main purpose of an arrangement or transaction. The protocol must be approved by the parliaments of both countries before it can enter into force.

Switzerland and Iran have signed a protocol to their double tax agreement. The protocol was signed on June 3, 2019 in Tehran. The protocol contains an abuse clause relating to the primary purpose of an arrangement or transaction. The revised

treaty includes a provision on the exchange of information upon request. It must now be ratified by both countries before it can enter into force.

[¶22] Restrictions. The Swiss Federal Council may modify the objectives of a foundation if circumstances have so changed as to give its performance a different significance from that intended by the founder [Civil Code, §86, ¶l00].

[¶23] Asset protection. Switzerland has not made provisions for protection of assets in a Swiss foundation.

[¶24] Fraudulent dispositions. Creditors of the founder may oppose the establishment of a Swiss foundation [Civil Code, §82, ¶00].

[¶25] Time limit to bring suit. There is no specific statute of limitation on actions seeking to nullify transfers to a Swiss foundation.

[¶26] Foreign court awards. The Swiss law of foundations is silent on the enforceability of judgments rendered against Swiss foundations in other jurisdictions.

[¶27] Forced heirship. The founder's heirs may oppose the establishment of a Swiss foundation [Civil Code, §82, ¶100].

[¶28] Other types of trusts. The Swiss Civil Code envisages the creation of ecclesiastical and family foundations in addition to those for unspecified purposes.

[¶29] Government control and anti-money laundering. Although Switzerland is extraordinarily rich in natural beauty, it lacks the mineral resources often found in mountainous areas, has very little agricultural land, and is completely landlocked. Its six and a half million people speak four different languages and have divided themselves politically into 22 cantons as fiercely jealous of their local autonomy as sovereign nations. Yet, from the creation of the Swiss Confederation of the Cantons of Uri, Schwyz, and Nidwalden in 1292 through the adoption of the Federal Constitution in 1848 and down to the present day, the independent-minded Swiss have created a strong, prosperous nation based as much on their differences as their similarities.

By remaining neutral through Europe's succession of increasingly devastating wars, Switzerland was able to develop financial and industrial facilities capable of withstanding the isolation of neutrality and to profit from the rebuilding that followed each war. As the rest of Europe rushes to unify markets and reduce the legal and psychological barriers among its peoples, Swiss voters continue to reject membership in the European Union. Shrinking output and rising unemployment in a recession that began in the late 1980s have shaken Swiss confidence in the economic future. Nonetheless strong domestic investment continues, and the Swiss are adopting European standards in anticipation of their entry into the single European market.

Each of the 19 cantons and six half cantons comprising the Swiss Confederation has its own legislature and budget. All Constitutional amendments are automatically subjected to a referendum requiring a majority of the votes of the electorate as well as approval by a majority of the cantonal governments for ratification. If 100,000 voters petition for it, any legislation passed by the Federal Assembly must be approved by a majority of the voters in a referendum. The Federal Assembly is a bicameral legislative body consisting of the National Council with 200 deputies representing the Swiss people and the Council of States representing the cantons with two members from each canton. Executive authority

is exercised by the Federal Council of seven members who are elected to four-year term by the Federal Assembly. The President of Switzerland, who presides over Council meetings, is nominated annually from the Council on a rotating basis. Every Council member including the President heads a department.

Switzerland is a civil law jurisdiction having a legal system based on legislated codes. Sitting in Lausanne, the Supreme Federal Tribunal, composed of 26 judges elected to six-year terms by the Federal Assembly, is the core of the judiciary. The Tribunal is supplemented by administrative and military courts.

Money Laundering

Switzerland's anti-money laundering legislation mtakes banks and other financial institutions subject to strict know-your-customer and reporting requirements. Know your customer rules cover banks, securities and insurance brokers, money exchangers or remitters, financial management firms, investment companies, insurance companies, casinos, or individuals acting as intermediaries in bank lending, money transactions, trading of currencies or dealing in matters of wealth management and investment advice. Suspicious transaction reporting requirements apply to banks, securities and insurance brokers, money exchangers or remitters, financial management firms, casinos, or individuals acting as intermediaries in bank lending, money transactions, trading of currencies or dealing in matters of wealth management and investment advice. Switzerland has implemented legislation for identifying, tracing, freezing and forfeiting narcotics-related assets. Under the Swiss Money Laundering Act, money laundering is a criminal offense and the statutory provisions apply to banks and non-bank financial institutions. The Swiss Federal Banking Commission AML Regulations were revised in 2002 and became effective in 2003. These regulations, aimed at the banking and securities industries, codify a risk-based approach to suspicious transactions and client identification and install a global know-your-customer risk management program for all banks, including those with branches and subsidiaries abroad. All provisions apply to correspondent banking relationships. Swiss banks may not maintain business relationships with shell banks. The 2002 Banking Commission regulations mandate that all cross-border wire transfers must contain identifying details about the funds remitters, though banks and other covered entities may omit such information for legitimate reasons. Revisions to the Swiss Penal Code regarding terrorist financing entered into force on October 1, 2003. The Swiss do not have laws comparable to those in the U.S. to report large cash transactions, cross-border currency declarations and large cash purchases. Switzerland has ratified the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and is a party to the UN International Convention for the Suppression of the Financing of Terrorism. Switzerland is a party to the 1988 UN Drug Convention. Switzerland ratified the UN Convention against Transnational Organized Crime on October 27, 2006. Swiss ratification of the UN Convention against Corruption is has occured.

Switzerland is a member of the Financial Action Task Force and its most recent evaluation can be found at http://www.fatf-gafi.org/dataoecd/29/ll/35670903.pdf. Switzerland has a mutual legal assistance treaty with the United States and Swiss law allows authorities to furnish information to US regulatory agencies, provided it is kept confidential and used for law enforcement purposes.

Switzerland is a member of the Financial Action Task Force. Switzerland has a mutual legal assistance treaty with the United States and Swiss law allows

authorities to furnish information to US regulatory agencies, provided it is kept confidential and used for law enforcement purposes. The Swiss Federal Council has submitted a draft federal act to parliament, which governs the freezing, confiscation, and restitution of illicitly acquired assets of foreign politically exposed persons (PEPs). The draft law is "to be applied in cases where leading figures enrich themselves through corruption or other criminal means and deposit these illicitly acquired assets in offshore financial centers." The law was drawn up at the beginning of 2011, in the wake of the Arab spring, after the Federal Council issued several freezing orders against PEPs. In March 2011, Switzerland's federal parliament adopted a motion obliging the Federal Council to create a formal legislative basis for such action. The proposed legislation lays down the conditions under which such illicit assets can be confiscated by a court within the framework of an administrative procedure, as well as the principles on which confiscated assets can be returned to the country of origin. It also provides for the possibility of taking targeted measures to support the country of origin in its efforts to recover illicitly acquired assets.

COMPARATIVE COUNTRY CHARTS

BRAZIL

This chart is up-to-date as of October 2019

Company Types ¶1	**Licensing of Corporate Agents** ¶2	**Company Name** ¶3
The Brazilian Law sets forth various types of legal entities that may be established. However, there are two types of corporate structures mainly used in Brazil: limited liability company ("*Sociedade Limitada"*) and corporation (*"Sociedade Anônima"*).	Any person (natural person or legal entity) can apply to register a Brazilian company. However, an attorney and an accountant, duly registered, shall assist them.	Company's name shall: (1) be registered simultaneously with its incorporation; (2) not have a similar name of one already registered, and (3) include a reference to its main activity in Portuguese. Some specific aspects regarding the company's name shall be noted for each type of company.
Registration Fees ¶4	**Registered Office** ¶5	**Registration** ¶6
Type — **Fee (**BRL**)** The registration and modification fee will depend on the type of company. *SociedadeLimitada/ SociedadeAnônima*, as well as the registry office responsible for the headquarters of the company. — Diverge in a minimum of R$ 5.000.00 and a maximum of R$ 20.000.00 The fees regarding publication of its financial statements and all announcements and minutes of meetings held by the shareholders, depends on the size of the document.	Every Brazilian company shall maintain a registered office in Brazil. *Registered Agent* Companies must have a legal representative (natural person), duly registered before Brazilian authorities.	*Corporation.* The incorporation documents, including bylaws, shall be registered before Junta Comercial–Registry of Companies of its respective State. *Limited Liability Company*. Incorporation documents, including its articles of association must be filed by Junta Comercial– Registry of Companies or before the Oficial de Registro Civil de Pessoa Jurídica–Official Register of Legal Entities, depending on their business activities. *Foreign Company Registration* The foreign investor must appoint a representative resident in Brazil with the power to receive service of process and to represent the investor before Brazilian authorities and must be registered with the Federal Revenue. *Time Requirement* Companies are usually registered within five business days. *Confidentiality* Brazil maintains a certain degree of confidentiality of corporate information, with the exception of corporate acts that produce effects before third parties.

COMPARATIVE COUNTRY CHARTS

BRAZIL

Reporting and Recordkeeping ¶7	**Formative Documents** ¶8	**Powers** ¶9
Annual Filing At the end of each fiscal year, the financial statements and balance sheets set forth by law shall be prepared by the company's offices. In a corporation, all the financial statements must be published in the Official Gazette and in a local newspaper. A large-sized corporation (i.e. a company or group of companies with total assets over R$ 240 million or gross annual revenue over R$ 300 million) and publicly held companies shall have their financial statements audited by an independent auditor registered at the Brazilian Securities Exchange Commission. For limited liability companies, the disclosure requirements are less stringent, and they are not required to have their financial statements in a publication. However, a large-sized limited liability companies (i.e. a company or group of companies with total assets over R $240 million or gross annual revenue over R$ 300 million), are subject to the rules of the Brazilian Corporation Law regarding the preparation of financial statements and shall have their financial statements audited by an independent auditor registered at the Brazilian Securities Exchange Commission (Comissão de ValoresMobiliários – CVM). Limited liability companies considered "large-sized companies" may publish their financial statements at the Official Gazette and also in another local newspaper.	Every company must have a company constitution (bylaws for a corporation and articles of association for a limited liability company). *Adjustment* In case of amendment to the bylaws or to the articles of association, the amendments must be approved by the partners or at the extraordinary shareholders meeting and shall be registered in the respective Registry of Companies.	Generally, companies have power to do all things necessary to carry out its affairs. Companies must appoint attorneys or representatives and grant them power of attorney with specific authorities to act on behalf of the company.

ANGUILLA

This chapter is up-to-date as of October 2019

ANGUILLA

Analysis of the Company Laws ¶

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ANGUILLA
ANALYSIS OF THE COMPANY LAWS

Domestic Companies

[¶1] Company Types. A company may be incorporated in Anguilla as either
(1) a company limited by shares;
(2) a company limited by guarantee; or
(3) a company limited by both shares and guarantee.[1]

Each corporate form has the capacity to carry on its business, conduct its affairs, and exercise its powers in any jurisdiction outside Anguilla to the extent that the laws of Anguilla and of that jurisdiction permit.[2]

Corporations in Anguilla have the same capacity, rights, powers, and privileges, subject to any limitations in Anguilla's Companies Act or any other law, as an individual.[3] However, companies may carry out any business or activities in breach of any enactment prohibiting or restricting the carrying on of the business or activity, or any provision requiring any permission or license for the carrying on of the business or activity.[4]

It is not necessary for a corporation's by-laws to be passed to confer any particular power on a company or its directors.[5]

[¶2] Licensing of Corporate Agents. Anyone carrying on any of the following businesses in or from Anguilla must be licensed under the Company Management Act (CMA):[6]
(1) Incorporating or forming companies
(2) Providing registered offices for companies
(3) Acting as a registered agent
(4) Preparing and filing statutory documents on behalf of companies
(5) Acting as director, manager, or officer of companies or foreign companies
(6) Acting as nominee shareholder of companies or foreign companies, and includes offering or agreeing to carry out any of the above listed activities with the intent to carry on business.[7]

Application for licensing of a company management business must be made to the Anguilla Financial Services Commission.[8] An application must contain information as the Commission may direct and be in the approved for and be accompanies by the documentation specified in the approved form or prescribed.[9]

The Company Management Act does not apply to a company licensed under the Trust Companies and Offshore Banking Act.[10]

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[1]Companies Act, R.S.A c. C65, §6 (2014), available at http://www.commercialregistry.ai/Content/documents/legislation/C065-Companies%20Act.pdf (last visited September 26, 2019).
[2]Companies Act § 17(2).
[3]Companies Act § 17(1).
[4]Companies Act § 17(4)(a)–(b).
[5]Companies Act § 17(3).
[6]Company Management Act, R.S.A. c. C75 §4 (2014) available at http://www.gov.ai/laws/C075-00-Company%20Management%20Act/ (last visited September 16, 2019). *See also* Company Management Act §1(1) (defining "company management business").
[7]Company Management Act § 1(1).
[8]Company Management Act § 5(1).
[9]Company Management Act § 5(2).
[10]Company Management Act §3.

Capital Maintenance Requirement. A company licensed under the Company Management Act must maintain a paid-up capital of at least $25,000.

Duties of Licensee. Licensees under the CMA must

(1) maintain and keep within Anguilla such books or records as accurately reflect the business of the licensee;
(2) maintain separate accounts in the books or records in respect of each company the licensee manages and shall separate the funds and other property of the companies he manages from his own; and
(3) maintains such books and records as may be required by the Regulatory Code.[11]

A licensee that violates their above listed duties commits an offence and is liable on summary conviction to a fine of $10,000, to imprisonment for a term of one year, or to both.[12]

[¶3] Company Name. *Suffix*. A company's name must end with one of the following words or abbreviations:

(1) Limited;
(2) Corporation;
(3) Incorporated; or
(4) the abbreviation "Ltd." or "Corp." or "Inc."[13]

In the case of a private company, the words or abbreviations below may be used in the name of the company in place of the above listed names:

(1) Sendirian Berhad or Sdn Bhd;
(2) Société à Responsabilité Limitée or SARL;
(3) Sociedad Anonima or S.A.;
(4) Besloten Vennootschap or B.V.;
(5) Gesellschaft mit beschrankter Haftung or GmbH;
(6) Naamloze Vennootschap or N.V.[14]

Restrictions on Company Name. A company shall not incorporate with or have a name:

(1) That is reserved for another company or intended company.[15]
(2) The name of the company:
    (a) is the same as, or similar to, the name of business name of any other person if the use of that name would be likely to confuse or mislead unless the other person consents in writing to the use of that name in whole or in part, and if required by the Registrar, provides an undertaking acceptable to the Registrar to cease carrying on business under that name within 6 months of the date of the undertaking;
    (b) is identical to the name of a body corporate incorporated under the laws of Anguilla before 1 January, 1995;
    (c) suggests it implies patronage of Her Majestry or any member of the Royal Family or connection with Her Majestry's Government or any department thereof in the United Kingdom or elsewhere;
    (d) suggests or implies a connection with a political party or a leader of a political party;
    (e) suggests or implies a connection with a university or a professional association recognized by the laws of Anguilla unless the university

[11]Company Management Act §15(1)(a)–(c).
[12]Company Management Act §15(2).
[13]Companies Act § 11(1).
[14]Companies Act § 11(2)(a)–(f).
[15]Companies Act § 12(b).

or professional association concerned consents in writing to the use of the proposed name; or

(f) is prohibited by the regulations.[16]

(3) The name of the company:

(a) is not distinctive because:

(i) it is too general;

(ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal; or

(iii) primarily it is only a geographical name used alone, unless the applicant establishes that the name has through use acquired, and continues to have a secondary meaning;

(b) the name is defectively inaccurate in describing:

(i) the business, goods, or services in association with which it is proposed to be used;

(ii) the conditions under which the goods or services will be produced or supplied; or

(iii) the persons to be employed in the production or supply of those goods and services;

(c) is likely to be confused with that of a company that was dissolved;

(d) contains the word or words "credit union", "co-operative", or "co-op" when it connotes a cooperative venture; or

(e) it is, in the opinion of the Registrar, for any reason objectionable.[17]

The Registrar may require a company to change its name where:

(1) By inadvertence or otherwise, a company is incorporated or continued under, or changes its name to, a name that –

(a) is reserved for another company; or

(b) prohibited under section 247.

(2) The Registrar is of the opinion that he should have refused –

(a) to accept the articles of incorporation or continuance, or

(b) to register articles amending the name of a company under section 248; or

(c) a company is permitted to use a name on the undertaking of another person given under section 247(a) to cease carrying on business under a similar name and that person failed to comply with his undertaking.[18]

Publication of Name. A company's name and the address of its registered office must be included in all of the company's written communications. A company's name must also be clearly stated in every document issued or signed by the company and all documents that evidence or create a legal obligation of the company.[19]

Change of Name. A company may change its name by passing a special resolution approving the change.[20]

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[16]Companies Act § 247(a)–(f).
[17]Companies Act § 248(a)–(e).
[18]Companies Act §13.
[19]Companies Act §15(1).
[20]Companies Act §164(1)(a).

[¶4] Fees.[21]

Service	Non-electronic (Non-licensees) & Electronic	Non-electronic (Licensees)
	EC$[22]	EC$
Registration		
Non-public company	800	840
Public company	1,500	1,540
Specified private company	1,250	1,290
Foreign company	2,500	2,540
Annual Return		
Non-public, non-specified private company[23] not maintaining a presence in Anguilla and not engaging in revenue-generating activities in Anguilla	750	790
Other non-public, non-specified private company	150	190
Specified private company	750	790
Public company	1,500	1,540
Foreign company – Annual fee	500	540
Dissolution		
Registration of intent to dissolve	150	190
Registration of article of dissolution	250	290
Filing		
Reservation of a name	50	50
Filing registration of registered office	50	90
Filing of notice of directors	50	90
Filing of any other document	50	50

Fees may be paid through ACORN (see *infra*, ¶6, Registration).

[¶5] Registered Office and Registered Agent.
A company shall at all times have a registered office in Anguilla.[24] A company's registered office will be specified in the company's articles of incorporation.[25] A company's registered office may be changed by filing the appropriate form with the

[21]Companies Regulations, R.S.A.c. C65, Schedule 3, available at http://www.commercialregistry.ai/Content/documents/legislation/C065-Companies%20Regulations.pdf (last visited on September 26, 2019).
[22]East Caribbean dollar.
[23]A "non-specified private company" is a company that has not registered as a private company under Part 4, Division 4, of the Act but does not satisfy the definition of "public company". See Companies Act §1 (defining "public company"); Companies Act §§194, 195 (outlining the requirements for registration of a private company).
[24]Companies Act § 151(1).
[25]Companies Act § 151(2).

Registrar.[26] The change may also be completed through the ACORN electronic registration system (see *infra*, ¶6, Registration).

Anyone providing registered offices for companies must be a licensed corporate service provider. See *supra*, ¶2, Licensing of corporate agents.

Registered Agent. Every company – whether a domestic company or a foreign company registered under the Act – must have a registered agent in Anguilla.[27] A company's first registered agent is the agent specified in its articles.[28]

A company may change its registered agent by filing a notice in prescribed form with the Registrar.[29]

A registered agent must give a company at least thirty days' notice prior to resigning as the company's agent.[30] After the company is notified of the registered agent's impending resignation, the company must secure a new registered agent and inform the Registrar of the change. If the company does not inform the Registrar of the appointment of a new registered agent by the close of the aforementioned thirty-day notification period, the Registrar may take steps to strike the company from the register of companies.[31]

Anyone serving as registered agent for a company must be a licensed corporate service provider. See *supra*, ¶2, Licensing of Corporate Agents.

[¶6] Registration.

One or more persons may incorporate a company by signing and filing articles of incorporation with the Registrar.[32] The incorporators may be 18 years old, of sound mind and found to be of sound mind by a Court or tribunal in Anguilla or elsewhere, and does not carry the status of a bankrupt.[33] A company may be incorporated only with the assistance of a licensed corporate services provider.[34]

Incorporation and registration of an Anguillan company may be completed over the Internet through Anguilla's Commercial Online Registration Network (ACORN). Only registered agents – licensed company managers, trust company managers, and overseas agents to a local registered agent – may register for the ACORN service.[35] See *supra*, ¶2, Licensing of Corporate Agents.

If, after receiving articles from a proposed company's incorporators, the Registrar is satisfied that the law has been complied with, the Registrar will issue a certificate of incorporation for the company.[36]

Redomiciliation. A company incorporated outside Anguilla may apply to the Registrar to continue its incorporation in Anguilla by submitting articles of continuance to the Registrar.[37]

After receiving articles of continuance, the Registrar, if satisfied with the information within the articles of continuance, may issue a certificate of

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[26]Companies Act §152(4).
[27]Companies Act § 152(1).
[28]Companies Act § 152(2)(a).
[29]Companies Act § 152(3).dom
[30]Companies Act § 153(1).
[31]Companies Act § 15. See *infra*, ¶18, Removal of Defunct Companies.
[32]Companies Act § 5(1).
[33]Companies Act § 5(2)(a)–(c).
[34]See *supra*, ¶2, Licensing of Corporate Agents.
[35]Anguilla Financial Services, *How to Register to Access ACORN*, http://www.commercialregistry.ai (last visited July 11, 2014).
[36]Companies Act § 9.
[37]Companies Act § 198(1)(b). For the Articles of Continuance form, see Companies Regulations, Sched. 2, form 10.

continuance to the company.[38] On the date which the Registrar grants a certificate of continuance, the body corporate becomes a company as if the company had been incorporated under Anguilla's Companies Act, the articles of continuance become the articles of incorporation of the continued company, and the certificate of continuance is the certificate of incorporation of the continued company.[39]

Outbound Continuation. An Anguillan company proposing to continue under the laws of another jurisdiction must file a certification of departure with the Registrar.[40] The certificate of departure must include the following information:

(1) the names and addresses of the company's creditors, the total amount of the indebtedness and the names and addresses of all persons who have notified the company of a claim in excess of $1,000 and the total amount of the claims;
(2) that the intended continuance in a foreign jurisdiction is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the company;
(3) that the company at the time of the application is not in breach of any duty or obligation imposed upon it by this Act;
(4) that the continuance in the foreign jurisdiction is made in good faith and will not serve to hinder, delay or defraud existing shareholders or other interested parties;
(5) that the company consents to being served with process in Anguilla in any proceeding arising out of actions occurring prior to its departure, and that it appoints the Minister as agent of the company to accept service of process; and
(6) its address for service in the foreign jurisdiction.[41]

After a company has received a certificate of departure from the Registrar, and the company has been continued in a foreign jurisdiction, the company may apply to the Registrar for a certificate of discontinuance.[42] If the Registrar is satisfied that the company has (1) paid all fees, (2) filed all returns and notices, and (3) complied with the requirements for outbound transfer, the Registrar will issue a certificate of discontinuance for the company and strike it from the register of companies. From the date the certificate of discontinuance is issued, the company will no longer be a company domiciled in Anguilla. The Registrar will publish a notice of the discontinuance in the Gazette.[43]

Foreign Company Registration. A foreign company may not carry on business in Anguilla unless it is registered in Anguilla pursuant to their Companies Act.[44] An application by a foreign company for registration in Anguilla must include:

(1) a copy, certified under the public seal of the country, city, place or registrar under the laws of which the foreign company has been incorporated, of its charter, statutes or articles of association or other instrument constituting or defining its constitution and if the instrument is not written in the English language a certified translation of it;
(2) a list of its directors containing the particulars with respect to the directors that are required by this Act to be contained with respect to directors in the register of the directors of a company; and

[38]Companies Act § 199(1).
[39]Companies Act § 199(2)(a)–(c).
[40]Companies Act § 202(1).
[41]Companies Act §202(2)(a)–(f).
[42]Companies Act §203.
[43]Companies Act §203(4).
[44]Companies Act §190(1).

(3) a notice specifying the name and address of its registered agent in Anguilla.[45]

If he is satisfied that the requirements of this Division in respect of registration as a foreign company have been complied with, the Registrar shall register the body corporate as a foreign company and issue a certificate of registration.[46]

If a foreign company wishes to cease carrying on business in Anguilla, it must file a notice with the Registrar.[47] On receipt of such a notice, the Registrar shall remove the name of the company from the Register of Foreign Companies, whereupon the obligations of the company to file any documents with the Registrar ceases.[48]

Confidentiality. Anyone misusing confidential information may be prosecuted under the Confidential Relationships Ordinance. An individual violating the Act may be subject to a fine, imprisonment, or both. A body corporate violating the Act may be subject to a fine.[49]

[¶7] Reporting and Recordkeeping. Every company must prepare and keep the following records:

(1) the articles and the by-laws, and all amendments to them, and a copy of any unanimous shareholder agreement and amendments to it;
(2) minutes of meetings and resolutions of shareholders;
(3) copies of all notices required by sections 76, 151 and 152; and
(4) registers of shareholders and of directors.[50]

Annual Filing. Every company must file an annual return with the Registrar.[51] The due date for the annual return is the last day of the calendar quarter within which the company's anniversary of incorporation falls.[52]

The return must be filed on the prescribed form, found in Schedule 2 to the Companies Regulations, and must include the following information:[53]

(1) Company name
(2) Company number
(3) Date of incorporation
(4) Date of the company's last annual return
(5) Type of company
(6) Address of registered office
(7) Name and address of registered agent
(8) Name, address, nationality, and date of appointment for each director
(9) Name, address, and office held by each officer
(10) Name, address, nationality, number of shares held, and date of change for each shareholder and guarantor
(11) A statement of whether the company's shares are offered to the public
(12) Certification by a director or officer that the information included in the return is correct.

Annual Return of a Foreign Company. A foreign company must, on or before the last day of the calendar quarter in which the anniversary of its registration falls, file

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[45]Companies Act §190(2)(a)–(c).
[46]Companies Act §191(a).
[47]Companies Act §195(1).
[48]Companies Act §195(1).
[49]See Confidential Relationships Ordinance (1981).
[50]Companies Act §154.
[51]Companies Act §160(1).
[52]Companies Act §160(1).
[53]See Companies Regulations, Sched. 2, form 5.

with the Registrar an annual return made up to the first day of the same quarter.[54] A foreign company's annual return may be filed via the ACORN electronic filing system (see supra, ¶6, Registration).

Company Seal. A company may, but is not required to, have a common seal engraved with the company's name in legible characters.[55] A company may also keep a facsimile of its common seal for use in other jurisdictions.[56] The name of every jurisdiction in which a seal will be used must be included on the face of every seal except the company's Anguillan common sea.[57]

[¶8] Formative Documents.

Articles of Incorporation. Under Anguillan company law, a company's articles of incorporation (articles) serve the purpose that a memorandum of association serves in other jurisdictions by defining the company's relationship with the outside world.

One or more persons may form a company by subscribing to its articles and filing them with the Registrar.[58] Articles may be filed through Anguilla's Internet company registration system, ACORN. (See *supra*, ¶6, Registration.)

A proposed company's articles of incorporation must include the following information:

(1) its proposed name;
(2) the address and mailing address, if any, of the first registered office of the company and the name, address and mailing address, if any, of its first registered agent;
(3) whether the company is limited by shares or guarantee or by both;
(4) whether the company is a non-profit company;
(5) the classes and any maximum number of shares that the company is authorized to issue and:
    (a) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and
    (b) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
(6) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;
(7) the number of directors or, subject to section 70(a), the minimum and maximum number of directors and in respect of each person who has consented to be a first director of the company:
    (a) in the case of an individual, his name, nationality, address and mailing address, if any; and
    (b) in the case of a corporation, its name, country of registration, address and mailing address, if any;
(8) any restrictions on the business that the company may carry on; and
    (a) that in the case of a company limited by shares and a company limited by shares and guarantee, the liability of each shareholder shall be limited to the amount paid up on the shares held by him; and

[54]Companies Act §193(1). See Companies Regulations, Sched. 2, form 9.
[55]Companies Act §26(1).
[56]Companies Act §26(1).
[57]Companies Act §26(1).
[58]Companies Act §5.

(b) in the case of a company limited by guarantee and a company limited by shares and guarantee, the liability of each member shall be limited to such amount as he may undertake by the articles of incorporation to contribute to the assets of the company in the event that it is wound up.[59]

Alteration of Articles. The articles of a company may, by special resolution, be amended:

(1) to change its name;
(2) to add, change or remove any restrictions upon the business that the company can carry on;
(3) to change any maximum number of shares that the company is authorized to issue;
(4) to create new classes of shares;
(5) to change the designation of all or any of its shares, and add change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends in respect of all or any of its shares, whether issued or unissued;
(6) to change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series, or into the same or a different number of shares or other classes or series;
(7) to divide a class of shares, whether issued or unissued, into a series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;
(8) to authorize the directors to divide any class of unissued shares into series of shares and fix the number of shares in each series, and the rights, privileges, restrictions and conditions attached thereto;
(9) to authorize the directors to change the rights, privileges, restrictions and conditions attached to the unissued shares of any series;
(10) to revoke, diminish or enlarge any authority conferred under paragraph (h) or (i);
(11) To increase or decrease the number of directors or the minimum or maximum number of directors' subject to sections 70 and 75;
(12) to add, change or remove restrictions on the transfer of shares; or
(13) to add, change or remove any other provision that is permitted or required by this act to be set out in the articles.[60]

A provision in the articles of a company that restricts in whole or in part the powers of the directors to manage the business or affairs of the company may not be amended except with the consent of all the shareholders.[61]

Bylaws. At any time before the organizational meeting of directors held pursuant to section 64, the incorporators may make by-laws by signing them.[62]

Alteration of Bylaws. The directors of a company shall submit a bylaw, or any amendment or repeal of a bylaw made, to the shareholders of the company at the next meeting of shareholders.[63] The shareholders may, by ordinary resolution, confirm, amend or reject the bylaw, amendment or repeal.[64]

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[59]Companies Act § 7(1)(a)–(i).
[60]Companies Act §164(1)(a)–(m).
[61]Companies Act §164(3).
[62]Companies Act §62.
[63]Companies Act §63(2).
[64]Companies Act §63(2).

[¶9] Powers. A company has the capacity, and, subject to any limitations in Anguilla's Companies Act or any other law, all the rights, powers and privileges of an individual.[65] A company has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Anguilla to the extent that the laws of Anguilla and of that jurisdiction permit.[66]

It is not necessary for a by-law to be passed to confer any particular power on a company or its directors.[67] However, a company may not carry on any business or exercise any power (1) prohibited by its articles or (2) in contravention of its articles any provision or (3) without obtaining permission or licenses for the carrying on of the business or activity.[68]

[¶10] Shareholders/Members.

If at any time a company does not have at least one shareholder, any person doing business in the name of or on behalf of the company is personally liable for the payment of the debts of the company contracted during the time and the person may be sued for the debts without joinder in the proceedings of any other person.[69]

Recordkeeping. Every company must keep a register of shareholders within Anguilla.[70] A public company whose shares are listed on an appointed stock exchange may keep its register of shareholders outside Anguilla at a place in the country in which the appointed stock exchange is located.[71]

Residency and Nationality. There are no residency or nationality requirements for shareholders in an Anguillan company.

Nominees. Anyone carrying on the business of acting as a nominee shareholder must be licensed as a corporate service provider. See *supra*, ¶2, Licensing of Corporate Agents.

[¶11] Single-Shareholder Corporation. A company may be formed by one person and may have a single member.[72]

[¶12] Share Capital. Shares in a company are personal estate, and a share is transferable in the manner provided by Anguilla's Companies Act.[73]

Each of a company's shares must be distinguished with a unique number.[74] If at any time all the issued shares in a company, or all the issued shares in a company of a particular class, rank equally for all purposes, none of those shares need thereafter have a distinguishing designation so long as they rank equally for all purposes with all shares for the time being issued, or all the shares for the time being issued of the particular class, as the case may be.[75]

Minimum Authorized Capital. There is no minimum authorized share capital requirement.

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[65]Companies Act §17(1).
[66]Companies Act §17(2).
[67]Companies Act §17(3).
[68]Companies Act §17(4).
[69]Companies Act §27.
[70]Companies Act §154(1)(d).
[71]Companies Act §154(6).
[72]Companies Act §5(1).
[73]Companies Act §28(1).
[74]Companies Act §28(3).
[75]Companies Act §28(4).

Bearer Shares. Bearer shares are not permitted.[76] However, companies incorporated under the International Business Companies Act are permitted to issue bearer shares.[77]

Issuance. A share shall not be issued until it is fully paid in money or in property or past service that is the fair equivalent of the money that the company would have received if the share had been issued for money.[78]

Fractional Shares. Fractional shares are permitted.

Stock Options. A company may issue stock options. hall maintain a register showing the name and latest known address of each person to whom the privileges, options or rights have been granted and any other particulars in respect thereof as may be prescribed.[79]

Par/No-Par Value. Shares in a company are to be without nominal or par value.[80]

Transfer of Shares. A company's shares may be transferred by a written instrument naming the transferee and signed by the transferor.[81] The transfer instrument must comply with any requirements for transfer instruments found in the company's bylaws.[82]

Redeemable Shares and Buyback. A company may issue redeemable shares.

Shares may be redeemed only at the price stated in the company's articles.

A company may not redeem its shares if, after redemption, the company (1) would be unable to pay its debts as they come due; or (2) the value of its assets would be less than the sum of its liabilities and "the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a winding up, ratably with or before the holders of the shares to be purchased or redeemed".[83]

Shares redeemed or otherwise acquired by a company will be cancelled, or if its articles or bylaws so provide, the shares may be held by the company as shares that are authorized but not issued.[84]

Alteration of Capital. A company may by special resolution reduce its stated capital by:

(1) Extinguishing or reducing a liability in respect of an amount unpaid on any share.
(2) Returning any amount in respect of consideration that the company received for an issued share, whether or not the company purchases, redeems or otherwise acquires any share or fraction thereof that it issued.
(3) Declaring its stated capital to be reduced by an amount that is not represented by realizable assets.[85]

A company shall not reduce its stated capital if there are reasonable grounds for believing that –

(1) the company is unable, or would, after that reduction, be unable, to pay its liabilities as they become due; or

[76]Companies Act §28(5).
[77]See infra, Anguilla, International Business Companies ¶10, Bearer Shares.
[78]Companies Act §32(1)(a)–(b).
[79]Companies Act §154(3).
[80]Companies Act §28(2).
[81]Companies Act §5(1).
[82]Companies Act §5(2).
[83]Companies Act §42(2).
[84]Companies Act §47.
[85]Companies Act §45(1)(a)–(c).

(2) the realizable value of the company's assets would thereby be less than the aggregate of its liabilities.[86]

A company that reduces its stated capital under this section shall not later than 30 days after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the company.[87] A creditor may apply to the Court for an order compelling a shareholder or other recipient:

(1) to pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section; or

(2) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.[88]

Dividends. Dividends may be paid out only of a company's realized profits.[89]

A company may not declare a dividend if, after the dividend is paid,[90]

(1) the company will be unable to pay its liabilities as they come due; or

(2) the value of the company's assets will be reduced to less than its total liabilities.

[¶13] Directors and Officers. A company must have at least one director but a public company shall have no fewer than 3 directors, at least 2 of whom are not officers or employees of the company or any of its affiliates.[91]

Directors must be at least 18 years of age, be of sound mind, and not be bankrupt, and may not have been disqualified from acting as a director by the Court.[92] A person may not be appointed as a director of a company unless that person has consented to the appointment.[93]

Appointment/Resignation. he shareholders of a company shall by ordinary resolution at the first meeting of the company and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders of the company following the election.[94]

Directors may be appointed for a term ending no later than the third annual shareholder meeting following the meeting at which the director is elected.[95]

If directors are not elected at a meeting at which directors were required to be elected, the incumbent directors will continue to hold office.[96]

Directors elected at the same meeting need not serve the same term.[97]

If a director is elected and the director's term of office is not specified, the director will hold office until the close of the next annual meeting after the meeting at which the director is elected.[98]

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[86]Companies Act §45(3)(a)–(b).
[87]Companies Act §45(4).
[88]Companies Act §45(5)(a)–(b).
[89]Companies Act §53(2).
[90]Companies Act §52.
[91]Companies Act §60.
[92]Companies Act §§65(1), 66, 5(2). "The Court" refers to the Anguillan High Court.
[93]Companies Act §68(1).
[94]Companies Act §68(3).
[95]Companies Act §68(3).
[96]Companies Act §68(5).
[97]Companies Act §68(4).
[98]Companies Act §68(6).

Removal. A director may be removed from office by ordinary resolution of the members. A company's articles may not require a greater majority vote than the Act requires to remove a director from office.[99]

Powers. An otherwise lawful written agreement among all the shareholders of a company, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the company to manage the business and affairs of the company is valid.[100]

A shareholder who is a party to any unanimous shareholder agreement has all the rights, powers and duties, and incurs all the liabilities of a director of the company to which the agreement relates, to the extent that the agreement restricts the discretion or powers of the directors to manage the business and affairs of the company, and the directors are thereby relieved of their duties and liabilities to the same extent.[101]

If a person who is the beneficial owner of all the issued shares of a company makes a written declaration that restricts in whole or in part the powers of the directors to manage the business and affairs of the company, the declaration constitutes a unanimous shareholder agreement.[102]

The Registrar must be given written notice within twenty-one days of the date when a company passes or revokes a unanimous shareholder agreement.[103]

Duties. A company's directors must (1) exercise the company's powers; and (2) direct and manage the company's business and affairs.[104]

Directors have a duty to exercise their powers

(1) Honestly, in good faith, and in the company's best interests.
(2) With the "care, diligence, and skill" of a reasonably prudent person acting under similar circumstances. [105]

In determining what is in a company's "best interests", directors must take into consideration the interests of the company's employees and shareholders.[106]

Directors also have a duty not to improperly disclose information about the company's business.[107]

Third-Party Reliance. For the avoidance of doubt, it is declared that no act of a company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its articles or by-laws.[108] In favor of persons dealing with a company in good faith and without knowledge that a director was acting outside the scope of the director's authority, a company's directors may bind the company without limitation imposed by the company's articles and bylaws, resolutions, and agreements between its members.[109]

Directors' Meetings. Unless the articles or by-laws of a company otherwise provide, the directors of a company may meet at any place, and upon such notice as the articles or by-laws require.[110] If a company only has one director, that director

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[99]Companies Act §8(2).
[100]Companies Act §124(1).
[101]Companies Act §124(2).
[102]Companies Act §124(3).
[103]Companies Act §124(4).
[104]Companies Act §59(1).
[105]Companies Act §97.
[106]Companies Act §97.
[107]Companies Act §97(4).
[108]Companies Act §19.
[109]Companies Act §21.
[110]Companies Act §77.

creates a quorum at the meetings of the director and the director must provide the company with a written record of the resolutions.[111]

If authorized by company's articles or bylaws, and if all the directors agree, a director may participate in a meeting by any means that allows all of the directors to hear each other.[112]

Organizational Meeting. After a certificate of incorporation is issued for a company, the directors must hold an organizational meeting at which the directors must either issue at least one share of stock or dissolve the company.[113] The directors may also conduct the following business at the organizational meeting:

(1) Approve bylaws
(2) Adopt the form of corporate records and share certificates
(3) Appoint officers
(4) Appoint the company's first auditor
(5) Make banking arrangements
(6) Transact other business. [114]

Committees. Subject to the company's articles and bylaws, directors of a company may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.[115]

Officers. Officers may be appointed by a company's directors or shareholders as permitted by the company's memorandum and articles.[116]

Every public company must appoint a secretary. A public company's directors must ensure that the secretary has the knowledge and experience necessary to fulfill the duties of the secretary of a public company. The directors may assume a person is qualified to act as company secretary if that person served as secretary of a public company over the previous three to five years, is a member of a recognized accounting body, is an attorney, or appears to be fit for the post by virtue of membership in other professional bodies or as a result of having held similar positions.[117]

Liability of Directors and Officers. In addition to liability for breach of common law directors' duties, the Companies Act specifies that a company's directors may be held jointly and severally liable for consenting to an improper[118]

(1) purchase, redemption, or acquisition of shares;
(2) commission paid for a person purchasing or procuring purchasers for the company's shares;
(3) dividend payment; or
(4) grant of financial assistance for purchase of the company's shares.

Directors may also be held jointly and severally liable to the company for any difference between the value of in-kind consideration paid to it on an issue of shares and the value that the directors ascribed to the consideration.[119]

Indemnification of Directors and Officers. A company may indemnify its directors against any liabilities and expenses incurred as a result of administrative,

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[111]Companies Act §80.
[112]Companies Act §81.
[113]Companies Act §64(1)(a).
[114]Companies Act §64(1)(b).
[115]Companies Act §82(1).
[116]Companies Act §64(b)(iii).
[117]Companies Act §59.
[118]Companies Act §86.
[119]Companies Act §85.

civil, or criminal action taken against the director by virtue of that person acting as director of the company, if the director

(1) Acted honestly and in good faith with a view to the best interests of the company.
(2) In the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that his conduct was lawful. [120]

Additionally, a company may, with the approval of the Court, indemnify a director in respect of an action by or on behalf of the company to obtain a judgment in its favor and to which he is made a party by reason of being or having been a director or an officer of the company, against all costs, charges and expenses reasonably incurred by him in connection with the action.[121]

A director is entitled to indemnification for costs incurred as a result of civil, criminal, or administrative proceedings resulting from that person's position as director if the person seeking indemnification

(1) was substantially successful on the merits in his defense of the action or proceeding;
(2) is otherwise qualified for indemnification; and
(3) is fairly and reasonably entitled to indemnification.[122]

Insurance. A company may purchase and maintain insurance for its directors against liability for breach of the duty of care.[123]

[¶14] Meetings. A company's meetings may be held anywhere in the world.[124]

Annual Meetings. A company's directors must call an annual meeting of the shareholders once per year. However, an annual meeting need not be called in the year the company incorporates if the company holds its first annual meeting within eighteen months of incorporation.[125]

Special Shareholder Meetings. A company's directors may call a special shareholder meeting at any time.[126]

Shareholders holding at least 5% of the company's issued share capital may requisition the company's directors to call a shareholder meeting. The requisition must state the purpose for which the meeting is being called.[127]

[¶15] Resolutions. Anguilla recognizes three types of shareholder resolutions:

(1) Ordinary resolutions – A resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution.[128]
(2) Special resolutions – A resolution of which at least 21 days notice is given that is –
    (a) passed by a majority of not less than 75% of the votes cast by the shareholders who voted in respect of the resolution; or
    (b) signed by all the shareholders entitled to vote on the resolution.[129]
(3) Any unanimous shareholder agreement is executed or terminated, written notice of that fact, together with the date of the execution or termination

[120]Companies Act §99(2)(a)–(b).
[121]Companies Act §100(a)–(b). "The Court" refers to the Anguillan High Court.
[122]Companies Act §101.
[123]Companies Act §102.
[124]Companies Act §105.
[125]Companies Act §106.
[126]Companies Act §106(1)(b).
[127]Companies Act §121(1).
[128]Companies Act §1.
[129]Companies Act §1.

of it, shall be filed with the Registrar within 15 days after the execution or termination.[130]

If a company's articles or a unanimous agreement of the shareholders requires a greater majority vote than is required by the Act for passage of a particular type of resolution, the company's articles supersede the requirement of the Act.[131]

[¶16] General Accounting Practices. *Books of Account*. Every company must keep proper books of account. The company's books must present a true and fair picture of the company's affairs and explain its transactions. The books must[132]

(1) accurately explain the company's transactions;
(2) allow the financial position of the company to be accurately determined at any time; and
(3) allow the directors to determine whether the company's financial statements and accounts conform to the requirements of the Companies Act.

The following entries must be made in every company's books of account:[133]

(1) all sums of money received and expended by the company and details with respect to each receipt or expenditure;
(2) a statement of the company's assets and liabilities; and
(3) a record of all goods purchased and sold by the company.

Although books of account may be kept outside Anguilla, a company must keep the following documents at its registered office:[134]

(1) accounts and returns sufficient to allow the company's directors to ascertain the company's financial position on a quarterly basis; and
(2) a record of the place the company's financial records are kept outside *Anguilla*.

Audit. Every public company must appoint an auditor. A company's auditor must be a member of a recognized professional accounting body.

[¶17] Mergers and Acquisitions. Pursuant to Anguilla's Companies Act, two or more companies may be merged into a single company or consolidated to form a new company.[135] The companies that will take part in the merger are referred to as constituent companies.[136]

If, before a merger, the company that will be the surviving company— (a) is a company limited by shares, the surviving company must be a company limited by shares; (b) is a company limited by guarantee, the surviving company must be a company limited by guarantee; or (c) is a company limited by both shares and guarantee.[137]

Plan of Merger. The directors of each company that will participate in a merger or consolidation (hereafter merger) must approve a written plan of merger. The plan of merger must include the following information:[138]

(1) The directors of each constituent company that proposes to participate in a merger or consolidation must, by resolution, approve a written plan of merger or consolidation containing:

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[130]Companies Act §124(4).
[131]Companies Act §8(1).
[132]Companies Act §126(1).
[133]Companies Act §126(3).
[134]Companies Act §127.
[135]Companies Act §167(1).
[136]Companies Act §168(1).
[137]Companies Act §167(2)(a)–(c).
[138]Companies Act §166(1).

(a) the name of each constituent company and the name of the surviving company or the consolidated company;
(b) in the case of:
  (i) a merger, whether the company which will be the surviving company is a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee; or
  (ii) a consolidation, whether the consolidated company will be a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee;
(c) in respect of each constituent company limited by shares or limited by shares and guarantee:
  (i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and
  (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
(d) where the surviving company or the consolidated company will be a company limited by shares or a company limited by both shares and guarantee, the matters required to be set out in the articles of incorporation of a company;
(e) where the surviving or the consolidated company will be a company limited by guarantee or by both shares and guarantee, the matters required to be set out in the articles of incorporation of a company;
(f) the terms and conditions of the proposed merger or consolidation including, if appropriate, the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;
(g) in respect of a merger, a statement of any amendment to the articles or by-laws of the surviving company, to be brought about by the merger; and
(h) in respect of a consolidation, all other matters required to be included in the articles of incorporation or by-laws of a company registered under this Act.

(2) The plan of merger or consolidation may specify the date on which the amalgamation is intended to become effective.
(3) Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.

The plan of merger or consolidation may include the date the merger or consolidation will take place.[139]

Shareholder Approval of Plan of Merger. Each constituent company must give at least 21 days notice to each of its shareholders of a resolution to approve a merger or consolidation.[140]

[139]Companies Act §168(2).
[140]Companies Act §169(1).

The plan of merger or consolidation must be approved by a special resolution of the shareholders of each constituent company incorporated under this Act; and by a resolution of the shareholders of every other constituent company.[141]

After approval of the plan of merger or consolidation by the shareholders of each constituent company, articles of merger or consolidation setting out the information in prescribed form must be executed by each company.[142]

Certificate of Merger or Consolidation. If he is satisfied that the provisions of this Act in respect of merger or consolidation have been complied with, the Registrar shall, upon receipt of articles of merger or consolidation executed by each constituent company in a merger or consolidation, register the articles and issue a certificate of merger or consolidation, as appropriate, stating that the merger or consolidation is effective from the date of the certificate.[143]

Merger or Consolidation Involving a Foreign Company. If a foreign company will be involved in a merger, the foreign company must comply with the requirements of its jurisdiction of incorporation with respect to mergers.[144]

If the company resulting from the merger will be incorporated outside Anguilla,[145]

(1) the company must agree to accept service of process with respect to "proceedings for the enforcement of any claim, debt, liability or obligation of a constituent company" or for enforcement of rights of dissenting shareholders. The Registrar must irrevocably be designated the company's agent to accept service of process in Anguilla with respect to any such claims;
(2) the company must agree to promptly pay dissenting shareholders any amounts they are due under the Act;
(3) the company must file with the Anguillan Registrar a document approving the merger, issued by the foreign jurisdiction in which the company is to be incorporated.

Dissenting Shareholders in a Share Transfer. The following section applies anytime a company (the transferor company) enters into a contract to sell its shares (or any class of its shares) to another company (the transferee company).

Where a scheme or contract involving the transfer of shares or any class thereof in a company (in this section referred to as the "transferor company") to another company, whether or not a company within the meaning of this Act (in this section referred to as the "transferee company") is, within 4 months after the making of the offer by the transferee company, approved by the holders of not less than 90% in value of the shares affected, the transferee company may at any time within 2 months after the expiration of the 4 month period give notice to any dissenting shareholder.[146]

The notice must specify that the transferee company desires to acquire the shares of the dissenting shareholder and the transferee company shall be entitled to acquire the shares subject to the terms specified in the scheme unless, on an application made by the dissenting shareholder within one month from the date on which the notice is given, the Court orders otherwise.[147]

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[141]Companies Act §169(2).
[142]Companies Act §169(3). See Companies Regulations, Sched. 2, form 6.
[143]Companies Act §171(1).
[144]Companies Act §173(1).
[145]Companies Act §173(2).
[146]Companies Act §163(1).
[147]Companies Act §163(2).

Where a notice is given by the transferee company and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee company shall on the expiration of one month from the date on which the notice is given or if an application to the Court by the dissenting shareholder is pending, after the application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares that that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of the shares.[148]

Any amounts received by the transferor company shall be paid into a separate bank account, and the amounts and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the amounts or other consideration were respectively received.[149]

"Dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.[150]

[¶18] Liquidation/Dissolution. The Registrar or any interested person may apply to the Court for an order dissolving a company.[151] There is also a simplified procedure for dissolution of companies that have not commenced business and for companies that have no property or liabilities.[152]

Winding Up by the Court. An interested person (or the Registrar) may apply to the Court for liquidation of a company by order of the Court if the company[153]

(1) has contravened section 18 or section 132, 134 or 159;
(2) has failed for 2 or more consecutive years to comply with the requirements of this act with respect to the holding of annual meetings of shareholders;
(3) has procured any certificate under this act by misrepresentation; or
(4) carries on business without a shareholder.[154]

An applicant under this section, other than the Registrar, must give the Registrar notice of the application, and the Registrar may appear and be heard at the hearing of the application.[155]

Upon an application, the Court may order that the company be dissolved, or that the company be liquidated and dissolved under the supervision of the Court, and the Court may make any other order it thinks fit. Upon receipt of an order, the Registrar must –

(1) if the order is to dissolve the company, issue a certificate of its dissolution and strike the company off the Register; or
(2) if the order is to liquidate and dissolve the company under the supervision of the Court, issue a certificate of intent to dissolve the company; and publish a notice of the certificate he has issued under this section in the Gazette.[156]

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[148]Companies Act §163(3).
[149]Companies Act §163(4).
[150]Companies Act §163(5).
[151]Companies Act §(1).
[152]See infra, Simplified Procedure for Solvent Companies.
[153]Companies Act §216(1).
[154]Companies Act §216(1)(a)–(d).
[155]Companies Act §216(4).
[156]Companies Act §216(5).

The company is dissolved on the date shown in its certificate of dissolution.[157]

The Court may order the liquidation and dissolution of a company or any of its affiliated companies:

(1) Upon the application of a shareholder, debenture holder, creditor, director or officer if the Court is satisfied that:
   (a) any unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the company after the occurrence of a specified event and that event has occurred;
   (b) it is just and equitable that the company be liquidated and dissolved; or
   (c) the company is insolvent or unable to pay its debts;
(2) Upon the application of the Commission if:
   (a) the company is a licensee, a former licensee or the company is carrying on, or has at any time carried on, unlicensed financial services business, and
   (b) the Court is of the opinion that it is in the public interest that the company should be liquidated and dissolved.[158]

Voluntary Liquidation. A company's directors, or any shareholder who is entitled to vote at the company's annual meeting, may propose the voluntary liquidation of the company.[159] Notice of a meeting at which the dissolution of the company will be proposed must include the terms of liquidation and dissolution.

A company may be liquidated by special resolution of its shareholders. After passing the special resolution, the company must file with the Registrar a statement of intent to dissolve. If the Registrar is satisfied that the requirements of the law have been complied with, the Registrar will issue a certificate of intent to dissolve to the company.[160]

After the certificate of intent to dissolve the company has been issued, the company must[161]

(1) cease its business except to the extent necessary to carry on the liquidation;
(2) notify all its creditors of the company's intent to dissolve;
(3) publish notice of its intent to dissolve in the Gazette, an Anguilla newspaper, and in each jurisdiction in which the company is registered or has a place of business;
(4) aggregate its property, liquidate property that will not be distributed in-kind to its shareholders, discharge all its obligations, and do anything else necessary to liquidate the business; and
(5) after providing notice as specified supra and discharging its obligations, distribute any remaining cash and property to its shareholders.

Court-Supervised Liquidation. An application to the Court to supervise a voluntary liquidation and dissolution must state the reasons the Court should supervise the liquidation and dissolution, and the reasons must be verified by the affidavit of the applicant. If the Court makes an order, the liquidation and dissolution of the company must be continued under supervision of the Court.[162]

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[157]Companies Act §216(4)(a)–(b).
[158]Companies Act §217(1).
[159]Companies Act §211(1).
[160]Companies Act §211, 212.
[161]Companies Act §212.
[162]Companies Act §216(1)–(2).

Liquidation Costs. A liquidator must pay the costs of liquidation out of the property of the company and must pay or make adequate provision for all claims against the company.[163]

Directors' Liability. If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the company, the liquidator may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order, and to be examined.[164]

Removal of Defunct Companies. The Registrar may strike a company off the Register if–

(1) the company fails to send any return, notice, document or prescribed fee to the Registrar as required under this Act;
(2) the company has not commenced business within 3 years after the date of its certificate of incorporation; or
(3) the Registrar is satisfied that the company has ceased to carry on business or is not in operation.[165]

In general, the Registrar will use the following procedure to strike a company from the register:[166]

(1) The Registrar will provide notice to the company stating the reason for striking the company and that the company will be struck if the company does not remedy its default within ninety days of the notice date.
(2) If the company has not remedied its default within ninety days of the notice date, the Registrar will issue a certificate of dissolution and the company will be struck from the register.
(3) The Registrar will publish notice of the striking off and dissolution in the Gazette.

An expedited procedure for striking a company from the register will be followed in some cases. If a company does not file a notice of change of registered agent within thirty days of being notified that its registered agent intends to resign, the Registrar will publish a notice in the Gazette stating the Registrar's intention to strike the company from the register. If the company does not submit a notice of change of registered agent within thirty days after the date the Registrar publishes notice in the Gazette, the Registrar must strike the company from the register and the company will be dissolved.[167]

Simplified Dissolution Procedure for Solvent Companies. A company that has not commenced business and has never issued any shares may be dissolved by a directors' resolution.[168]

A company with no liabilities and no property may be dissolved by a special resolution of its shareholders.[169]

A company that has determined to dissolve under the previous two paragraphs must file articles of dissolution with the Registrar.[170] If the Registrar is satisfied the company has complied with the Act, the Registrar will issue a certificate of

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[163]Companies Act §224(5).
[164]Companies Act §224(3).
[165]Companies Act §243(1).
[166]Companies Act §243(2)–(5).
[167]Companies Act §151(5), (6).
[168]Companies Act §208.
[169]Companies Act §209.
[170]Companies Act §210. See Companies Regulations, Sched. 2, form 1.

dissolution and strike the company from the register. The company will be dissolved from the date on the certificate of dissolution.[171]

[¶19] Governing Law. The following acts and regulations govern business entities and the provision of corporate services in Anguilla:[172]

(1) Companies Act
(2) Companies Regulations
(3) Companies Registry Act
(4) Company Management Act
(5) Company Management Regulations
(6) Company Management Fees Regulations
(7) International Business Companies Act
(8) International Business Companies Regulations
(9) Limited Liability Company Act
(10) Limited Liability Company Regulations
(11) Limited Partnership Act
(12) Limited Partnership Rules
(13) Companies (Amendment) Act, 2019
(14) International Business Companies (Amendment) Act, 2019
(15) Limited Partnership (Amendment) Act, 2019
(16) Limited Liability Company (Amendment) Act, 2019.

Links to Law and Regulations.
http://www.commercialregistry.ai/Legislation

[¶20] Forms. Filings are completed via Anguilla's Commercial Online Registration Network (ACORN), thus making forms unnecessary. *See* http://www.commercialregistry.ai/About/HowToRegister

[171]Companies Act §210(2), (3).
[172]See Anguilla Financial Services, Financial Services Legislation, http://www.fsc.org.ai/about.shtml (last visited July 11, 2014).

BRAZIL

This chapter is up-to-date as of October 2019

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ANALYSIS OF THE COMPANY LAWS

[¶1] Company Types. The Brazilian Civil Code of 2002 ("CC") sets forth various types of legal entities that may be established in Brazil. However, there are two types of corporate structures mainly used by residents, foreign individuals, and companies when incorporating in Brazil, which are (1) limited liability company ("*Sociedade Limitada"*) and (2) corporation (*"Sociedade Anônima"*).[1]

Limited Liability Company: more commonly known as *"limitada"* which, in Brazil, includes both features common to partnerships and features common to corporations, but is otherwise similar to English private limited companies and other types of European liability companies;[2] and *Corporation*. Normally referred to as "*S.A.*", the structure is broadly similar to a corporation organized under state law in the United States and a public limited company in England. A corporation can be established as a:

(1) Public Company – which is registered with the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários – CVM*) and whose bonds and securities may be traded on the stock exchange or the over the counter market. Such companies are subject to the rules issued by CVM regarding disclosure of information, preparation of financial statements, obligation to make tender offers, etc.; or as a

(2) Private Company – which does not offer its shares or debentures for public underwriting, but only for private transfer, and which is comparatively easier to organize than a public company, due to fewer obligations and formalities provided for in the corporate law.[3]

In addition to these types of entities, the Civil Code created an entity called "*sociedade simples*", which is used only for non-business purposes, such as for the development of artistic, intellectual, and scientific activities, or for non-organized and non-professional activities. As compared to the limited liability company, the principals of a *sociedade simples* may have unlimited liability to third parties for the company's obligations.[4]

In 2011, the individual limited liability company (*Empresa Individual de Responsabilidade Limitada – EIRELI*) was introduced in Brazil, by means of which it became possible for one individual to be the sole owner and holder of all quotas representing a company's corporate capital. The rules applicable to the limited liability companies, as described in this chapter, also apply to EIRELI, as the case may be.[5]

Considering that all the other corporate types provided in the CC are not useful in Brazil and the investor generally prefers the corporate forms of a limited liability company or a corporation, this chapter will be restricted to the analysis of the latter.

Limited liability companies and corporations shall comply with several legal and regulatory obligations, according to its corporate purpose, including those referring to publicity of its corporate and financial documents, audit, bookkeeping and shareholders' annual meeting. On the next page, we present a chart with the main corporate obligations of limited liability companies and corporations.

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[1]Articles 1052 to 1092, Brazilian Civil Code.
[2]Article 1052:1087 of the CC.
[3]Article 1088:1089, CC; Law 6404/74.
[4]Article 997 to 1038, CC.
[5]Article 980(A); Law n 12441/2011.

Main Corporate Requirements for Limited Liability Companies and Corporations	
Articles of Association	It must state: (1) The company's name (which shall also include a reference to its main activity in Portuguese); (2) The period for which the company is established (if the case may be); (3) The company's main activities; (4) Its administration rules; (5) The principal place of business; (6) The name and personal details of each shareholder; and (7) The amount of capital stock and its distribution among the shareholders.[6]
Minimum number of shareholders	Minimum of two partners.[7] The partners do not need to be Brazilian nationals,[8] and may be either legal or natural persons. In fact, the shareholder does not need even to be resident in Brazil, provided that it maintains a representative resident in Brazil with powers to receive service of process. However, the officers of the company incorporated in Brazil shall be an individual resident in Brazil. Permanent visa is required in case the officer is a foreign citizen.[9]
Capital stock	There is no requirement as to the minimum capital that must be paid up on initial subscription or subsequent capital increases, except for certain types of companies for which the law provides for a minimum capital requirement (*i.e.* insurance, export/import, trading companies; mining companies shall provide proof of financial capacity to develop the mining programs). Shares may be paid up in cash or in assets capable of being valued in cash. Appraisal of the assets is mandatory, and the evaluation report must be approved by the shareholders in a general meeting. A corporation requires that a minimum of 10% of the share capital must be paid up at subscription. In order to increase the capital, the corporation shall have at least 3/4 of the capital paid up, whilst the limited liability company must have the total capital paid up in order to increase the capital.

[6]Article 997 I-VIII of the CC.

[7]Exception made to the corporation that may have only 1 shareholder provided that the corporation is a subsidiary and its shareholder is a Brazilian company.

[8]As long as the limited liability company's articles of association expressly states that the rules of corporations shall also be applicable to such company, since the Brazilian Civil Code does not explicitly allow foreigners to be partners in Brazilian limited liability companies.

[9]Article 1126 of the CC.

Accounting Principles	The companies are subject to the Brazilian accounting principles which are similar to international standard accounting rules. Accounting has to be kept by a qualified bookkeeper or accountant, both with certification at the Regional Council of Accountants. The books of account shall be kept in Portuguese and in Brazilian currency.[10]

We present below a brief comparison of the specific characteristics of limited liability companies and corporations.

	Limited Liability Company	Corporation
Advantages	– Even though it has become a more complex type of organization, the limited liability company is still less expensive and simpler to be managed than the corporations. – No need to publish its financial statements, except for large-Sized companies (subject to interpretation of the applicable law). This entails less expense and the right to maintain a certain degree of confidentiality as to company affairs. – It requires only one officer, resident in Brazil. – The officer may be appointed for an unlimited term. – Profits and dividends in a limited liability company may be distributed and paid accordingly or not to each shareholder participation in the company's capital stock.	– Obligations arising from shareholders agreement produce effects before third parties and the corporation if the shareholders' agreement is registered in the shares registration book. – The shares may be traded without recording any document at the Registry of Companies, which reduces time and bureaucracy. – It may have only one shareholder provided that the company is a subsidiary and its shareholder is a Brazilian company. – The voting quorum in the corporation is generally formed by shareholders holding the majority of shares of the capital stock. Notwithstanding that, such quorum can be higher in some cases required by law, and if foreseen in the company's bylaws or in the shareholders' agreement. – A company's capital may be divided into several kinds of shares, all of which may have different advantages, rights or restrictions.

[10]Article 1179 to 1195 of the CC.

	Limited Liability Company	Corporation
		– It is possible to issue securities in the stock market, subject to IPO rules issued by the Brazilian SEC (CVM).
Disadvantages	– Large-sized companies shall have their financial statements audited by an independent auditor registered at the Brazilian SEC (CVM) and may have to publish its financial statements.[11] – Amendments to the articles of association are subject to previous written approval of shareholders representing at least **75%** of the company's capital. – The name of each shareholder of the company is available to the public at the company, where the amendment to the articles of association of the company referring to the assignment of quotas shall be recorded. – The increase of capital is subject to full pay up of the capital. – Shareholders agreements which are not in accordance with the company's articles of association are ineffective before third parties. – It is not possible to issue securities in the stock market and the issuance of other securities in the securities market is limited.	– Need to publish its financial statements and all announcements and minutes of meetings held by the shareholders. This entails more expense and a minimum degree of confidentiality as to the company affairs. – A minimum of 10% of the share capital subscribed must be paid up. – Mandatory distribution of profits according to the corporation's bylaws. – It shall set aside 5% of its annual profit as a mandatory reserve for capital protection, until it reaches 20% of the corporate capital. – The board of directors (if established in the company's bylaws) has to be comprised by at least three members and it is not required that the member hold shares of the corporation. The directors may reside abroad, provided that they maintain a representative resident in Brazil.

Limited Liability Company	Corporation
	– Requires at least two officers' resident in Brazil. directors may also be appointed to occupy an officer position to the limit of 1/3. – Officers and directors shall be appointed for a term limited to three years. – The corporation has to keep the receipt of payment or a declaration of tax payment exemption from the assignor of the shares recorded in the company's books. Otherwise, the corporation has to send to the Federal Revenue Service a Declaration of Assignment of Shares (DTTA) referring to the assignment of shares recorded in the company's books.

[¶2] Licensing of Corporate Agents. Any person (natural person or legal entity) can apply to register a Brazilian company. However, an attorney and an accountant, duly registered, shall assist them.

[¶3] Company Name. A company's name shall be registered simultaneously with its incorporation, before the respective Registry of Companies, addressed at the state that the company will be operating at. A company's name cannot have a similar name of one already registered. Therefore, before its incorporation, a previous research of name could be provided by the Registry of Companies.[12]

Moreover, the company's name shall also include a reference to its main activity in Portuguese and some specific aspects regarding to the company's name shall be noted for each type of company as follow:

(1) Limited Liability Company: the company's name must have to indicate the word "Limitada" (or its abbreviation as "Ltda."), in the end of the name. for exemple: Lubrifácil Comércio de óleo Lubrificantes LTDA, or Lubrifácil Comércio de óleo Limitada;[13] and

(2) Corporation: A corporation must indicate on its name the abbreviation "S.A" ("Sociedade Anônima") or the word company ("Companhia"), the word, "Companhia", shall never be used in the end of the company's

[11]The concept of large-sized company was introduced by Act # 11,638 of December, 2007, and still there is no consensus on whether a large-sized company shall or not publish its financial statements at the Official Gazette and also in another local newspaper.

[12]Article 1166 of the CC.

[13]Article 1158 (3) of the CC.

name. For example: Lubrifácil Comércio de óleo Lubrificantes S/A or Companhia Lubrifácil Comércio de óleo.[14]

[¶4] Fees. The registration and modification fee will depend on the type of company, as well as the registry office responsible for the headquarters of the company. Considering that fees change almost every year, it is recommended to consult the fee at the following web site: http://drei.smpe.gov.br/assuntos/juntas-comerciais.

The fees for publishing financial statements and all announcements and minutes of meetings held by the shareholders depends on the size of the document, and can diverge in a minimum of R 5,000.00 and a maximum of R 20,000.00.

[¶5] Registered Office and Resident Agent. Every Brazilian company is required to maintain a registered office in Brazil, and the address of its headquarters must appear as stated in its bylaws or articles of association.

Also, companies must have a legal representative (natural person), appointed for that purpose in accordance with the respective bylaws or articles of association, and this person has to be duly registered before Brazilian authorities, as Registry of Companies and Brazil Federal Revenue.

Powers of attorney must be granted in regards to the respective bylaws or articles of association, by particular or public deed.

[¶6] Registration.

(1) Company's Incorporation

In order to do business and regularly operate in Brazil, a company must fulfill several requirements and often perform its registration before many government departments in Brazil, including the Registry of Companies and Brazil Federal Revenue.

The registry of the Company by the government departments must be performed before the beginning of the company's activities and the entity responsible for registering the company's office depends on the type of company and its subject, as follows:[15]

Corporation. The incorporation documents, including bylaws, shall be registered before Junta Commercial–Registry of Companies of its respective State, once its main activities can be only strictly related to commercial and business activities.[16]

Limited Liability Company. The incorporation documents, including its articles of association must be filed by Junta Comercial– Registry of Companies, in case of its main activities being strictly related to commercial and business activities. Otherwise it could be registered before the Oficial de Registro Civil de Pessoa Jurídica–Official Register of Legal Entities, once its main activities are related to intellectual profession, scientific, literary or artistic activities, in other words, the subject is not related to commercial activities.[17]

In the case of foreign investment, for all types of companies referred above:

(1) The foreign investor must appoint a representative resident in Brazil with power to receive service of process and to represent the investor before Brazilian authorities;

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[14]Article 1160 of the CC.
[15]Article 967 of Brazil Civil Code.
[16]Article 1150 of the CC.
[17]Article 1150 of the CC.

(2) The foreign investor must also be registered with the Federal Revenue Service to obtain a taxpayer registration number, whether as an individual (CPF) or a legal entity (CNPJ);
(3) The foreign investor must prove that it is an existing and legally registered entity, and present a certificate of incorporation or individual passport; and
(4) Foreign documents must be notarized and the notary's signature has to be authenticated in a Brazilian Consulate. However, whether the country where the document has been issued, is a signatory of "Haia Convention 2016", it is not required to provide its legalization or authentication before the Brazilian Consulate.

As explained above, a company in Brazil, whether limited liability company or corporation, shall be registered before several public agencies in order to regularly develop its business. The main public agencies are the following:[18]

Registry of Companies	– Creates the legal entity; and – Provides publicity to the company's corporate documents.
Federal Tax Payer Register (CNPJ)	– Required for payment of several federal taxes; and – Required to start the company's business operations, including opening bank accounts, executing contracts, hiring and operating.
Local Municipality Registration	– Required for the payment of several municipal taxes (including taxes over services); and – Required for installation and operation of the company's activities (Installation and Operational Licenses and Permits).
Brazilian Central Bank	– Required to receive foreign investments and loans.
State Tax Payer Register	– Mandatory only for manufacturers, sales and trading companies; – Entitles the company to issue invoices; and – Required for import and export of equipment.
Social Security Institute and Unemployment Guarantee Fund (FGTS)	– Required for payment of the mandatory contributions to employees.
SISCOMEX Registration	– Mandatory for import and export companies.

(2) Registry of Corporate Acts

Limited liability companies shall register at the Registry of Companies and/or publish at the official press and a local newspaper:

[18]Article 985 of the CC.

(1) Shall register all the Amendments to the Articles of Association and Corporate Resolutions at the Registry of Companies;
(2) Shall register at the Registry of Companies and publish at the official press and a local newspaper:
  (a) The call for meetings;
  (b) Managers' renouncement acts;
  (c) Corporate resolutions referring to reduction of capital; and
  (d) Dissolution, merger, acquisition, and slip-up operations related documents; and
(3) Shall register at the Registry of Companies and publish at the official press and a local newspaper any contract related to the sale, usufruct, or lease of the place of business in order to such contract be valid before third parties.[19]

Corporations shall register at the Registry of Companies and publish at the official press and a local newspaper:

(1) any minutes of any general shareholders meeting including, but not limited to: (a) acquisition, merger and split off, liquidation, and dissolution; (b) capital decrease; and (c) amendments to the articles of incorporation;
(2) minutes of board of officers' meetings that shall be valid before third parties;
(3) minutes of directors' meetings that shall be valid before third parties, including, but not limited to acts of appointment and resignation of officers;
(4) call announcements for general meetings (such calls shall be published at least three times with 15 days in advance); and
(5) financial statements, excluding corporations with less than 20 shareholders, and with a net equity inferior than R 1,000,000 (one million reais), provided, however, that such documents are registered before the Registry of Companies.

The evidences of publication of the acts above mentioned shall also be registered with the Registry of Companies.

Also, the corporation shall register at the Registry of Companies and publish at the official press and a local newspaper any contract related to the sale, usufruct, or lease of the place of business in order to such contract be valid before third parties.

A corporation shall keep books for records of the:

(1) General shareholders' meetings;
(2) Directors and board of officers meetings;
(3) Statutory audit committee meetings;
(4) Shares registration;
(5) Share assignment and transfer registration; and
(6) Shareholders' presence in the shareholders meetings.

Such books shall be registered before the Registry of Companies.

[¶7] Reporting and Recordkeeping.

Annual Filing:

At the end of each fiscal year, the financial statements and balance sheets set forth by law shall be prepared by the company's office(s).

[19]Article 1152 § 1 of the CC.

In a corporation, all the financial statements must be published in the official Gazette and in a local newspaper. Moreover, a large-sized corporation, i.e. a company or group of companies with total assets over R 240 million or gross annual revenue over R 300 million and publicly held companies, shall have their financial statements audited by an independent auditor registered at the Brazilian Securities Exchange Commission.

Otherwise, for a limited liability company, the disclosure requirements are less stringent, and it is not required to have its financial statement publication. However, a large-sized limited liability company, i.e. a company or group of companies with total assets over R 240 million or gross annual revenue over R 300 million, is subject to the rules of the Brazilian Corporation Law regarding the preparation of financial statements and shall have its financial statements audited by an independent auditor registered at the Brazilian Securities Exchange Commission (Comissão de Valores Mobiliários – CVM). Limited liability companies considered "large-sized companies" may publish their financial statements at the Official Gazette and also in another local newspaper.

[¶8] Formative Documents.

Constitution: The corporate act required for the incorporation of a corporation is the minutes of the general meeting for the organization of the company and the bylaws, and the corporate act for the incorporation of a limited liability company is the article of association. The incorporation documents shall provide for:

(1) The company's name;
(2) The period for which the company is established (if the case may be);
(3) The company's main activities;
(4) Its administration rules;
(5) The principal place of business;
(6) The name and personal details of each shareholder; and
(7) The amount of capital stock and its distribution among the shareholders.

Adjustment: In the case of amendment to the bylaws or to the article of association, the amendments, must be approved by the partners or at the extraordinary shareholders' meeting and shall be registered in the respective Registry of Companies. See No 6 above.

[¶9] Powers. Generally, companies have power to do all things necessary to carry out affairs through their legal representative duly indicated at the respective corporate act. Nevertheless, companies must appoint attorneys or representatives and grant them power of attorney with specific authorities to act on behalf of the company. It is not required that the power of attorney be granted by a public deed and registered at the Registry of Companies once it is complying with the bylaws or to the article of association.[20]

[¶10] Shareholders/Members.

Company governed by shares.

As a general rule a company must have at least two shareholders or partners that subscribe to all of the shares or *quotas* comprising the capital stock, regardless of whether they are individuals or corporate entities, or foreign or Brazilian. In a corporation, the shareholders are liable up to the extent of their capital holding**.**

Regarding to the limited liability company, the liability of owners is limited to their respective holdings of the company's capital. However, until the capital of the

[20]Article 653 to 661 of the CC.

company is fully paid up, liability extends to the total amount of the unpaid capital of the company.[21]

Therefore, the owner's liability may be structured as:

(1) If the corporate capital has been subscribed to, but not fully paid up, the owner is personally liable for the total amount of the capital;

(2) If the subscribed-to capital has been entirely paid up, the general rule is that the owners have already fully contributed and can no longer be held responsible for any liability of the company, except for certain circumstances in which the "corporate veil" may be lifted or actions have been taken which are against the law or without proper corporate authority.[22]

[¶11] Single Shareholder/Member Companies. Only EIRELI or Subsidiary companies are allowed to have one member. Corporations and limited liability companies are required to have at least two (2) shareholders or partner, respectively.[23]

[¶12] Share Capital. ***Shares.*** The capital of a corporation company is divided into shares, each representing a fraction of the capital and a bundle of rights attached thereto. There may be a number of different classes of shares, each class of share conferring different rights, advantages, and/or restrictions on the holders. The most useful class of shares are "common shares" and "preferred share". Within each class, different rights are restriction may apply.

Preferred shares may not carry any voting rights other than, perhaps, the right to elect certain member of the company's administrative bodies. Preferred shares may carry priority in the distribution of a minimum or fixed dividend, priority in relation to the reimbursement of capital in the event of liquidation of the company, or both of these rights, in addition to other prerogatives that must be granted in order for them to trade in the capital markets. No more than 50% of the total share capital of a corporation company may be issued as preferred shares with restricting voting rights.

All shares of a corporation must be registered, since bearer shares are not permitted under Brazilian law. In addition to the bylaws of the company, the rights and obligations of the shareholders may be governed by a shareholder agreement, the terms of which are enforceable by the shareholders against the company and its administrator once the agreement has been filed in the company's head offices and registered in the company's corporate book. The shares may be traded without recording any document at the Registry of Companies.

Quotas. The capital of a limited liability company is divided into *"quotas"* that, in much the same way as share represent a bundle of rights and assets in the company. Quota holdings are required to be registered but, unlike shares, do not exist in certificated form and are not represented by any form of security instrument. The name of each shareholder of the company is available to the public at the Registry of Companies, where the amendment to the articles of association of the company referring to the assignment of quotas shall be recorded.

[¶13] Directors and Officers. The administration and management of a corporation may be under the responsibility of a number of different bodies, as presented below.

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[21]Article 1082 of the CC.
[22]Article 1082 of the CC.
[23]Article 980-A of the CC.

(1) General Meeting of Shareholders

In broad terms, the shareholders at a general meeting have the authority to decide on all transactions relating to the company's business, and to pass any resolutions deemed advisable for its development. The shareholders at a meeting also have exclusive authority to decide specific matters set forth in the Corporate Law, such as: amendments to the bylaws; election or dismissal of directors; approval of financial statements; and transformation, merger, acquisition, spin-off, dissolution, and winding-up of the company.

(2) Board of Directors

The establishment of a board of directors is optional for a private company and mandatory for a public company. The members of the board of directors are elected and dismissed by the shareholders in a general meeting and may or may not be resident in Brazil, provided that directors resident abroad must grant a power-of-attorney for representation by a Brazilian resident. The company's bylaws will provide for the number of members to be elected (being a minimum of three), their term of office (which may not exceed three years, although re-election is permitted), the replacement of members, and will otherwise govern the board's activities. The board of directors is responsible for establishing the general business and financial policies of the company, electing and dismissing the officers sitting on the board of executive officers and supervising its activities, examining the books of the company, and generally overseeing the company's activities.

(3) Board of Executive Officers

Every corporation must have at least two officers, who may or may not be shareholders of the company, but who must be individuals permanently residing in Brazil. In the case of a foreign individual appointed as a member of the board of executive officers, she/he must hold the relevant permanent visa before taking office. Members of the board of executive officers are elected and dismissed by the board of directors or, if the corporation does not have a board of directors, by the shareholders acting at the general meeting. The officers' powers are set forth in the corporation's bylaws, which will also provide for the number, term of appointment (a maximum of three years with re-election permitted), replacement procedure, and duties. The board of executive officers represents the company in dealings with third parties and is responsible for its management. Each officer will have separate duties to perform in accordance with the company's bylaws. Officers will not be personally liable for any obligations that are assumed on behalf of the company, provided that these are in the normal course of business and in accordance with their powers.

(4) Inspection Committee – Conselho Fiscal

The inspection committee (often referred to as an "audit committee") is an optional management body of the company, created to supervise the acts of the other management bodies, i.e., board of directors and board of executive officers. For such purposes, the inspection committee may issue opinions, request documents and information, review financial reports, and even call general meetings, if the board of directors fails to do so. The inspection committee may be a permanent body of the company or may be temporarily or specifically created, by decision of the shareholders. The inspection committee is composed of three to five members, with the same number of alternates. Each such member:

(a) Must be an individual resident in Brazil;
(b) Must have a university degree; and
(c) Must have served for at least three years as a member of a company or a member of the inspection committee of a corporation.

The members of the inspection committee are elected, dismissed, and have their remuneration determined by the shareholders of the company at a general meeting.

(5) Limited Liability Company

The limited liability company is managed by one or more executive officers elected by the owners of the company (the majority required for election varies from 50% plus one quota, to 100% of the capital of the company). Such executive officers must be individuals resident and domiciled in Brazil. In the case of a foreign individual, she/he must hold a permanent residency visa before taking his/her seat in order to be appointed as an executive officer of a limited liability company. Additionally, an owner may be appointed as an officer of the limited liability company, subject to the above mentioned restrictions.

The powers of the management may be limited by the articles of association of the company. Therefore, certain acts and transactions may be subject to the prior approval of the company's owners.

[¶14] Meetings. A corporation shall hold an annual general shareholders meeting in the first four months following the end of the fiscal year to deliberate on the:

(1) Approval of accounting and financial statements (income statement, balance sheet, and cash flow statement);
(2) Distribution of the net profit regarding the fiscal year (provided that 5% of its annual profit shall be set aside as a mandatory reserve for capital protection and that a minimum amount shall be distributed as dividends, according to the bylaws provisions); and
(3) Appointment of officers directors, and settlement of their compensation.

The balance sheet and financial statements shall be provided to the shareholders with 30 days in advance of such meeting. The corporate resolution shall be subject to registration before the Registry of Companies and shall be published in the official newspaper and in a widely known newspaper. The said publication is excluded for corporations with less than 20 shareholders, and with a net equity inferior than R 1,000,000 (one million reais), provided, however, that such documents are registered before the Registry of Companies.

The limited liability company shall hold an annual general shareholders meeting in the four first months following the end of the fiscal year for:

(1) The analysis and approval of financial statements;
(2) Distribution of the net profit regarding the fiscal year; and
(3) Appointment of officers, if applicable.

The financial statements shall be provided to the shareholders with 30 days in advance of such meeting. The corporate resolution shall be subject to registration before the Registry of Companies.

[¶15] Resolutions. An important aspect of the limited liability company is that the main resolution of the owners, such as amendments to the company's article of association, or decision concerning acquisitions, mergers dissolutions, and the cessation of any liquidation, must be taken by owners holding at least 75% of the company's total capital, as opposed to a corporation, in which such resolution are taken by owners holding at least 50%, plus one share, of the company's capital. Additionally, there are such matter in a limited liability company which may require

the unanimous approval of the owners (such as the transformation of the limited liability company corporate structure and the election of managers if the corporate capital is not fully paid up).[24]

[¶16] General Accounting Practices. The companies are subject to the Brazilian accounting principles which are similar to international standard accounting rules. Accounting has to be kept by a qualified bookkeeper or accountant, both with certification at the Regional Council of Accountants. The books of account shall be kept in Portuguese and in Brazilian currency.[25]

[¶17] Mergers & Acquisitions. The foreign investor may acquire equity participation in an existing Brazilian company. This can be achieved through direct purchase of shares from a partner or shareholder or through direct capital subscription and payment in.

The common steps in a standard M&A transaction in Brazil are not much different from those outside Brazil. Non-disclosure agreements, letter of intent, stock or asset purchase agreements, transition services agreements, and other similar documents are widely used and accepted.

Furthermore, the evaluation of the Brazilian company for such transactions is a normal procedure and follows international standards concerning the company's cash flow, financial statement and appraisal of goodwill. A due diligence process is also usually undertaken prior to the execution of a definitive agreement, and an audit may also take place according to the negotiation carried on by the parties.

In some cases, the validity of the business transaction will depend on the analysis of and approval by the Brazilian Competition Agency (CADE – Conselho Administrativo de Defesa Econômica). It is mandatory to file before CADE agreements with the following characteristics:

(1) any of the corporate groups have a revenue equal or above R 750 million in the Brazilian territory (the company itself or the corporate group which the company belongs to); and
(2) any of the other corporate groups involved in the transaction have a revenue equal or above R 75 million.

However, Judicial Precedent # 2 of CADE states that it is not mandatory to file before CADE agreements related to the acquisition of minority equity participation in the company's capital stock by the controlling shareholder, provided that:

(1) the seller does not have powers to nominate officers, to vote on the company's commercial police or to bar corporate matters;
(2) the agreement does not have a non-competition clause with term superior to 5 years and/or with territorial coverage higher than the company's actual territorial activities; and
(3) after the transaction one of the parties will not control the other, in any form.

The agreement shall be filed at CADE before its execution, and the analysis will be accomplished in, at maximum, 240 (two hundred and forty) days from the file of the petition or its amendments. The execution of the transaction before the complete analysis of CADE is subject to fines and beginning of an administrative proceeding.

[¶18] Liquidations/Dissolution. A company shall be dissolved and liquidated in the circumstances provided by law, and the general meeting shall determine the

[24]Article 1071 to 1072 of the CC.
[25]Article 1179:1195 of the CC.

form of liquidation and elect a liquidator or liquidators and the Fiscal Board, which shall be in effect throughout the liquidation period, further establishing their powers and compensation.

The dissolution of a company could operate when:

(1) Expiration of its period;
(2) Unanimous consent of the partners;
(3) The resolution of the shareholders by an absolute majority in the indeterminate term partnership for a limited liability company;
(4) If the company has only one partner for more than 180 days; or
(5) Its extinction.[26]

In a corporate company is required that the resolution of shareholders represent at least 50% of the share, since a higher percentage is not required at the bylaws of the company.[27]

[¶19] Governing Law.

The main law governing company's law in Brazil is as follows:

(1) Brazilian Civil Code Law 10,406/2002; mainly regulates the Limited Liability Company;
(2) Law n° 6,404/1974; regulates Corporations; and
(3) Law n° 11,101/2005, regulates judicial recovery, extrajudicial and bankruptcy of the entrepreneur and companies.

[¶20] Forms. None available. Find the government website for the particular state in which the headquarters will be located for specific information.

[26]Article 1033 of the Brazil Civil Code and Article 1035.
[27]Article 1076 of the CC.

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This chapter is up-to-date as of October 2019

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GREECE

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ANALYSIS OF THE COMPANY LAWS[1]

[¶1] Company Types. The following types of companies can be incorporated in Greece under the Greek Civil Code, Greek Commercial Law, Law 4070/2012, Law 4072/2012, Law 4019/2011, Law 4015/2011, Law 2190/1920, and Law 27/1975:

(1) Sole proprietorship (owned by one individual);
(2) General Partnership;
(3) Limited Partnership;
(4) Limited Liability Company;
(5) Societe Anonyme;
(6) Social Cooperative Enterprise[2], have the following types;
  – Social Cooperative Integration Enterprises
  – Social Cooperative Social Care Enterprises
  – Social Cooperative Enterprises of Collective and Productive Purpose
(7) Private Capital Company (IKE);
(8) Cooperative[3];
(9) Maritime company under the Law 959/79[4];
(10) Maritime Company of Pleasure Yachts under the Law 3182/2003;
(11) Branch offices of a foreign company[5];
(12) Branch Office of a foreign maritime company under the Greek Law 27/75[6] (formerly law 89/1967);
(13) Silent Partnership[7]; or
(14) Civil Partnership.

[¶2] Licensing of Corporate Agents.
Not applicable.

[¶3] Company Name. The name of the company is selected prior to incorporation and is provided on the commercial invoices, the commercial correspondence, as well as on certificates and corporate documents. It is used to identify the trader, and for this reason, it must be **clearly** affixed along the signature. If the company faces litigation, it must be stated along with its name.

The following principles apply when selecting a name:

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[2]Greek Law 4019/2011 and 2716/1999.

[3]Law 1667/86, amended with the recent Greek Law 4384/2016 for the agricultural cooperatives and other types of collaborate associations.

[4]There are also two additional types of special maritime companies, i.e. the Special Maritime Enterprise used for oceangoing vessels and the Investment Company in Oceangoing Vessels (law 2823/2000).

[5]According to articles 50, 50a and 50b of the Greek Law 2190/1920, the branch offices are incorporated in the form of a Societe Anonyme or a Limited Liability Company.

[6]Their purpose is solely the management, commercial use, chartering, insurance, average adjustment, brokering for sale/ shipbuilding/chartering/ insurance of vessels over 500 GT flying the Greek or foreign flag. The said offices can also represent a maritime company engaging in the aforementioned activities.

[7]The company in which the dormant or silent partner has only contract rights in the company's assets and no representative authority or individual liability.

(1) It must not mislead public with regards to the purpose and type of the company.
(2) In case of a company transfer, the new corporate entity may under some conditions be permitted to use the same name.
(3) The name belongs exclusively to and is associated with the company registered first (time priority), i.e. two separate companies may not use an identical name or a name so similar that can be misleading.[8]
(4) The company cannot use more than one name and it must disclose publicly its name by using it in the trade.
(5) The name must not be offensive or against public morals.

The law distinguishes between the different corporate types.

– In case of a sole proprietorship, the use of the full name of the individual is compulsory.
– The name of the General and the Limited Partnership consists of the name of one or more of the general partners[9], or of words describing their purpose or of other indications, with addendum, in words or in abbreviation, of the company type.[10]
– The name of the Societe Anonyme is defined by the type of its business and consists of the name of an individual or of another company.[11] It can include also one or more of its purposes. In any case the addition of its corporate type, in words or abbreviation, is compulsory.
– The Limited Liability and the Maritime Company can use names of partners or words indicating activities or a combination of them.
– The name of the cooperative must include its activities/purpose, its type, and the liability of its members. In case of an agricultural cooperative[12], its agricultural type and the registered office must be also included.

The right to use the name is acquired solely by use and no other formalities or registration are required. It is optional to file a declaration to the competent Chamber. The name can be also filed and protected as a trademark. Prior to the incorporation, the ability to register the company must be confirmed.

[¶4] Fees. The following amounts are only the official fees and do not include various disbursements (such as monthly lease payments, accountancy fees, etc.).

A. Sole Proprietorship	EUR
Social Security Registration Fee	110.00
Chamber Registration Fee	25.00
B. General Partnership	
Non-Refundable Registration Fee	50

[8]Article 4 § 3 of the law 1089/1980.
[9]The name of the limited partners cannot be included in the name.
[10]Articles 249-294 of Law 4072/2012.
[11]Article 5 of the Law 2190/1920, as amended with the article 3 of the Law 2339/95. The name of a SA providing banking services must be approved by the Ministry of Finance (article 10 par. 2 Law 5076/31).
[12]The agricultural cooperative is regulated by the Law 2810/2000.

If the incorporators are more than 3	5 per individual
Chamber Registration Fee	To be calculated upon filling
Commercial Registry Registration Fee	10
Lawyers Fund	0.5% of the capital
Athens Lawyers' Welfare Fund for capital more than 586.94	1% of the capital plus stamp duty 3.6% of this amount
Athens Lawyers' Welfare Fund for capital less than 586.94	5.80

C. Limited Partnership

Non Refundable Registration Fee	50
If the incorporators are more than 3	5 per individual
Chamber Registration Fee	To be calculated upon filling
Commercial Registry Registration Fee	10
Lawyers Fund	0.5% of the capital
Athens Lawyers' Welfare Fund for capital more than 586.94	1% of the capital plus stamp duty 3.6% of this amount
Athens Lawyers' Welfare Fund for capital less than 586.94	5.80
Social Security Registration Fee	110.00

D. Limited Liability Company

Non-Refundable Registration Fee	70
If the incorporators are more than 3	5 per individual
Chamber Registration Fee	To be calculated upon filling
Commercial Registry Registration Fee	10
Athens Lawyers' Welfare Fund	5.80
Notary Public Fees	44.02 + 6 per page + applicable VAT. For certified copies 5 per page + applicable VAT
Social Security Registration Fee	110.00

E. Societe Anonyme

Non-Refundable Registration Fee	70
If the incorporators are more than 3	5 per individual
Chamber Registration Fee	To be calculated upon filling
Hellenic Competition Commission Fee	1‰ on the capital
Notary Public Fees	500 + 6 per page + applicable VAT. For certified copies 5 per page + applicable VAT
Social Security Registration Fee	110.00

F. Private Capital Company (IKE)	
Non-Refundable Registration Fee	70
If the incorporators are more than 3	5 per individual
Chamber Registration Fee	To be calculated upon filling
Commercial Registry Registration Fee	10
Athens Lawyers' Welfare Fund	5.80
Notary Public Fees	44.02 + 6 per page + applicable VAT. For certified copies 5 per page + applicable VAT
**If the incorporators choose opt to proceed through a notary public	
Lawyers Fund	0.5% of the capital
G. Maritime company under the Law 959/79	
Stamp duty for the registration of the Memorandum and Articles of Association	645.63
Stamp duty for the registration of the resolution regarding the representation of the company and the payment of the capital	64.56

[¶5] Registered Office of Company. The legislation and practice differentiate between the statutory headquarters, where the company was incorporated, and real headquarters (where the company actually maintains presence and coordinates its business). Under the ordinance of article 10 of the Greek Civil Code, the legal capacity of the company is provided under the laws of the country where the real headquarters are located.

The Greek companies must have headquarters in a municipality within Greek territory. Its description must be accurate, because the address determines the jurisdiction and the competent tax office.

In order to declare the address, the incorporators must provide the Registrar with one of the following:

(1) Lease contract;
(2) Tax declaration proving the ownership of the premises;
(3) Deed of grant, pursuant to which the legal owner of the premises permits the operation of the company; or
(4) In some cases, when the aforementioned deeds are not yet signed, the Registrar may accept an attestation from the incorporators.

In case of a health-regulated company (such as food, catering, and beverage establishments), the licensing of the company is subject to prior autopsy of the premises by the competent authorities.

The legal entities, which are taxable in Greece but do not have a postal address, must appoint a tax representative with residence within Greek territory, who will act as a process agent receiving the correspondence and the summons from the tax authorities.[13]

[13]Pursuant to the Circular No 1283/30-12-2013.

Change of Address

In case of a change of the address, the company must submit to the Registrar the following:

(a) The amended articles of association; and
(b) One of the aforementioned declarations or deeds.

The change must be notified to the Registrar, the Tax Office, the competent Chamber, and the social security funds, and the company has to amend in the same time its stamp and the account books.

[¶6] Registration.

Competent Authority

(1) The General and Limited Partnership as well as the Private Capital Company are incorporated on One-Stop Services. One-Stop Services operate in Chambers and Certified as One-Stop Citizen Service Centers.
(2) The Limited Liability Company and the Societe Anonyme are incorporated by a notary public, who acts as a One-Stop Service.
(3) The Maritime Company of Pleasure Yachts is registered in the same name Registry kept in the Ministry of Mercantile Marine.
(4) The Maritime Company 959/79 is registered in the same name Registry kept in the Ministry of Mercantile Marine.

The founders submit to the competent authority all the necessary documents and the procedure is as follows:

(1) Incorporation of the company;
(2) Registration in the General Commercial Registry (GEMH);
(3) Publication in the Greek Government Gazette (where applicable);
(4) Registration in the competent Chamber;
(5) Registration in the social security organization; and
(6) Registration with the tax authorities and obtaining of Tax Registration Number.

Establishing of a branch office

Branch offices are incorporated in the form of a Societe Anonyme or a Limited Liability Company. The following documents, duly legalized via apostille and translated into Greek, are required:

(1) Articles of Association;
(2) Certificate of good standing;
(3) Certificate of Registration, Directors, Shareholders and Registered Office;
(4) Certificate of fully paid up capital;
(5) Resolution of the company approving the establishment of the branch in Greece; and
(6) Power of Attorney appointing the branch's legal representative in Greece as well as the process agent.

The documents are filed to the local prefecture, where the branch is registered, and a summary of the establishment is published in the Government Gazette. The procedure is completed then according to the steps hereinabove mentioned.

Establishing of branches of shipping companies

The companies have the obligation:

(a) to employ at least 4 employees in Greece; and
(b) to have at least EUR 50,000 operating expenses in Greece per year, covered by import of foreign exchange.

The company submits its statutory documents as well as the documents pertaining to the vessels under its management to the competent Ministry of Mercantile Marine, in order to obtain a permit for establishment.

Filling fees are equivalent to USD 2,000 and must be imported in the name of the company. The permit is granted by a joint Ministerial Decision and is valid for five years with the possibility of renewal. Within two months from the publication of this decision, the company must deposit a bank guarantee of USD 10,000 with the Ministry of Finance.

[¶7] Reporting and Record-keeping. Every legal entity has the obligation to maintain an appropriate accounting system and keep records of every transaction or event, as well as of any resultant revenues, gains, expenses, losses, purchases, and sales of assets, discounts and returns, taxes, levies, and contributions to social security organizations.[14]

Though the invoices the company issues may be expressed in a foreign language, the account books and the records must be maintained in Greek and may be kept manually or electronically.

Tax Returns

Every calendar year and within the deadline designated by the financial authorities, all companies must file to the competent fiscal authority their annual return for the income they acquired the previous fiscal year. Within the year and according to their type and nature of business, the companies have to also file:

(1) annual returns for the immovable asset they own;
(2) VAT returns and VIES declarations;
(3) customs declarations;
(4) aggregated balance sheet referring to the clientele and suppliers; and
(5) various returns concerning the withheld taxes and advance tax payments.

The returns and the declarations are drafted according to the financial reporting standards stipulated in the aforementioned law as well as in the applicable fiscal legislation.

Financial Statements

The following categories of entities are subject to the obligation of filling separate and consolidated financial statements:

(a) Societe Anonyme, limited liability companies, limited liability partnerships by shares, and private company.
(b) General partnerships or limited partnerships, when all of the direct or indirect members of the entity, having otherwise unlimited liability, in fact have limited liability, because that liability is limited by those members being of the type of subpart (a) above or of a comparable type.
(c) Any legal entity that is subject to this law under tax or other legislation.

With the express exemption of specific types, the companies can prepare their financial statements applying voluntarily the IFRS.

[14]Law 4308/2014.

Depending on their total assets, number of employees and net turnover[15], the companies file:

– Balance Sheet or Statement of Financial Position;[16]
– Income Statement;
– Statement of Changes in Equity;
– Cash Flow Statement; or
– Notes to the accounts.

Where applicable, they have to maintain:

– Record of tangible and intangible fixed assets;
– Record of investments in debt and equity securities and other titles; – Record of owned inventory;
– Record of inventory owned by other entities;
– Record of other assets;
– Record of equity items;
– Record of liability items; and
– Record of assets and liabilities denominated in foreign currency.

The preparation of the financial statements is completed within six months from the date the fiscal year ended or in the time limits set by the applicable legislation. The financial statements are filed to the General Electronic Commercial Registry twenty days before the General Meeting of the company and, in case of their amendment, within twenty days from the day the alteration was approved.[17]

Failing to comply with the above requirements renders the resolution of the General Meeting voidable and the directors/managers are held liable under the applicable penal legislation.

As of the January 2016, the Greek Government proposed a new Bill which aims at the following amendments:

(1) The Societe Anonyme companies have to file the financial statements within eleven months from the date the fiscal year ended and, on the premises, that the same are previously approved by the General Meeting.
(2) If specific requirements are met, the General and the Limited Partnerships will have the same obligation.

The following regulations have been introduced;[18]

1 Depending on the size and the type of the company, the Board of Directors has to draft and submit to the General Meeting on an annual basis a Management Report, which reflects the actual status of the company. The Report is published in the General Electronic Commercial Registry within 20 days from the day it is approved by the General Meeting; and
2 Corporate Governance Report Audit Opinion prepared by the statutory auditors and Consolidated Management Report are required for special types of companies.[19]

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[15]The companies are categorized on the basis of their size as micro, small, medium, and large entities (article 2 Law 4308/2014).

[16]Article 4 § 3 of the law 1089/1980.

[17]Par. 2 article 8 of the Law 3190/1955 and articles 7b and 43b of Law 2190/1920.

[18]On 7 July 2016 the Law 4403/2016 entered into force, encompassing the European Directives 2013/34 and 2014/95.

[19]Articles 2 and 3 of the Law 4403/2016, article 20 of European Directive 2013/34, par. 2 article 1 of European Directive 2014/95/EE.

[¶8] Formative Documents. With the exception of the sole proprietorship, the incorporation of a company requires the drafting and the filling of a charter (memorandum and articles of association). The charter contains the minimum required ordinances and clauses of optional character and for certain companies (banking, insurance, etc.) additional requirements may also be imposed. The charter is executed in writing and in the Greek language; in case of establishing a branch office of a foreign company, the corporate documents must be translated into Greek before filling. Unless the company has a single member, the charter is signed by at least two individuals[20], who are called the founders and may be either natural persons or legal entities.

Formal Requirements

(1) In case of a Societe Anonyme and a Limited Lability company, the charter is executed before a notary public. If the share capital exceeds the amount of EUR 100,000, a lawyer must co-sign.
(2) The Limited Partnership, the General Partnership, the Private Capital Company[21], the Maritime Company, and the Maritime Company of Pleasure Yachts are incorporated with a private agreement, which is checked by the competent registration authority.
(3) The signatures of the founders of a Maritime Company of Pleasure Yachts must be attested by a public authority.

Mandatory content

Depending on the type of the company, the mandatory provisions must deal in the following matters:

(1) The name and the purpose of the company;
(2) The type of the company;
(3) The headquarters of the company and its web site;
(4) The duration of the company;
(5) The amount and the payment of the share capital;
(6) The nature, the number and the amount of the corporate contributions (capital, out capital, guarantee);
(7) The type of shares, their number, their nominal value and their issue;
(8) The number of shares of each class and the conversion of registered shares into bearer or bearer into registered
(9) The liability of its partners;
(10) The convocation, constitution, operation, and responsibilities of the Board of Directors;
(11) The convocation, constitution, operation, and responsibilities of General Assemblies;
(12) The shareholders' rights;
(13) The Balance Sheet and the distribution of profits;
(14) The dissolution and the liquidation of its property;
(15) The identification data of the founders and of the members;
(16) The representation;

[20]Provisions for specific types of companies, like cooperatives, may provide otherwise, increasing the minimum number of founders.
[21]The incorporation of a Private Capital Company requires a notarial document in cases of out capital contributions.

(17) The identification data of the managers, directors, and representatives as well as their responsibilities; and
(18) In case of a Limited Partnership, indication of the partners' capacity (general or limited).

Optional clauses, which pertain to the company's operation.

(1) Appointment of the members of the first Board of Directors until the first ordinary General Assembly.
(2) Appointment of auditors of the first corporate usage.
(3) The assignment of the S.A.'s representation either generally or for certain actions to one or more members of the Board or to third individuals.

Amendment of the charter

(1) For the amendment of the charter of the SA, the Limited Liability, the Limited Partnership, the General Partnership, and the Private Capital Companies, the registry must be provided with a codification of the new charter, duly legalized by the Greek authorities, as well as with a summarized announcement.
(2) In case of a SA company, a corporate resolution is required.
(3) If the amendment concerns the partners, shareholders, directors, managers, or members, the company must submit copies of their identification documents/staying permits.

[¶9] Powers. Once all the incorporation requirements are met, the companies acquire their distinct legal personality and legal capacity; they have their own name, residence, citizenship, and property and in general are able to hold rights and obligations, sue and be sued, and participate in other companies. This status remains unchanged and continues until the completion of the liquidation. Lifting the corporate veil for the protection of the creditors is dependent on the circumstances.

The capacity of the corporation to act is limited by its purpose as described in the charter. However, the limitation may not be asserted against third parties who did not and should not have known it. Third party may rely on the authority of the individuals who appear to represent the company and lack of authorization may not be opposed to them unless they were aware of it.

Legal Incapacity

Legal incapacity is deemed to exist for illegal acts. Persons acting for a company under formation are liable jointly and severally, unless the company assumes sole responsibility within three months from its incorporation for the acts carried out in its name.

[¶10] Shareholders/Members. The founders of the company can be either legal entities or natural persons, on the premises that are of legal age or duly incorporated. Legal entities must appoint a natural person. In case a partner, member, or shareholder is a foreigner or a foreign entity, they must register with the Greek tax authority and acquire a Greek tax registration number. Issuance of special residence permits for third country nationals is required. The provisions of social security legislation are applied.

It is mandatory for companies to keep a shareholders' ledger, which includes all the information concerning the shares and their holders.[22]

The Private Capital company keeps the Partners' Book, which is similar to the aforementioned ledger. Any changes in the membership must be made according to the charter and the applicable legislation and be further registered in the Registry.

[¶11] Single Member Companies. Incorporation of single member companies is permitted in Greece. Apart from the sole proprietorship, the following companies can either be incorporated by one person (physical or legal entity) or become one at a later time-in the latter case, the charter has to be amended and further registered.

Single Member Private Capital Company

The company's name must contain the words "Single Member Private Company". The sole partner can act also as the manager or administrator.

Societe Anonyme

The company can be incorporated as a single member one or become at a later time, if a shareholder acquires the totality of the shares. The company's name must contain the words "Single Member Societe Anonyme". The name of the single shareholder as well as the type of the company must be declared and published through the Registry.

Single Member Limited Liability Company

The incorporation is permitted under certain circumstances, i.e. the founder cannot incorporate a new single member limited liability company and a company of this type cannot be the sole shareholder of another single-member limited liability company.

The manager and representative of the company is its sole partner, who can delegate this power to one or more individuals for definite or indefinite time either under the charter or by resolution.

[¶12] Share Capital.

Limited Liability Company

There is no minimum capital requirement.[23] The capital, defined by the founders without limitation, must be paid up at the incorporation and can be either cash or contribution in kind (asset's value up to 50% of the capital). In the latter case, a valuation of the asset by a committee according to the provisions of the article 9 Greek Law 2190/1920 must be previously concluded. The capital is divided into parts[24] and every partner can participate in the corporate capital with more parts, which constitute their corporate portion.

Increase of the capital requires amendment of the charter and publication through the registry. The capital may be increased as follows:

(1) Issuance of new parts;
(2) Consolidation;
(3) Capitalize of profits;

[22]The keeping of these books is mandatory pursuant to these articles, despite the newer laws 4093/2012 and 4308/2014.

[23]Abolished under the Greek Law 4156/2013; Article 8 of Law 2190/1920 for Societe Anonymes, article 6 of Law 3182/2003 for Maritime Company of Pleasure Yachts, and article 7 of Law 959/1979 for Maritime Company.

[24]There is no minimum requirement regarding their nominal value- Greek Law 4156/2013.

(4) Increase of the nominal value of the parts;
(5) The decrease of the capital can be either voluntary due to profit loss or compulsory due to the removal of a partner; or
(6) Transfer of the parts.

The transfer may be subject to statutory restrictions and is made exclusively by notarial deed.[25]

Private Capital Company

There is no minimum capital requirement. The capital is divided into parts of a minimum nominal value of 1 Euro, the number of which is defined in the charter and which cannot be incorporated into shares. Participation in the company presupposes the acquisition of at least one part.

The parts of the company represent the contributions of the partners. These contributions are separated into capital, out-capital, and guarantee.

(1) Capital contributions are made in money or in kind (fixed assets).[26]
(2) The out-capital contributions are benefits which cannot be subject of capital contribution, such as undertaking obligation of performing works or services provision. These benefits must be specified in the charter and provided for a definite or indefinite time.
(3) The guarantee contributions consist of the partner undertaking liability towards a third party for the company's debts and up to the amount specified in the charter. The value of each guarantee contribution must be defined in the charter and are not permitted to exceed the seventy-five percent (75%) of the liability amount.

The increase of the capital is made by an increase of the parts. In case the capital is made in cash, the partners have a pre-emption right in the capital according to the parts they hold. Decrease of the capital is made by cancellation of existing parts.

Societe Anonyme

The minimum capital requirement is EUR 24,000 and must be subscribed and fully paid up[27] at the incorporation. It can be made either in cash or in contribution in kind (asset's value up to 50% of the capital). In the latter case, a valuation of the asset by a committee according to the provisions of the article 9 Greek Law 2190/1920 must be previously concluded. Within two months from the incorporation the Board of Directors convene a special meeting with the sole agenda to confirm the payment of the capital. In case of a capital increase, the deadline is one month from the day up to which the payment had to be affected.

The capital is divided into shares, which are separated into:

(1) Registered and Bearer[28]; or
(2) Ordinary and Preference.

The minimum nominal value of the share is EUR 0.30 and the maximum EUR 100. The company cannot acquire its own shares except in limited circumstances, such as capital decrease or total transfer of the assets. However, the subsidiary may acquire the shares of the parent company.

Increase of the capital is made by a resolution of the General Meeting and by:

(1) Contribution in cash or in kind (actual increase);

[25]Article 28 Greek Law 3190/1955.
[26]At least one part must correspond to a capital contribution.
[27]The partial payment of the capital is permitted if certain requirements are met.
[28]Specific types of companies, such as bank, insurance, water supply etc, are obliged to issue only nominal shares- article 11 of the Greek Law 2190/1920.

(2) Capitalization;
(3) Management of assets (nominal increase); or
(4) Debt securities convertible into stocks.

The above referenced increases require the amendment of the charter and publication. The amendment may be avoided, if the charter provides for an increase within the first five years of the incorporation. In the event that the increase is not made in kind or in debt securities, the existent shareholders hold a pre-emption right in the capital according to the shares they hold.

Decrease of the capital is decided by the General Meeting and is made by:

(1) By returning capital to the shareholders, in case there is a capital surplus (actual decrease);
(2) By decreasing the nominal value of shares;
(3) By decreasing the number of shares each shareholder holds; or
(4) By the company acquiring its own shares and cancelling them.

An auditor must previously confirm that the intended decrease will not infringe the rights of the creditors. The decrease of the capital must also meet the publication requirements.

Transfer of shares

The transfer of shares is not subject to any restriction and does not require previous consent of the shareholders or the Board of Directors unless the charter provides otherwise.[29]

The bearer shares are transferred by an agreement between the transferor and the transferee and the actual delivery of the share title to the transferee.

Registered shares are transferred according to the provisions of the Greek Civil Code. The delivery of the share title and the registration of the transfer to the shareholders' ledger are required. The company either issues new shares in the name of the new shareholder or endorses the existing shares and delivers these to the transferee.

Maritime Company of Pleasure Yachts

The minimum capital requirement is EUR 10,000 and must be subscribed and fully paid up at the incorporation. It is divided into share of minimum nominal value 1 Euro. The shares can be either registered or bearer.

The bearer shares are transferred by an agreement between the transferor and the transferee and the actual delivery of the share title to the transferee. Registered shares are transferred according to the provisions of the Greek Civil Code. The delivery of the share title and the registration of the transfer to the shareholders' ledger are required. Under statutory provisions the right of transfer may be restricted.[30]

Nationals of a third country (i.e. country not belonging in the European Union) are permitted to acquire only up to 49% of the capital.

The charter may include clauses relating to the increase of the capital; it is decided by either the Board of Directors or the General Meeting and is made only in cash and by issuing new shares. The existent shareholders hold a pre-emption right in the capital according to the shares they hold. No amendment of the charter is required.

[29]However, any clause rendering the shares absolutely non-transferrable is considered void.
[30]This is mentioned on the share.

Maritime Company

The minimum capital requirement is EUR 5,000 and must be subscribed and fully paid up within two days from the registration in the competent registry. Payment in kind or partial payment is not permitted. It is divided into share of minimum nominal value 1 Euro. The shares can be either registered or bearer.

The bearer shares are transferred by an agreement between the transferor and the transferee and the actual delivery of the share title to the transferee. Registered shares are transferred according to the provisions of the Greek Civil Code. The delivery of the share title and the registration of the transfer to the shareholders' ledger are required. Under statutory provisions the right of transfer may be restricted.[31]

Nationals of a third country (i.e. country not belonging in the European Union) are permitted to acquire only up to 49% of the capital.

The charter may include clauses relating to the increase of the capital; it is decided by either the Board of Directors or the General Meeting and is made only in cash and by issuing new shares. The existing shareholders hold a pre-emption right in the capital according to the shares they hold. No amendment of the charter is required.

General and Limited Partnership

There is no minimum capital requirement.

[¶13] Directors and Officers.

General Provisions

No one can be appointed as director, manager, or administrator of a company unless they are of legal age (18 years) at the time of appointment. The appointment as well as any dismissal or substitution is filed in the Registry along with copies of the identification documents of the individuals. Minors are allowed to participate in a company only by virtue of a court decision.

The liability of the directors is governed by the charter and the applicable legislation. The general guidelines, as derived from the ordinances, include the following:

(1) The director must act in good faith for the benefit of the company;
(2) They must exercise reasonable care and due diligence while performing their duties;
(3) They must not pursue individual goals against the interests of the company; and
(4) They must not act illegally and in breach of the statutory ordinances.

General and Limited Partnership

At least two partners must reach an agreement and participate in the incorporation as founders. The general partners of these companies are jointly responsible for all the company's liabilities with their personal assets. This obligation for the existing liabilities is not terminated by the dissolution of the company. Unless provided otherwise in the charter, the administration of the company's affairs is exercised by all the general partners, either jointly or severally, whereas the limited partners are strictly excluded. According to the prevailing opinion and case law, the administration cannot be delegated to third, non-partner parties.

[31]This is mentioned on the share.

Limited Liability Company

Unless the charter's ordinances provide otherwise, all partners act collectively and unanimously as administrators. In case the charter does not provide for the administrator or the way the decisions are made, the General Meeting is convened to adopt a relevant resolution. The administration may be entrusted (by charter or resolution) also to individuals who are not partners.

Societe Anonyme

The company is managed by the Board of Directors, which consists of at least three members who need not be shareholders. A legal entity can be appointed as a member of the Board.[32]

The first Board, which will act until the first General Meeting is convened, is appointed by the charter. Its members are appointed and removed with a resolution of the General Meeting, where certain voting requirements must be met. The charter may provide that the shareholders can appoint members in the Board, on the premises that their number does not exceed the 1/3 of the Board's total number. Moreover, the charter may contain ordinances that allow the Board to elect replacements for its members who have resigned, died, or lost their right to be a member, provided that the General Meeting has not elected alternate members for such cases. The term of the Board cannot exceed the six years, but its members can be re-elected. Its members are not allowed to participate in a General or Limited Partnership, unless they have obtained prior consent of the General Meeting.

No appointment of other officers is required. The charter may contain ordinances enabling the delegation of Board's authority to members or third parties in relation to specific matters of representation and management.

Private Capital Company

Unless the charter provides otherwise, the management and the representation of the company are exercised collectively by all the partners. Pursuant to the charter ordinances, the management as well as the representation can be delegated for definite or indefinite period of time to one or more individuals, who may not be partners.

Maritime Company of Pleasure Yacht and Maritime Company 959/79

The company is managed by the Board of Directors, consisting of at least three members. A legal entity can be appointed as a member of the Board. Its members are appointed either by the charter or by a resolution of the General Meeting. The members are allowed to participate in the Boards of other similar companies. The term is three years, unless provided otherwise in the charter (however, in the case of a MCPY, it cannot exceed the six years).

[¶14] Meetings.

General and Limited Partnership

The Greek Civil Code ordinances for the civil partnerships are applied residually; unless the charter provides otherwise and with the exception of the limited partners[33], all members have equal managing rights. The General Meeting is held

[32]Pursuant to the Law 3604/2007.

[33]Under the Commercial Law, the limited partner cannot do any act of administration, management or external representation of the company, not even by commission. However, they

pursuant to the charter's clauses. The resolutions are adopted by unanimous vote, unless the charter provides otherwise. The clause of the majority, in case of doubt, is interpreted on a per capita and not per parts basis.

Social Cooperative Enterprise

The ordinary annual General Meeting is called by its Administration Committee within three months of the end of the fiscal year. An extraordinary meeting may be called by the Committee or upon request of the 1/5 of the members.

Societe Anonyme

Ordinary Meeting

The annual meeting is convened at least once within each fiscal year and the latest until the tenth day of the ninth month after the end of the previous fiscal year. The meeting takes place at the registered office of the company or within the municipal region of the prefecture where the office is located.

A minimum twenty-day notice by publication, including the agenda, is mandatory.[34] Within ten days before the meeting, each shareholder may obtain a copy of the company's financial statements as well as of the reports of the directors and statutory auditors. For a shareholder to attend and participate, it is required that they deposit their shares or their proxy documents with a bank or the Deposits and Loan Fund within five days prior to the meeting.

Extraordinary Meeting

The authority to call an extraordinary meeting is vested in the Board of Directors, which is obliged to do so when the legislation requires, or upon request of the statutory auditors or the shareholders holding the 1/20 of the paid-up capital. In case the Board fails to comply, the requesters can obtain a court permission.

Limited Liability Company

The ordinary annual meeting is convened within three (3) months of the end of the fiscal year. A minimum eight-day notice by publication, including the agenda, is mandatory.

The authority to call an extraordinary meeting is vested in the administrators, who are obliged to do so upon request of the members holding the 1/20 of the paid-up capital. In case the administrators fail to comply, the requesters can obtain a court permission.

Private Capital Company

The ordinary annual meeting is convened within four months of the end of the fiscal year for the approval of the annual financial statements and the profit distribution. Pursuant to article 73 of the Greek Law 4072/2012, in case the resolutions are adopted unanimously and in writing, no meeting is required.

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conserve the right to control the administration of the company and to request information from its managers.

[34]Pursuant to article 115 par. 2 of the Greek Law 4335/2015, the General Meeting can adopt a resolution or amend the charter so as the notification deadline is limited in the cases of capital increase.

Maritime company under the Law 959/79

An ordinary annual meeting is convened at least within the fiscal year. A minimum thirty-day notice by publication, including the agenda, is mandatory. For a shareholder to attend and participate, it is required that they deposit their shares, or they proxy documents with a bank. The authority to call an extraordinary meeting is vested in the Board of Directors.

Maritime Company of Pleasure Yachts under the Law 3182/2003

An ordinary annual meeting is convened at least within the fiscal year. A minimum thirty-day notice by publication, including the agenda, is mandatory. For a shareholder to attend and participate, it is required that they deposit their shares, or they proxy documents with a bank.

[¶15] Resolutions.

Societe Anonyme

At ordinary, regular General Meetings, the 1/5 of the paid-up capital constitutes the required quorum. For the extraordinary or statutory meetings, the quorum is the 2/3. The resolutions are adopted by the absolute or the 2/3 majority of the quorum. However, the charter may provide for higher percentages.

The following matters require among others a special resolution:

(1) change of nationality;
(2) change of the activities;
(3) increase of the shareholders' obligations;
(4) increase and decrease of share capital; and
(5) merger or dissolution.

Pursuant to the applicable legislation, the resolutions of the company are subject to publication to the Registry.[35] Moreover, the preparation and the signing of a resolution by all members of the Board of Directors equals to a valid one, even if the meeting did not actually take place. The shareholders are entitled to receive copies of the minutes of the meetings.

The company is obligated to keep Book of Resolutions of the Board of Directors as well as the shareholders' ledger and the Book of the General Meeting.

Limited Liability Company

No quorum rules exist. The resolutions are adopted by the General Meeting by a majority of more than one half of total number of partners representing more than one half of the total capital of the company. The charter and the legislation may provide for extra-ordinary majority (3/4) or unanimity.

The company is obliged to keep Book of the Administrator's Minutes, Book of Partners' Meetings, and Partners' Ledger.

Private Capital Company

The company keeps the Book of Partners and Book of Minutes of the decisions of the managers and partners. The resolutions are adopted by absolute majority of the total number of the parts. For special matters specified in the applicable legislation

[35]The resolution pertaining to the incorporation, the approval of the charter, payment of the capital, appointment and dismissal of the directors/administrators, increase and decrease of the capital, dissolution, financial statements, etc.

the majority increases to 2/3. Notwithstanding these provisions, a unanimous resolution may be adopted in writing without a meeting.

Maritime Company of Pleasure Yachts and Maritime Company

Over 1/2 of its members constitute the require quorum. Unless increased percentage is provided for, the resolutions are adopted by absolute majority and are recorded in minutes. Minutes duly signed by all members of the Board equals to valid resolution, even if all the meeting requirements have not been met.

[¶16] General Accounting Practices.[36] Every legal entity or individual engaging in business activity for profit has the obligation to keep accounting books. The category of the books (simply entry or double entry book keeping), depends on the legal form and their financial size, as described above.

The accounting records are kept in the premises of the company. However, it is often the case that are kept in the offices of the accountants.

The following legal entities apply the International Financial Reporting Standards on a mandatory basis for their separate and consolidated financial statements:

(1) Public interest entities;
(2) Entities registered in Greece, subsidiaries of a parent entity whose securities are admitted to trading on a regulated market of any Member State within the meaning of Council Directive 2004/39/EC, in accordance with the provisions of Regulation 1606/2002 of the European Union, and that either individually or collectively account for more than 5% of the net turnover or total assets or total employees of the parent entity;
(3) Investment companies of law 3606/2007;
(4) Portfolio investment companies of law 3371/2005;
(5) Real estate investment companies of law 2778/1999;
(6) Companies of closed-end alternative investment funds of law 2367/1995;
(7) Management companies of entities for collective investment in transferable securities of law 4099/2012; and
(8) Financial holding entities.

Any other legal entity may apply the IFRS on a voluntary basis. In this case, they may not revert from the application of IFRS within five annual periods of the first application of IFRS.

The accounting records maintained shall be kept for the longer of:

a) a period of 5 years from the balance sheet date; or
b) the storage period set by any other national legislation.

Unless exempted under the applicable tax legislation, the entity that supplies goods or services either within the country, or to other Member States of the European Union, or to a third country must ensure the issuance of a respective invoice that is subject to VAT according to law 2859/2000.

Private Capital Company

Pursuant to article 99 of the Greek Law 4072/2012, if the requirements of the Law 2190/1920 are met, the financial statements of the company must be audited. The auditors are appointed by the partners and their appointment is registered in the Registry.

[36]Greek Law 4308/2014.

Societe Anonyme

In the annual meeting of the shareholders two statutory auditors are appointed, who will follow the accounting, certify the financial statements, and report in the meetings, providing with a respective certificate.[37] For companies of total turnover less than EUR 1,000,000 this requirement is abolished.[38]

Maritime Company of Pleasure Yachts

The books are kept in the Greek language. However, if the company own vessels characterized as "Professional," the charter or a resolution by the general meeting may allow the use of a foreign language. The charter may provide that the balance sheet or account statement of the company are reviewed by independent auditors, who will provide with a relevant report and will be appointed by the general meeting.

Maritime Company

The keeping of accounting books is mandatory when the company owns vessels.[39] The books are kept in the Greek language. However, the charter or a resolution by the general meeting may provide otherwise. The charter may provide that the balance sheet or account statement of the company are reviewed by independent auditors, who will provide with a relevant report and will be appointed by the general meeting.

[¶17] Mergers & Acquisitions. The following main legislation governs the mergers and acquisitions in Greece:

(1) Law 2190/1920 for the Societe Anonyme;
(2) Law 3190/1955 for the Limited Liability Company;
(3) Law 3959/2011 (provisions for the merger control);
(4) Taxation Law 4172/2013;
(5) Legislation for cross borders mergers, namely Law 2578/1998 and Law 3777/2009;
(6) Law 3401/2005 on the prospectus to be issued in a case of public offer of securities;
(7) The codified Athens Exchange Rulebook;
(8) Law 3461/2006, implementing the Directive 2004/25/EC;
(9) Law 3049/2002 for privatizations; and
(10) The Civil Code.

The Greek Competition Commission supervises the mergers and acquisitions. For this reason, the Commission is either notified or provides its prior consent for the major transactions.[40]

[¶18] Liquidation/Dissolution. The resolution on the dissolution for every company is subject to the registration in the competent Registry. Except in case of bankruptcy, the dissolution is followed by liquidation. Until the liquidation process is completed, the company exists as a legal entity and operates within the context of the liquidation's purposes. The powers of the managing bodies are limited to the purposes of the liquidation. The words "under liquidation" are added to its trade name.

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[37]Greek Laws 2190/1920, 3604/2007 and 4336/2015.
[38]The charter or a corporate resolution adopted in a general meeting may provide otherwise.
[39]Article 58 of Greek Law 959/79.
[40]*See* Ordinances of Competition Law.

Societe Anonyme

Dissolution of a SA company takes place when:

(1) Its term, as defined in the charter, expires[41];
(2) The shareholders adopt a resolution in a meeting where certain voting requirements must be met;
(3) The corporate book net worth falls below the ½ of the share capital; in this case, the Board of Directors must call a General Meeting within 6 months from the end of the fiscal year in order to decide on the dissolution;
(4) The company is declared bankrupt; and
(5) By virtue of a court decision, following petition of anybody claiming and proving legal; or interest and for reasons specified in the applicable legislation.

Limited Liability Company

The ground for dissolution is provided either in the law (article 44 of Law 3190/1955) or the charter of the company. The company may be therefore dissolved:

(1) By extraordinary resolution adopted by its members;
(2) By declaration of bankruptcy;
(3) Due to expiration of its statutory term;
(4) By virtue of a court decision in case there is an important reason following petition of its members representing one tenth of the company's paid up capital; or
(5) In case the capital falls below the one half, the administrators are obliged to call the General Meeting to decide on the dissolution or the decrease of the capital by percentage not lower than the minimum capital provided by its charter.

Private Capital Company

The company is dissolved:

(1) At any time by partners' resolution;
(2) When the statutory term has expired, unless the partners decide on its extension;
(3) When it is declared bankrupt; and
(4) For grounds provided for in the law and the charter

General and Limited Partnership

Both companies are dissolved:

(1) When the statutory term has expired and no extension has been decided; however, in case the company continues its operation, is considered a silent partnership with indefinite statutory term and the company can be revived before the distribution of its assets;
(2) By partners' resolution;
(3) Filling a complaint by a partner: in case the company is of definite statutory term, they must establish a serious reason. The partner may be held liable in damages, if he has acted untimely and without serious reason;

[41]The General Meeting can decide on the extension of the term. Tacit extension is prohibited.

(4) When they are declared bankrupt; and
(5) Reduction of the number of partners to one.

Maritime Company 959/79 and Maritime Company of pleasure yachts

Both companies are dissolved:

(1) When statutory term has expired. Revival is possible, if certain requirements are met and before distribution of assets so long as other requirements are met under law described above;
(2) By virtue of a resolution adopted in a meeting where certain voting requirements must be met; and
(3) When they are declared bankrupt.

The acquisition of the totality of shares by one partner does not lead to its dissolution.

Furthermore, there are additional reasons for the dissolution of a Maritime Company of Pleasure Yachts, namely:

(a) Within sixth months from the day the charter was filed in the competent Registry, the company must declare that it acquired the ownership, or the management of a pleasure yacht categorized as commercial. Failing to comply, leads automatically to its dissolution.
(b) The dissolution is also declared automatically after six months from the day either the company relinquished the ownership/management of the yacht or the yacht lost its commercial status.

[¶19] Governing Law. The incorporation, operation and dissolution of the companies in Greece are governed by various laws, decrees and circulars, depending on their type. The basic legislation is hereunder listed:

(1) Greek Civil Code;
(2) Greek Commercial Law;
(3) Law 4070/2012;
(4) Law 4072/2012;
(5) Law 4019/2011;
(6) Law 4015/2011;
(7) Law 2190/1920;
(8) Law 27/1975;
(9) Law 4308/2014.
(10) Law 4403/2016; and
(11) Law 4441/2016.

[¶20] Forms. Forms are available at the following web sites- last access on 25/05/2016:

http://www.acci.gr/acci/business_information/ebea_Gemi/tabid/1483/language/el-GR/Default.aspx>; and http://www.et.gr/index.php/2010-01-21-13-05-53/fek-publishings /2010-01-28-10-11-34.

PAKISTAN

This chapter is up-to-date as of September 2019

PAKISTAN

PAKISTAN

Analysis of the Company Laws ¶

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PAKISTAN

ANALYSIS OF THE COMPANY LAWS[1]

[¶1] Company Types. The corporate sector in Pakistan is governed by the Companies Act, 2017 which dismantled the Companies Ordinance 1984. This act was enacted to reform and re0enact the laws relating to companies and for matters connected within.

No association, partnership or entity consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association, partnership or entity, or by the individual members thereof, unless it is registered as a company under this Act and any violation of this section shall be an offence punishable under this section.[2]

A company formed under this Act may be a company with or without limited liability, that is to say-:

(a) A company limited by shares; or
(b) A company limited by guarantee; or
(c) An unlimited company.[3]

A company limited by shares means a company; having the liability of its members limited by the memorandum to the extent of amount, if any, remaining unpaid on the shares respectively held by them.[4]

"Company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up.[5]

Private company means a company which, by its articles:

(a) Restricts the right to transfer its shares;
(b) Limits the number of its members to fifty not including persons who are in the employment of the company; and
(c) Prohibits any invitation to the public to subscribe for the shares, if any, or debentures or redeemable capital of the company.

Provided that, where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member.[6]

A public company means a company which is not a private company.[7] A public company may be converted into a private company with the prior approval of the Commission in writing by passing a special resolution in this behalf by the public company amending its memorandum and articles of association in such a manner that they include the provisions relating to a private company in the articles and complying with all the requirements as may be specified.[8]

[¶2] Licensing of Corporate Agents. Licensing not required.

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[2]Companies Act 2017 §9(1).
[3]Companies Act §14(2).
[4]Companies Act §2(20).
[5]Companies Act §2(19).
[6]Companies Act §2(49).
[7]Companies Act §2(52).
[8]Companies Act §46.

[¶3] Company Name.

Prohibition of certain names. No company shall be registered by a name which contains such word or expression, as may be notified by the Commission or in the opinion of the registrar is:

(a) Identical with or resemble or similar to the name of a company; or
(b) Inappropriate; or
(c) Undesirable; or
(d) Deceptive; or
(e) Designed to exploit or offend religious susceptibilities of the people; or
(f) Any other ground as may be specified.[9]

Except with prior approval in writing of the Commission, no company shall be registered by a name which contains any word suggesting or calculated to suggest:

(a) The patronage of any past or present Pakistani or foreign head of state;
(b) Any connection with the Federal Government or a Provincial Government or any department or authority or statutory body of any such Government;
(c) Any connection with any corporation setup by or under any Federal or Provincial law;
(d) The patronage of, or any connection with, any foreign Government or any international organization;
(e) Establishing a modaraba management company or to float a modaraba; or
(f) Any other business requiring license from the Commission.[10]

Rectification of name. A company which, through inadvertence or otherwise, is registered by a prohibited name or the name was obtained by furnishing false or incorrect information may, with approval of the registrar, change its name; and shall, if the registrar so directs, within twenty-one days of receipt of such direction, change its name with approval of the registrar—provided that the registrar shall, before issuing a direction for change of the name, afford the company an opportunity to make representation against the proposed direction..[11]

Change of name by a company. A company may, by special resolution and with approval of the registrar signified in writing, change its name: Provided that no approval under this section shall be required where the change in the name of a company is only the addition thereto, or the omission therefrom, of the expression:

(a) Private; or
(b) SMC-Private; or
(c) Guarantee Limited; or
(d) Limited; or
(e) Unlimited;

as the case may be, consequent upon the conversion of the status of a company.[12]

Registration of change of name and effect thereof. Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case and, on the issue of such a certificate, the change of name shall be complete.[13]

Where a company changes its name it shall, for a period of three months from the date of issue of a certificate by the registrar, continue to mention its former

[9]Companies Act §10(1)(a)-(f).
[10]Companies Act §10(2)(a)-(f).
[11]Companies Act §11(1)(a)-(b).
[12]Companies Act §12.
[13]Companies Act §13(1).

name along with its new name on the outside of every office or place in which its business is carried on, and in every document or notice.[14]

The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company and any legal proceedings that might have been continued or commenced against the company by its former name may be continued by or commenced against the company by its new name.[15]

[¶4] Fees.[16]

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
I. By a company having a share capital:		
(1) For registration of a company whose nominal share capital does not exceed 100,000 rupees, a fee of ….	1,000	1,000
(2) For registration of a company whose nominal share capital exceeds 100,000 rupees, the additional fee to be determined according to the amount of nominal share capital as follows, namely-		
(i) For every 100,000 rupees of nominal share capital or part of 100,000 rupees, up to 10,000,000 rupees, a fees of	500	1,000
(ii) For every 100,000 rupees of nominal share capital or part of 100,000 rupees, after the first 10,000,000 rupees, up to 5,000,000,000 a fee of	400	750
(iii) For every 100,000 rupees of nominal share capital or part of 100,000 rupees after the first 5,000,000,000 rupees, up to any amount of fee of:	150	250

[14]Companies Act § 13(2).
[15]Companies Act §13 (3).
[16]Companies Act §§462, 469, Seventh Schedule.

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
Provided that a company which is wholly owned by the Federal Government and has been notified by the Federal Government in the official Gazette for exemption from paying fee shall be charged a fee of Rs. 10,000: Provided further that the fee payable at the time of registration of company shall not exceed forty million rupees in case of electronic submission and fifty million rupees in case of physical submission.		
(3) For registration of an increase in the share capital made after the first registration of the company, an amount equal to the difference between the amount which would have been payable on registration of the company by reference to its capital as increased and the amount which would have been payable by reference to its capital immediately before the increase, calculated at the rates given under sub-item (2): Provided that no such fee shall be applicable on registration of an increase in authorized share capital of a transferee company after merger consequent to sanction of application for compromises, arrangements or reconstruction for merger of companies by the Commission pursuant to Section 279 to 282 or section 284 of the Act, to the extent of aggregate of authorized capital of the transferor and transferee companies.		

Item		For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
	Explanation.– For the purpose of calculation of fee for registration of an increase in the share capital of the company which has shifted from physical mode of filing to electronic mode of filing, the difference of fee shall be calculated on the basis of the rates applicable for electronic submission on the amount of capital before and after such increase: Provided further that where a company to be formed has been notified by the Federal Government in the official Gazette to be wholly owned by it, a fee of Rs.10,000/- shall be charged irrespective of amount of share capital.		
(4)	For conversion of any existing company not having share capital into a company having a share capital, the same fee as is charged for registration of a new company having share capital.		
(5)	For filing, registering or recording any document notifying particulars relating to a mortgage or charge or pledge or other interest created by a company, or any modification therein or satisfaction thereof, a fee of	5,000	7,500
(6)	For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond the period prescribed under section 109 but not exceeding one year, a fee of	10,000	15,000
(7)	For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond one year of the period prescribed under section 109, a fee of	15,000	22,500

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(8) For filing, registering or recording any document other than that at sub-items (5), (6) and (7) above, required to be filed, registered or recorded under the Act or making a record of any fact under the Act, a fee to be determined according to the amount of nominal share capital as follows, namely		
(i) For company having a nominal share capital of up to. 100,000 rupees, a fee of	250	500
(ii) For company having a nominal share capital of more than 100,000 rupees but not more than 1,000,000 rupees, a fee of	300	600
(iii) For company having a nominal share capital of more than 1,000,000 rupees but not more than 10,000,000 rupees, a fee of	400	800
(iv) For company having a nominal share capital of more than 10,000,000 rupees but not more than 100,000,000 rupees, a fee of	500	1,000
(v) For company having a nominal share capital of more than 100,000,000 rupees, a fee of	600	1,200
II. By a company limited by guarantee and not having a share capital, other than a company registered under a license granted under section 42:		
(1) For registration of a new company, a fee of	20,000	30,000
(2) For conversion of any existing company having a share capital into a company limited by guarantee, the same fee as is charged for registration a new company in terms of sub-item (1).		
(3) Companies limited by guarantee and having share capital shall be charged registration fee as mentioned at item I above.		

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(4) For filing, registering or recording any document notifying particulars relating to a mortgage or charge or pledge or other interest created by a company, or any modification therein or satisfaction thereof, a fee of	5,000	7,000
(5) For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond the period prescribed under section 109 but not exceeding one year, a fee of	10,000	15,000
(6) For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond one year of the period prescribed under section 109, a fee of	15,000	22,500
(7) For filing, registering or recording any document other than that at Sr. No. (4), (5) and (6) above, required to be filed, registered or recorded under the Act or making a record of any fact under the Act, a fee of	600	1,200
III. By a company registered under a license granted under section 42 and not having a share capital:		
(1) For an application seeking grant of license or its renewal, a nonrefundable processing fee of	15,000	25,000
(2) For registration, a fee of	25,000	50,000
(3) Companies limited by guarantee and having share capital shall be charged registration fee as mentioned at item I above.		
(4) For filing, registering or recording any document notifying particulars relating to a mortgage or charge or pledge or other interest created by a company, or any modification therein or satisfaction thereof, a fee of	5,000	7,500

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(5) For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond the period prescribed under section 109 but not exceeding one year, a fee of	10,000	15,000
(6) For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond one year of the period prescribed under section 109, a fee of	15,000	22,500
(7) For filing, registering or recording any document other than that at Sr. No. (4), (5) and (6) above, required to be filed, registered or recorded under the Act or making a record of any fact under the Act, a fee of	250	500
IV. By a company established outside Pakistan which has a place of business in Pakistan:		
(1) For filing, registering or recording a document containing charter/statute/ memorandum and articles, etc. for registration by a foreign company under the Act required or authorized to be filed, registered or recorded a fee of	25,000	50,000
(2) For filing, registering or recording any document notifying particulars relating to a mortgage or charge or pledge or other interest created by a company, or any modification therein or satisfaction thereof, a fee of	5,000	7,500
(3) For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond the period prescribed under section 109 but not exceeding one year, a fee of	10,000	15,000

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(4) For filing, registering or recording the particulars relating to satisfaction of mortgage or charge or pledge beyond one year of the period prescribed under section 109, a fee of	15,000	22,500
(5) For filing, registering or recording any document other than that at Sr. No. (2), (3) and (4) above, required to be filed registered or recorded under the Act or making a record of any fact under the Act, a fee of	600	1,200
V. For inspection of documents and register kept by the registrar in respect of a company, a fee of	200	500
VI.		
(1) For a certified copy of the certificate of incorporation or a certificate of commencement of business or a certificate of registration of mortgage or charge or any other certificate or license issued under the Act, a fee of	100	200
(2) For a certified copy of the Memorandum and Articles of Association of private limited company, a fee of	250	500
(3) For a certified copy of the Memorandum and Articles of Association of other than a private limited company, a fee	500	1,000
(4) For a certified copy of any return excepting financial statements, of private limited company, a fee of	100	200
(5) For a certified copy of any return excepting financial statements, of other than a private limited company, a fee of	200	300
(6) For a certified copy or extract of any other document, financial statements or register, calculated at the rate, per page or fractional part thereof required to be copied, subject to a minimum fee of one hundred rupees, a fee of	20	20

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
Provided that fee prescribed under this item shall not be charged for certified copies of one set of incorporation documents consisting of Certificate of Incorporation, Memorandum and Articles of Association, and the relevant forms, to be issued one time only at the time of registration of company:		
Provided further that upon registration of any return (i.e. statutory forms) one certified copy of the said return shall be issued along with the acknowledgement of filing without charging any copying fee.		
VII. System generated reports:		
(1) For providing a system generated list of companies registered with the Commission, a fee calculated at the rate per data field, subject to a minimum fee of five hundred rupees, a fee of	Rs. 2 per data field	Rs. 2 per data field
(2) For a system generated company profile, per company, a fee of	200	200
VIII. Annual fee payable by an inactive company under section 424 of the Act, payable on 1st January each year after obtaining the status of an inactive company.		
(1) not having any capital		
(2) having an authorized share capital of:	1,000	2,000
(i) up to Rs. 5.0 million, a fee of	1,000	2,000
(ii) more than Rs. 5.0 million and up to Rs. 10.0 million, a fee of	2,000	4,000
(iii) more than Rs. 10.0 million, a fee of	5,000	10,000
IX. Annual renewal fee for companies incorporated as Free Zone Company under section 454 of the Act.		100,000
X. For seeking approval, sanction, permission, exemption, direction or confirmation of the Commission or the registrar in the following matters, as the case may be, a non-refundable application processing fee in respect of application for		

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(1) Reservation of any proposed name for registration of a company from the registrar under section 10, a fee of:	200	500
Provided that no fee for reservation of proposed name shall be charged in case the same is applied for with three name choices in priority, along with submission of related incorporation of company's documents.		
(2) approval for change of name of a company under section 11 and 12, a fee of	2,500	5,000
(3) alteration in memorandum of association under section 32, a fee of	5,000	10,000
(4) conversion of status of company from a public company to a private company under section 46, a fee of	2,500	5,000
(5) conversion of status of a company from a private company to a single member company under section 47, a fee of	2,500	5,000
(6) conversion of status from an unlimited company to a limited company under section 48, a fee of …	2,500	5,000
(7) conversion of status of a company limited by guarantee to a company limited by shares under section 49, a fee of	2,500	5,000
(8) issuance of shares at discount under section 82, a fee of	5,000	10,000
(9)		
(i) issuance of further share capital, otherwise than right under section 83, a fee of	Rs.25,000 or 0.1% of the proposed further issue of share capital whichever is higher	Rs.50,000 or 0.1% of the proposed further issue of share capital whichever is higher

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(ii) for approval of Employee Stock Option Scheme under section 83, a fee of	Rs.25,000/- or 0.1% of the proposed further issue of share capital whichever is higher	Rs.50,000/- or 0.1% of the proposed further issue of share capital whichever is higher
(iii) issuance of shares with different rights and privileges, a fee of …. Provided that in case of a financial institution in which the Federal Government owns not less than 90% shares, only a fixed amount of Rs.25,000 in case of application submitted electronically and Rs.50,000 in case of physical submission shall be charged as application processing fee.	25,000 or 0.1% of the proposed capital increase whichever is higher	50,000 or 0.1% of the proposed capital increase whichever is higher
(10) rectification in the particulars of mortgages or charges or pledge or extension in time for filling the particulars of mortgages or charges or pledge under section 108, a fee of	5,000	7,500
(11) extension in the prescribed period for holding annual general meeting under section 132, a fee of:		
(i) by a public company, a fee of	10,000	15,000
(ii) by a private company, a fee of	3,000	5,000
(12) direction for holding annual general meeting/ Extra Ordinary General Meeting under section 147:		
(i) by a public company, a fee of	10,000	15,000
(ii) by a private company, a fee of	3,000	5,000
(13) fresh election of directors by an unlisted company under section 162, a fee of	5,000	10,000
(14) approval of loan to director under section 182, a fee of	5,000	10,000
(15) approval for preparation of accounts of more than twelve months under section 223, a fee of	2,500	5,000

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(16) seeking modification under section 225, in respect of requirements of the relevant Schedule, a fee of	2,500	5,000
(17) exemption under section 225 from the applicability of fourth schedule or fifth schedule, a fee of	2,500	5,000
(18) exemption from the applicability of section 228, a fee of	2,500	5,000
(19) appointment of auditor under section 246, a fee of	2,500	5,000
(20) investigation into the affairs of a company under section 256, a fee of	10,000	20,000
(21) approval of the Commission to refer the matter to the Mediation and Conciliation Panel under section 276, a fee of	5,000	10,000
(22) sanctioning compromise or arrangement including reconstruction, amalgamation or division under section 279 to 282, a fee of	50,000	100,000
(23) appointment of Administrator under section 291, a fee of	10,000	20,000
(24) obtaining the status of an inactive company under section 424, a fee of	5,000	10,000
(25) for an application by an inactive company for obtaining the status of an active company under section 424, a fee of	5,000	10,000
(26) restoration of name of a company, struck off by the registrar under section 425	5,000	10,000
(27) easy exit of a company by striking its name off the register under section 426, a fee of	5,000	10,000
(28) registration as intermediary under section 455, a fee of	10,000	20,000
(29) approval by the Commission sought by a real estate company under section 456, a fee of	25,000	50,000
(30) registration as valuer under section 460, a fee of	10,000	20,000

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(31) license as transfer agent under section 467, a fee of	10,000	20,000
(32) issuance of duplicate of any certificate issued under the provisions of the Act or the rules or regulations framed thereunder, a fee of	1,000	2,000
(33) for an application other than those specified in this item or an appeal submitted to the registrar or the Commission under the Act by or on behalf of a company, a fee of	500	1,000
(34) for an application/appeal /complaint submitted to the registrar or the Commission under the Act:		
(i) by a member of the company or any other person having dealing with the company, a fee of	500	500
(ii) by any creditor of the company, a fee of	1,000	1,000
(35) for processing under Fast Track Registration Services (FTRS), the FTRS fee shall be in addition to normal fee and charged as given below:		
(i) for incorporation of a company	Equal to normal fee but subject to maximum of Rs. 10,000	Equal to normal fee but subject to maximum of Rs. 20,000
(ii) for reservation of any proposed name for registration of company	500	1,000
(iii) for seeking approval of change of name	2,500	5,000

Item	For Submission of Documents Electronically Rs.	For Submission of Documents in Physical Form Rs.
(iv) for filing, registering or recording any documents notifying particulars relating to a mortgage or charge or pledge or other interest created by a company, or any modification therein or satisfaction thereof	5,000	7,500

[¶5] Registered Office and Registered Agent. A company shall have a registered office to which all communications and notices shall be addressed and within a period of thirty days of its incorporation, notify to the registrar in the specified manner.[17]

Notice of any change in situation of the registered office shall be given to the registrar in a specified form within a period of fifteen days after the date of change: Provided that the change of registered office of a company from:

(a) One city in a Province to another; or

(b) A city to another in any part of Pakistan not forming part of a Province;

shall require approval of general meeting through special resolution.[18]

If a company fails to comply with the above mentioned requirements, the company and its every officer who is responsible for such non-compliance shall be liable to a penalty not exceeding of level 1 on the standard scale.[19]

Furthermore, every company shall keep at its registered office a register of its directors and officers, including the chief executive, company secretary, chief financial officer, auditors and legal adviser, containing with respect to each of them such particulars as may be specified.[20]

[¶6] Registration. "Registrar" means registrar, an additional registrar, an additional joint registrar, a joint registrar, a deputy registrar or an assistant registrar, performing duties and functions under this Act.[21]

There shall be filed with the registrar an application on the specified form containing the following information and documents for incorporation of a company, namely:

(a) A declaration on the specified form, by an authorized intermediary or by a person named in the articles as a director, of compliance with all or any of the requirements of this Act and the rules and regulations made thereunder in respect of registration and matters precedent or incidental thereto;

(b) Memorandum of association of the proposed company signed by all subscribers, duly witnessed and dated;

[17]Companies Act §21(1).
[18]Companies Act §21(2)(a)-(b).
[19]Companies Act §21(3).
[20]Companies Act §197(1).
[21]Companies Act §2(57).

(c) There may, in the case of a company limited by shares and there shall, in the case of a company limited by guarantee or an unlimited company, be the articles of association signed by the subscribers duly witnessed and dated;
(d) An address for correspondence till its registered office is established and notified.[22]

The certificate of incorporation shall be conclusive evidence that the requirements of this Act as to registration have been complied with and that the company is duly registered under this Act.[23]

[¶7] Reporting and Recordkeeping. The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours.[24] The directors shall from time to time determine whether and to what extent and at what time and places and under what conditions or regulations the accounts and books or papers of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account and book or papers of the company except as conferred by law or authorized by the directors or by the company in general meeting.[25] The directors shall as required by sections 223 and 226 cause to be prepared and to be laid before the company in general meeting the financial statements duly audited and reports as are referred to in those sections.[26]

The financial statements and other reports referred to in regulation 80 shall be made out in every year and laid before the company in the annual general meeting.[27]

A copy of the financial statements and reports of directors and auditors shall, at least twenty-one days preceding the meeting, be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.[28] Auditors shall be appointed and their duties regulated.[29]

[¶8] Formative Documents. The formative document for every Pakistani company is a memorandum of association. In addition, every unlimited company, company limited by guarantee, or private company limited shares must register articles of association.

Memorandum of Association. Every company must have a memorandum of associations.

In the case of a company limited by shares,

(A) The memorandum shall state:
  (i) The name of the company with the word "Limited" as last word of the name in the case of a public limited company, the parenthesis and words "Private Limited" as last words of the name in the case of a private limited company, and the parenthesis and words "SMC-Private Limited" as last words of the name in the case of a single member company;

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[22]Companies Act §16(1)(a)-(d).
[23]Companies Act §16(8).
[24]Companies Act §78.
[25]Companies Act §79.
[26]Companies Act §80.
[27]Companies Act §81.
[28]Companies Act, First Schedule §82.
[29]Companies Act §84.

(ii) The Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is to be situate;
(iii) Principal line of business: Provided tha:
(a) The existing companies shall continue with their existing memorandum of association and the object stated at serial number 1 of the object clause shall be treated as the principal line of business;
(b) If the object stated at serial number 1 of the object clause is not the principal line of business of the company, it shall be required to intimate to the registrar their principal line of business within such time from commencement of this Act and in the form as may be specified. A revised copy of the memorandum of association indicating therein its principal business at serial number 1 of the object clause shall also be furnished to the registrar; and
(c) The existing companies or the companies to be formed to carry on or engage in any business which is subject to a license or registration, permission or approval shall mention the businesses as required under the respective law and the rules and regulations made thereunder;
(iv) An undertaking as may be specified;
(v) That the liability of the members is limited; and
(vi) The amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(B) No subscriber of the memorandum shall take less than one share; and
(C) Each subscriber of the memorandum shall write opposite to his name the number of shares he agrees to take.[30]

(1) In the case of a company limited by guarantee the memorandum shall state
(a) The name of the company with the parenthesis and words "(Guarantee) Limited" as last words of its name;
(b) The Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is to be situate;
(c) Principal line of business: Provided that:
(i) The existing companies shall continue with their existing memorandum of association and the object stated at serial number 1 of the object clause shall be treated as the principal line of business;
(ii) If the object stated at serial number 1 of the object clause is not the principal line of business of the company, it shall be required to intimate to the registrar their principal line of business within such time from the commencement of this Act and in the form as may be specified. A revised copy of the memorandum of association indicating therein its

[30]Companies Act §27.

principal business at serial number 1 of the object clause shall also be furnished to the registrar; and

(iii) The existing companies or the companies to be formed to carry on or engage in any business which is subject to a license or registration, permission or approval shall mention the businesses as required under the respective law;

(d) An undertaking as may be specified;

(e) That the liability of the members is limited; and

(f) Such amount as may be required, not exceeding a specified amount that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of rights of the contributories among themselves.

(2) If the company has a share capital, the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount and the number of shares taken by each subscriber.[31]

(1) In the case of an unlimited company the memorandum shall state:

(a) The name of the company with the word "Unlimited" as last words of its name;

(b) The Province or the part of Pakistan not forming part of a Province, as the case may be, in which registered office of the company is to be situate;

(c) Principal line of business: Provided that—

(i) The existing companies shall continue with their existing memorandum of association and the object stated at serial number 1 of the object clause shall be treated as the principal line of business;

(ii) If the object stated at serial number 1 of the object clause is not the principal line of business of the company, it shall be required to intimate to the registrar their principal line of business within such time from the commencement of this Act and in the form as may be specified. A revised copy of the memorandum of association indicating therein its principal business at serial number 1 of the object clause shall also be furnished to the registrar; and

(iii) The existing companies or the companies to be formed to carry on or engage in any business which is subject to a license or registration, permission or approval shall mention the businesses as required under the respective law; and

(d) An undertaking as may be specified;

(e) That the liability of the members is unlimited.

[31]Companies Act §28.

(2) If the company has a share capital, the memorandum shall also state the amount of share capital with which the company proposes to be registered and the number of shares taken by each subscriber.

Printing, signature, etc. of memorandum. The memorandum shall be

(a) Printed in the manner generally acceptable;
(b) Divided into paragraphs numbered consecutively;
(c) Signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be specified, in the presence of a witness who shall attest the signature and shall likewise add his particulars; and
(d) Dated.[32]

Alteration of memorandum. Subject to the provisions of this Act, a company may by special resolution alter the provisions of its memorandum so as to:

(a) change the place of its registered office from one Province to another or from Islamabad Capital Territory to a part of Pakistan not forming part of a Province and vice versa;
(b) change its principal line of business; or
(c) adopt any business activity or any change therein which is subject to license, registration, permission or approval under any law.[33]

The alteration shall not take effect until and except in so far as it is confirmed by the Commission on petition: Provided that an alteration so as to change its principal line of business shall not require confirmation by the Commission.[34]

A copy of the order confirming the alteration duly certified by an authorized officer of the Commission shall be forwarded to the company and to the registrar within seven days from the date of the order.[35]

A copy of the memorandum of association as altered pursuant to the order under this section shall within thirty days from the date of the order be filed by the company with the registrar, who shall register the same and issue a certificate which shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with and thenceforth the memorandum so filed shall be the memorandum of the company: Provided that the Commission may by order, at any time on an application by the company, on sufficient cause shown extend the time for the filing of memorandum with the registrar under this section for such period as it thinks proper.[36]

Where the alteration involves a transfer of registered office from the jurisdiction of one company registration office to another, physical record of the company shall be transferred to the registrar concerned of the company registration office in whose jurisdiction the registered office of the company has been shifted.[37]

Where the alteration involves change in principal line of business, the company shall file the amended memorandum of association with the registrar within thirty days, which shall be recorded for the purposes of this Act.[38]

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[32]Companies Act §19.
[33]Companies Act §32(1).
[34]Companies Act §32(2).
[35]Companies Act §32(3).
[36]Companies Act §32(4).
[37]Companies Act §32(5).
[38]Companies Act §32(6).

Article of Associations: There may, in the case of company limited by shares and there shall, in the case of a company limited by guarantee or an unlimited company, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and setting out regulations for the company.[39]

Articles of association of a company limited by shares may adopt all or any of the regulations contained in Table A in the First Schedule to this Act.[40]

In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.[41]

In the case of an unlimited company or a company limited by guarantee, if the company has no share capital, the articles shall state the number of members with which the company proposes to be registered.[42]

In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or, if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule to this Act, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.[43]

The articles of every company shall be explicit and without ambiguity and, without prejudice to the generality of the foregoing, shall list and enumerate the voting and other rights attached to the different classes of shares and other securities, if any, issued or to be issued by it.[44]

If a company contravenes the provisions of its articles of association, the company and every officer of the company shall be liable to a penalty not exceeding of level 1 on the standard scale.[45]

Alteration of articles. Subject to the provisions of Pakistan's Companies Act and to the conditions contained in its memorandum, a company may, by special resolution, alter its articles and any alteration so made shall be as valid as if originally contained in the articles and be subject in like manner to alteration by special resolution:

> Provided that, where such alteration affects the substantive rights or liabilities of members or of a class of members, it shall be carried out only if a majority of at least three fourths of the members or of the class of members affected by such alteration, as the case may be, exercise the option through vote personally or through proxy vote for such alteration.[46]

A copy of the articles of association as altered shall, within thirty days from the date of passing of the resolution, be filed by the company with the registrar and he shall register the same and thenceforth the articles so filed shall be the articles of the company.[47]

Form of memorandum and articles. The form of—

(a) Memorandum of association of a company limited by shares;
(b) Memorandum and articles of association of a company limited by guarantee and not having a share capital;

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[39]Companies Act §36(1).
[40]Companies Act §36(2).
[41]Companies Act §36(3).
[42]Companies Act §36(4).
[43]Companies Act §36(5).
[44]Companies Act §36(6).
[45]Companies Act §36(7).
[46]Companies Act §38(1).
[47]Companies Act §38(2).

(c) Memorandum and articles of association of a company limited by guarantee and having a share capital; and
(d) Memorandum and articles of association of an unlimited company having a share capital;

Shall be respectively in accordance with the forms set out in Tables B, C, D and E in the First Schedule or as near thereto as circumstances admit.[48]

Effect of memorandum and articles. The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they 20 respectively had been signed by each member and contained a covenant on the part of each member, his heirs and legal representatives, to observe and be bound by all the provisions of the memorandum and of the articles, subject to the provisions of this Act.[49]

All moneys payable by a subscriber in pursuance of his undertaking in the memorandum of association against the shares subscribed shall be a debt due from him and be payable in cash within thirty days from the date of incorporation of the company.[50]

The receipt of subscription money from the subscribers shall be reported by the company to the registrar on a specified form within forty-five days from the date of incorporation of the company, accompanied by a certificate by a practicing chartered accountant or a cost and management accountant verifying receipt of the money so subscribed.[51]

Any violation of this section shall be an offence liable to a penalty of level 1 on the standard scale.[52]

Effect of registration. The registration of the company has the following effects, as from the date of incorporation-

(a) The subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation;
(b) the body corporate is capable of exercising all the functions of an incorporated company, having perpetual succession and a common seal;
(c) the status and registered office of the company are as stated in, or in connection with, the application for registration;
(d) in case of a company having share capital, the subscribers to the memorandum become holders of the initial shares; and
(e) the persons named in the articles of association as proposed directors, are deemed to have been appointed to that office.[53]

[¶9] Powers. A company may carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities.[54]

However, If from any report made, the Commission is of the opinion that-

(a) the business of the company is being or has been conducted with intent to defraud its creditors, members or any other persons or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or

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[48]Companies Act §41.
[49]Companies Act §17(1).
[50]Companies Act §17(2).
[51]Companies Act §17(3).
[52]Companies Act §17(4).
[53]Companies Act §18.
[54]Companies Act §26(1).

(b) the person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its member or have been carrying on unauthorized business; or
(c) the affairs of the company have been so conducted or managed as to deprive the shareholders thereof of a reasonable return; or
(d) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect; or
(e) any shares of the company have been allotted for inadequate consideration; or
(f) the affairs of the company are not being managed in accordance with sound business principles or prudent commercial practices; or
(g) the financial position of the company is such as to endanger its solvency;

The Commission may apply to the Court and the Court may, after taking such evidence as it may consider necessary, by an order-

(i) remove from office any director including the chief executive or other officer of the company; or
(ii) direct that the directors of the company shall carry out such changes in the management or in the accounting policies of the company as may be specified in the order; or
(iii) notwithstanding anything contained in this Act or any other law for the time being in force, direct the company to call a meeting of its members to consider such matters as may be specified in the order and to take appropriate remedial actions; or
(iv)direct that any existing contract which is to the detriment of the company or its members or is intended to or does benefit any officer or director shall be annulled or modified to the extent specified in the order:

Provided that no such order shall be made so as to have effect from any date preceding the date of the order: Provided further that any director, including a chief executive or other officer who is removed from office under clause (i), unless the Court specified a lesser period, shall not be a director, chief executive or officer of any company for a period of five years from the date of his removal.[55]

No order under this section shall be made unless the director or other officer likely to be affected by such order has been given an opportunity of being heard.[56]

The action taken under sub-section (1) shall be in addition to and not in substitution of any other action or remedy provided in any other law for the time being in force.[57]

[¶10] Shareholder/Members. Every company shall keep a register of its members and any contravention or default in complying with requirement of this section shall be an offence punishable under this Act.[58] There must be entered in the register such particulars of each member as may be specified.[59] In the case of joint holders of shares or stock in a company, the company's register of members shall state the names of each joint holder. In other respects, joint holders shall be

[55]Companies Act §264(1).
[56]Companies Act §264(2).
[57]Companies Act §264(3).
[58]Companies Act §119(1).
[59]Companies Act §119(2).

regarded for the purposes of this Part as a single member and the address of the person named first shall be entered in the register.[60]

Every company having more than fifty members shall keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index.[61] The company shall make any necessary alteration in the index within fourteen days after the date on which any alteration is made in the register of members.[62] The index shall contain, in respect of each member, a sufficient indication to enable the account of that member in the register to be readily found.[63]

Power to close register. A company may, on giving not less than seven days' previous notice close its register of members, or the part of it relating to members holding shares of any class, for any period or periods not exceeding in the whole thirty days in each year: Provided that the Commission may, on the application of the company extend the period mentioned in sub-section (1), for a further period of fifteen days.[64]

In the case of listed company, notice for the purposes of sub-section (1), must be given by advertisement in English and Urdu languages at least in one issue each of a daily newspaper of respective language having wide circulation.[65]

The provision of this section shall also apply for the purpose of closure of register of debenture-holders of a company.[66]

Members and Nominees. Notwithstanding anything contained in any other law for the time being in force or in any disposition by a member of a company of his interest represented by the shares held by him as a member of the company, a person may on acquiring interest in a company as member, represented by shares, at any time after acquisition of such interest deposit with the company a nomination conferring on a person 48 the right to protect the interest of the legal heirs in the shares of the deceased in the event of his death, as a trustee and to facilitate the transfer of shares to the legal heirs of the deceased subject to succession to be determined under the Islamic law of inheritance and in case of a non-Muslim members, as per their respective law.[67]

The person nominated shall, after the death of the member, be deemed as a member of company till the shares are transferred to the legal heirs and if the deceased was a director of the company, not being a listed company, the nominee shall also act as director of the company to protect the interest of the legal heirs.[68]

The person to be nominated shall not be a person other than the relatives of the member, namely, a spouse, father, mother, brother, sister and son or daughter.[69]

The nomination as aforesaid, shall in no way prejudice the right of the member making the nomination to transfer, dispose of or otherwise deal in the shares owned by him during his lifetime and, shall have effect in respect of the shares owned by the said member on the day of his death.[70]

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[60]Companies Act §119(3).
[61]Companies Act §120(1).
[62]Companies Act §120(2).
[63]Companies Act §120(3).
[64]Companies Act §125(1).
[65]Companies Act §125(2).
[66]Companies Act §125(3).
[67]Companies Act §79(1).
[68]Companies Act §79(2).
[69]Companies Act §79(3).
[70]Companies Act §79(4).

[¶11] Single Member Companies. Single member companies are companies which only have one member.[71]

One person may form a single member company by complying with the requirements in respect of registration of a private company and such other requirement as may be specified. The subscriber to the memorandum shall nominate a person who in the event of death of the sole member shall be responsible to-

(i) transfer the shares to the legal heirs of the deceased subject to succession to be determined under the Islamic law of inheritance and in case of a non-Muslim members, as per their respective law; and

(ii) manage the affairs of the company as a trustee, till such time the title of shares are transferred.[72]

A single member company shall have at least one director.[73]

[¶12] Share Capital. There is no minimum authorized share capital requirement in Pakistan.

Transfer of shares and debentures. An application for registration of transfer of shares and other transferable securities along with proper instrument of transfer duly stamped and executed by the transferor and the transferee may be made to the company either by the transferor or the transferee, and subject to the provisions of this section, the company shall 46 within fifteen days after the application for the registration of the transfer of any such securities, complete the process and-

(a) ensure delivery of the certificates to the transferee at his registered address; and

(b) enter in its register of members the name of the transferee:

Provided that in case of conversion of physical shares and other transferable securities into book-entry form, the company shall, within ten days after an application is made for the registration of the transfer of any shares or other securities to a central depository, register such transfer in the name of the central depository:

Provided further that nothing in this section shall apply to any transfer of shares or other securities pursuant to a transaction executed on the securities exchange.[74]

Where a transfer deed is lost, destroyed or mutilated before its lodgment, the company may on an application made by the transferee and bearing the stamp required by an instrument of transfer, register the transfer of shares or other securities if the transferee proves to the satisfaction of the board that the transfer deed duly executed has been lost, destroyed or mutilated: Provided that before registering the transfer of shares or other securities, the company may demand such indemnity as it may think fit.[75]

All references to the shares or other securities in this section, shall in case of a company not having share capital, be deemed to be references to interest of the members in the company.[76]

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[71]Companies Act §2(65).
[72]Companies Act §14(1)(c).
[73]Companies Act §154(1)(a).
[74]Companies Act §74(1).
[75]Companies Act §74(2).
[76]Companies Act §74(3).

Every company shall maintain at its registered office a register of transfers of shares and other securities and such register shall be open to inspection by the members and supply of copy thereof in the manner stated in section 124.[77]

Nothing in sub-section (1) shall prevent a company from registering as shareholder or other securities holder a person to whom the right to any share or security of the company has been transmitted by operation of law.[78]

Any violation of this section shall be an offence liable to a penalty of level 2 on the standard scale.[79]

Board not to refuse transfer of shares. The board shall not refuse to transfer any shares or securities unless the transfer deed is, for any reason, defective or invalid:

> Provided that the company shall within fifteen days or, where the transferee is a central depository, within five days from the date on which the instrument of transfer was lodged with it notify the defect or invalidity to the transferee who shall, after the removal of such defect or invalidity, be entitled to re-lodge the transfer deed with the company:
>
> > Provided further that the provisions of this section shall, in relation to a private company, be subject to such limitations and restrictions as may have been imposed by the articles of such company.[80]

Restrictions on Transfer of Shares by Members of a Private Company.

A member of a private company desirous of selling any shares held by him, shall intimate to the board of his intention through a notice.[81]

On receipt of such notice, the board shall, within a period of ten days, offer those shares for sale to the members in proportion to their existing shareholding:

> Provided that a private company may transfer or sell its shares in accordance with its articles of association and agreement among the shareholders, if any, entered into prior to the commencement of this Act:
>
> > Provided further that any such agreement will be valid only if it is filed with the registrar within ninety days of the commencement of this Act.[82]

The letter of offer for sale specifying the number of shares to which the member is entitled, price per share and specifying the time limit, within which the offer, if not accepted, be deemed as declined, shall be dispatched to the members through registered post or courier or through electronic mode.[83]

If the whole or any part of the shares offered is declined or is not taken, the board may offer such shares to the other members in proportion to their shareholding.[84]

If all the members decline to accept the offer or if any shares are left over, the shares may be sold to any other person as determined by the member, who initiated the offer.[85]

For the purpose of this section, the mechanism to determine the price of shares shall be such, as may be specified.[86]

Notice of Refusal to Transfer. If a company refuses to register a transfer of any shares or other securities, the company shall, within fifteen days after the date on

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[77]Companies Act §74(4).
[78]Companies Act §74(5).
[79]Companies Act §74(6).
[80]Companies Act §75.
[81]Companies Act §76(1)
[82]Companies Act §76(2).
[83]Companies Act §76(3).
[84]Companies Act §76(4).
[85]Companies Act §76(5).
[86]Companies Act §76(6).

which the instrument of transfer was lodged with the company, send to the transferee notice of the refusal indicating reasons for such refusal:

> Provided that failure of the company to give notice of refusal after the expiry of the period mentioned in this section or section 75, shall be deemed refusal of transfer.[87]

Any violation of this section shall be an offence liable to a penalty of level 2 on the standard scale.[88]

Appeal against refusal for registration of transfer. The transferor or transferee, or the person who gives intimation of the transmission by operation of law, as the case may be, aggrieved by the refusal of transfer under section 75 to 79 may appeal to the Commission within a period of sixty days of the date of refusal.[89]

The Commission shall, provide opportunity of hearing to the parties concerned and may, by an order in writing, direct that the transfer or transmission should be registered by the company and the company shall give effect to the decision within fifteen days of the receipt of the order.[90]

The Commission may, in its aforesaid order, give such incidental and consequential directions as to the payment of costs or otherwise as it deems fit.[91]

If default is made in giving effect to the order of the Commission within the period specified in sub-section (2), every director and officer of the company shall be liable to a penalty of level 3 on the standard scale.[92]

Transfer to successor-in-interest. The shares or other securities of a deceased member shall be transferred on application duly supported by succession certificate or by lawful award, as the case may be, in favour of the successors to the extent of their interests and their names shall be entered in the register of members. [93]

Transfer to nominee of a deceased member. Notwithstanding anything contained in any other law for the time being in force or in any disposition by a member of a company of his interest represented by the shares held by him as a member of the company, a person may on acquiring interest in a company as member, represented by shares, at any time after acquisition of such interest deposit with the company a nomination conferring on a person 48 the right to protect the interest of the legal heirs in the shares of the deceased in the event of his death, as a trustee and to facilitate the transfer of shares to the legal heirs of the deceased subject to succession to be determined under the Islamic law of inheritance and in case of a non-Muslim members, as per their respective law.[94]

The person nominated under this section shall, after the death of the member, be deemed as a member of company till the shares are transferred to the legal heirs and if the deceased was a director of the company, not being a listed company, the nominee shall also act as director of the company to protect the interest of the legal heirs.[95]

The person to be nominated under this section shall not be a person other than the relatives of the member, namely, a spouse, father, mother, brother, sister and son or daughter.[96]

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[87]Companies Act §77(1).
[88]Companies Act §77(2).
[89]Companies Act §80(1).
[90]Companies Act §80(2).
[91]Companies Act §80(3).
[92]Companies Act §80(4).
[93]Companies Act §78.
[94]Companies Act §79(1).
[95]Companies Act §79(2).
[96]Companies Act §79(3)

The nomination as aforesaid, shall in no way prejudice the right of the member making the nomination to transfer, dispose of or otherwise deal in the shares owned by him during his lifetime and, shall have effect in respect of the shares owned by the said member on the day of his death.[97]

Stock options. A company may issue stock options.

Redeemable shares. A company may by public offer or, upon terms and conditions contained in an agreement in writing, issue to one or more scheduled banks, financial institutions or such other persons as are notified for the purpose by the Commission either severally, jointly or through their syndicate, any instrument in the nature of redeemable capital in any or several forms in consideration of funds, moneys or accommodations received or to be received by the company, whether in cash or in specie or against any promise, guarantee, undertaking or indemnity issued to or in favor of or for the benefit of the company.[98]

In particular and without prejudice to the generality of the forgoing provisions, the agreement referred to in sub-section (1) for redeemable capital may provide for, adopt or include, in addition to others, all or any of the following matters, namely-

(a) mode and basis of repayment by the company of the amount invested in redeemable capital within a certain period of time;
(b) arrangement for sharing of profit and loss;
(c) creation of a special reserve called the —participation reserves by the company in the manner provided in the agreement for the issue of participatory redeemable capital in which all providers of such capital shall participate for interim and final adjustment on the maturity date in accordance with the terms and conditions of such agreements; and
(d) in case of net loss on participatory redeemable capital on the date of maturity, the right of holders to convert the outstanding, balance of such capital or part thereof as provided in the agreement into ordinary shares of the company at the break-up price calculated in the specified manner.[99]

The terms and conditions for the issue of instruments or certificates of redeemable capital and the rights of their holders shall not be challenged or questioned by the company or any of its shareholders unless repugnant to any provision of this Act or any other law or the memorandum or articles or any resolution of the general meeting or directors of the company or any other document.[100]

The provision of this Act relating to the creation, issue, increase or decrease of the capital shall not apply to the redeemable capital.[101]

Dividend to be paid only out of profits. Any dividend may be paid by a company either in cash or in kind only out of its profits.[102]

Dividend not to be paid except to registered shareholders or to their order or to their bankers. Any dividend declared by a company must be paid to its registered shareholders or to their order within such period and in such manner as may be specified:

> Provided that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholders entitled to the payment of the dividend, as per their direction:

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[97]Companies Act §79(4).
[98]Companies Act §66(1).
[99]Companies Act §66(2).
[100]Companies Act §66(3).
[101]Companies Act §66(4).
[102]Companies Act §241.

Provided further that in case of a listed company, any dividend payable in cash shall only be paid through electronic mode directly into the bank account designated by the entitled shareholders.[103]

Period for payment of dividend. When a dividend has been declared, it shall not be lawful for the directors of the company to withhold or defer its payment and the chief executive of the company shall be responsible to make the payment in the manner provided in section 242.

Explanation.- Dividend shall be deemed to have been declared on the date of the general meeting in case of a dividend declared or approved in the general meeting and on the date of commencement of closing of share transfer for purposes of determination of entitlement of dividend in the case of an interim dividend and where register of members is not closed for such purpose, on the date on which such dividend is approved by the board.[104]

Where a dividend has been declared by a company but is not paid within the period specified under section 242, the chief executive of the company shall be punishable with 122 imprisonment for a term which may extend to two years and with fine which may extend to five million rupees:

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely—

(a) where the dividend could not be paid by reason of the operation of any law;
(b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
(c) where there is a dispute regarding the right to receive the dividend;
(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company; and

the Commission has, on an application of the company on the specified form made within forty-five days from the date of declaration of the dividend, and after providing an opportunity to the shareholder or person who may seem to be entitled to receive the dividend of making representation against the proposed action, permitted the company to withhold or defer payment as may be ordered by the Commission.[105]

Notwithstanding anything contained in sub-section (2), a company may withhold the payment of dividend of a member where the member has not provided the complete information or documents as specified by the Commission.[106]

Chief executive convicted under sub-section (2) shall from the day of the conviction cease to hold the office of chief executive of the company and shall not, for a period of five years from that day, be eligible to be the chief executive or a director of that company or any other company.[107]

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[103]Companies Act §242.
[104]Companies Act §243(1).
[105]Companies Act §243(2).
[106]Companies Act §243(3).
[107]Companies Act §243(4).

Certain Restrictions on Declaration of Dividend. The company in general meeting may declare dividends; but no dividend shall exceed the amount recommended by the board.[108]

No dividend shall be declared or paid by a company for any financial year out of the profits of the company made from the sale or disposal of any immovable property or assets of a capital nature comprised in the undertaking or any of the undertaking of the company, unless the business of the company consists, whether wholly or partly, of selling and purchasing any such property or assets, except after such profits are set off or adjusted against losses arising from the sale of any such immovable property or assets of a capital nature:

Provided that no dividend shall be declared or paid out of unrealized gain on investment property credited to profit and loss account.[109]

[¶13] Directors and Officers. Minimum number of directors of a company: Notwithstanding anything contained in any other law for the time being in force-

(a) a single member company shall have at least one director;
(b) every other private company shall have not less than two directors;
(c) a public company other than a listed company shall have not less than three directors; and
(d) a listed company shall have not less than seven directors.[110]

Only natural persons to be directors. Only a natural person shall be a director.[111]

Number of Directorship. No person shall, after the commencement of this Act, hold office as a director, including as an alternate director at the same time in more than such number of companies as may be specified: Provided that this limit shall not include the directorships in a listed subsidiary.[112]

A person holding the position of director in more than seven companies on the commencement of this Act shall ensure the compliance of this section within one year of such commencement.[113]

Any casual vacancy on the board of a listed company shall be filled up by the directors at the earliest but not later than ninety days from the date, the vacancy occurred.[114]

First directors and their term. The number of directors and the names of the first directors shall be determined by the subscribers of the memorandum and their particulars specified under section 197 shall be submitted along with the documents for the incorporation of the company.[115]

The number of first directors may be increased by appointing additional directors by the members in a general meeting. The first directors shall hold office until the election of directors in the first annual general meeting of the company.[116]

Retirement of directors. All directors of the company-

(a) on the date of first annual general meeting; or
(b) in case of subsequent directors on expiry of term of office of directors mentioned in section 161,

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[108]Companies Act §240(1)
[109]Companies Act §240(2).
[110]Companies Act §154(1).
[111]Companies Act §154(2).
[112]Companies Act §155(1).
[113]Companies Act §155(2).
[114]Companies Act §155(3).
[115]Companies Act §157(1).
[116]Companies Act §157(2).

shall stand retired from office and the directors so retiring shall continue to perform their functions until their successors are elected.[117]

The directors so continuing to perform their functions shall take immediate steps to hold the election of directors and in case of any impediment report such circumstances to the registrar within forty-five days before the due date of the annual general meeting or extra ordinary general meeting, as the case may be, in which elections are to be held:

> Provided that the holding of annual general meeting or extra ordinary general meeting, as the case may be, shall not be delayed for more than ninety days from the due date of the meeting or such extended time as may be allowed by the registrar, for reasons to be recorded, only in case of exceptional circumstances beyond the control of the directors, or in compliance of any order of the court.[118]

The registrar, may on expiry of period as provided in sub-section (2), either-

(a) on its own motion; or
(b) on the representation of the members holding not less than one tenth of the total voting powers in a company having share capital; or
(c) on the representation of the members holding not less than one tenth of the total members of the company not having share capital of the company,

directs the company to hold annual general meeting or extra ordinary general meeting for the election of directors on such date and time as may be specified in the order.[119]

Any officer of the company or any other person who fails to comply with the direction given under sub-section (3) shall be guilty of an offence liable to a fine of level 2 on the standard scale.[120]

Procedure for election of directors. Subject to the provision of section 154, the existing directors of a company shall fix the number of directors to be elected in the general meeting, not later than thirty-five days before convening of such meeting and the number of directors so fixed shall not be changed except with the prior approval of the general meeting in which election is to be held.[121]

The notice of the meeting at which directors are proposed to be elected shall among other matters, expressly state-

(a) the number of directors fixed under sub-section (1); and
(b) the names of the retiring directors.[122]

Any member who seeks to contest an election to the office of director shall, whether he is a retiring director or otherwise, file with the company, not later than fourteen days before the date of the meeting at which elections are to be held, a notice of his intention to offer himself for election as a director:

> Provided that any such person may, at any time before the holding of election, withdraw such notice.[123]

All notices received by the company in pursuance of sub-section (3) shall be transmitted to the members not later than seven days before the date of the meeting, in the same manner as provided under this Act for sending of a notice of general meeting. In the case of a listed company such notice shall be published in English

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[117]Companies Act §158(1).
[118]Companies Act §158(2).
[119]Companies Act §158(3).
[120]Companies Act §158(4).
[121]Companies Act §159(1).
[122]Companies Act §159(2).
[123]Companies Act §159(3).

and Urdu languages at least in one issue each of a daily newspaper of respective language having wide circulation.[124]

The directors of a company having a share capital shall, unless the number of persons who offer themselves to be elected is not more than the number of directors fixed under sub- 84 section (1), be elected by the members of the company in general meeting in the following manner, namely-

(a) a member shall have such number of votes as is equal to the product of the number of voting shares or securities held by him and the number of directors to be elected;
(b) a member may give all his votes to a single candidate or divide them between more than one of the candidates in such manner as he may choose; and
(c) the candidate who gets the highest number of votes shall be declared elected as director and then the candidate who gets the next highest number of votes shall be so declared and so on until the total number of directors to be elected has been so elected.[125]

The directors of a company limited by guarantee and not having share capital shall be elected by members of the company in general meeting in the manner as provided in articles of association of the company.[126]

Fresh election of directors on request of substantial acquirer. Notwithstanding anything contained in this Act, a member having acquired, after the election of directors, the requisite shareholding to get him elected as a director on the board of a company not being a listed company, may require the company to hold fresh election of directors in accordance with the procedure laid down in section 159:

Provided that the number of directors fixed in the preceding election shall not be decreased.[127]

The board shall upon receipt of requisition under sub-section (1), as soon as practicable but not later than one month from the receipt of such requisition, proceed to hold fresh election of directors of the company.[128]

Circumstances in which election of directors may be declared invalid. The Court may, on the application of members holding ten percent of the voting power in the company, made within thirty days of the date of election, declare election of all directors or any one or more of them invalid if it is satisfied that there has been material irregularity in the holding of the elections and matters incidental or relating thereto.[129]

Term of office of directors. A director elected under sections 159 or 162 shall hold office for a period of three years unless he earlier resigns, vacates office due to fresh election required under section 162 as the case may be, becomes disqualified from being a director or otherwise ceases to hold office:

Provided that the term of office of directors of a company limited by guarantee and not having share capital may be a period of less than three years as provided in the articles of association of a company.[130]

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[124]Companies Act §159(4).
[125]Companies Act §159(5).
[126]Companies Act §159(6).
[127]Companies Act §162(1).
[128]Companies Act §162(2).
[129]Companies Act §160.
[130]Companies Act §161(1).

Any casual vacancy occurring among the directors may be filled up by the directors and the person so appointed shall hold office for the remainder of the term of the director in whose place he is appointed.[131]

Removal of director. A company may by resolution in general meeting remove a director appointed under sections 157, 161 or section 162 or elected in the manner provided for in section 159:

> Provided that a resolution for removing a director shall not be deemed to have been passed if the number of votes cast against it is equal to, or exceeds-
>
> (a) the total number of votes for the time being computed in the manner laid down in sub-section (5) of section 159 divided by the number of directors for the time being, if the resolution relates to removal of a director appointed under sections 157, 161 or section 162 or where the directors were elected unopposed; or
>
> (b) the minimum number of votes that were cast for the election of a director at the immediately preceding election of directors, if the resolution relates to removal of a director elected in the manner provided in sub-section (5) of section 159.[132]

Creditors may nominate directors. I In addition to the directors elected or deemed to have been elected by shareholders, a company may have directors nominated by the company's creditors or other special interests by virtue of contractual arrangements.[133]

A body corporate or corporation owned or controlled by the Federal Government or as the case may be, a Provincial Government may also have directors nominated on the board to whom such corporation or company has extended credit facilities.[134]

Certain provisions not to apply to directors representing special interests. Nothing in sections 158, 159,161, 162 or 163 shall apply to-

(a) directors nominated by a body corporate or company or any other entity owned or controlled, whether directly or indirectly, by the Federal Government or as the case may be, a Provincial Government on the board of the company in which such body corporate or company or entity has made investment;

(b) directors nominated by virtue of investment made by the Federal Government or as the case may be, a Provincial Government or the Commission on the board; or

(c) directors nominated by foreign equity holders on the board or any other body corporate set up under a regional co-operation or other co-operation arrangement approved by the Federal Government.[135]

For the purpose of nominating directors referred to in clause (a), (b) and (c), the number of votes computed in the manner laid down in sub-section (5) of section 159 as are proportionate to the number of votes required to elect the director if they had offered themselves for election, shall stand excluded from the total number of votes available to the nominating body at an election of directors, which may be

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[131]Companies Act §161(2).
[132]Companies Act §163.
[133]Companies Act §164(1).
[134]Companies Act §164(2).
[135]Companies Act §165(1).

proportionate to their voting power required to elect directors at an election of directors of a company.[136]

A director nominated under sub-section (1) shall hold office during the pleasure of the nominating body.[137]

[¶14] Meetings. *Statutory Meeting*. Every public company having a share capital shall, within a period of six months from the date at which the company is entitled to commence business or within nine months from the date of its incorporation whichever is earlier, hold a general meeting of the members of the company, to be called the – statutory meeting:

Provided that in case first annual general meeting of a company is decided to be held earlier, no statutory meeting shall be required.[138]

The notice of a statutory meeting shall be sent to the members at least twenty-one days before the date fixed for the meeting along with a copy of statutory report. [139]

The statutory report shall state-

(a) the total number of shares allotted, distinguishing shares allotted other than in cash, and stating the consideration for which they have been allotted;
(b) the total amount of cash received by the company in respect of all the shares allotted;
(c) an abstract of the receipts of the company and of the payments made there out up to a date within fifteen days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made there out, and particulars concerning 70 the balance remaining in hand, and an account or estimate of the preliminary expenses of the company showing separately any commission or discount paid or to be paid on the issue or sale of shares or debentures;
(d) the names, addresses and occupations of the directors, chief executive, secretary, auditors and legal advisers of the company and the changes, if any, which have occurred since the date of the incorporation;
(e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification;
(f) the extent to which underwriting contracts, if any, have been carried out and the extent to which such contracts have not been carried out, together with the reasons for their not having been carried out; and
(g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares to any director, chief executive, secretary or officer or to a private company of which he is a director; and certified by the chief executive and at least one director of the company, and in case of a listed company also by the chief financial officer.[140]

The statutory report shall also contain a brief account of the state of the company's affairs since its incorporation and the business plan, including any

[136]Companies Act §165(2).
[137]Companies Act §165(3).
[138]Companies Act §131(1).
[139]Companies Act §131(2).
[140]Companies Act §131(3).

change or proposed change affecting the interest of shareholders and business prospects of the company.[141]

The statutory report shall, so far as it relates to the shares allotted by the company, the cash received in respect of such shares and to the receipts and payments of the company, be accompanied by a report of the auditors of the company as to the correctness of such allotment, receipt of cash, receipts and payments.[142]

The directors shall cause a copy of the statutory report, along with report of the auditors as aforesaid, to be delivered to the registrar for registration forthwith after sending the report to the members of the company.[143]

The directors shall cause a list showing the names, occupations, nationality and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting.[144]

The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.[145]

The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or after 71 the original meeting, may be passed, and an adjourned meeting shall have the same powers as an original meeting.[146]

The provisions of this section shall not apply to a public company which converts itself from a private company after one year of incorporation.[147]

Any contravention or default in complying with requirement of this section shall be an offence liable-

(a) in case of a listed company, to a penalty of level 2 on the standard scale; and
(b) in case of any other company, to a penalty of level 1 on the standard scale.[148]

Annual general meeting. The directors of a company—

(a) Shall in each year call an annual meeting of shareholders; and
(b) May at any time call a special meeting of shareholders.[149]

An annual meeting of shareholders of a company need not be called in its first year of existence if the directors of a company call an annual meeting of shareholders to be held not later than 18 months after the company comes into existence.[150]

Not more than 15 months shall elapse between the date of one annual meeting of shareholders and the next.[151]

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[141]Companies Act §131(4).
[142]Companies Act §131(5).
[143]Companies Act §131(6).
[144]Companies Act §131(7).
[145]Companies Act §131(8).
[146]Companies Act §131(9).
[147]Companies Act §131(10).
[148]Companies Act §131(11).
[149]Companies Act §106(1).
[150]Companies Act §106(2).
[151]Companies Act §106(3).

Calling of extraordinary general meeting. A sale, lease or exchange of all, or substantially all, the property of a company other than in the ordinary course of business of the company requires the approval of the shareholders in accordance with this section.[152]

A notice complying with section 110 of a meeting of shareholders shall be sent in accordance with that section to each shareholder and shall—

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange; and

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares; but failure to make the statement referred to in paragraph (b) does not invalidate a sale, lease or exchange referred to in subsection (1).[153]

At the meeting referred to in subsection (2), the shareholders may authorise the sale, lease or exchange of the property, and may fix, or authorise the directors to fix, any of the terms and conditions of the sale, lease or exchange.[154]

Each share of the company carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1), whether or not it otherwise carries the right to vote.[155]

The shareholders of a class or series of shares of the company are entitled to vote separately as a class or series in respect of a sale, lease or exchange in a manner different from the shares of another class or series.[156]

A sale, lease or exchange referred to in subsection (1) is adopted when the shareholders of each class or series of shares who are entitled to vote on it have, by special resolution, approved of the sale, lease or exchange.[157]

The directors of a company, if authorized by the shareholders approving a proposed sale, lease or exchange, may, subject to the rights of third parties, abandon the sale, lease or exchange without any further approval of the shareholders.[158]

A company that contravenes subsection (2) commits an offence.[159]

[¶15] Resolutions. *Special resolution*. Special Resolution means a resolution of which at least 21 days notice is given that is—

(a) passed by a majority of not less than 75% of the votes cast by the shareholders who voted in respect of the resolution; or

(b) signed by all the shareholders entitled to vote on the resolution.[160]

[¶16] General Accounting Practices. *Books of Account*. A company must keep accounting records that—

(a) are sufficient to record and explain the transactions of the company; and

(b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.[161]

The accounting records kept by a public company must be sufficient to enable financial statements to be prepared and audited in accordance with this Division.[162]

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[152]Companies Act §125(1).
[153]Companies Act §125(2).
[154]Companies Act §125(3).
[155]Companies Act §125(4).
[156]Companies Act §125(5).
[157]Companies Act §125(6).
[158]Companies Act §125(7).
[159]Companies Act §125(8).
[160]Companies Act §1.
[161]Companies Act §127(1).
[162]Companies Act §127(2).

Without limiting subsection (1) or (2), the accounting records must contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
(b) details of all sales and purchases of goods by the company; and
(c) a record of the assets and liabilities of the company.[163]

If the accounting records of a company are kept outside Anguilla, the company must ensure that it keeps at its registered office—

(a) accounts and returns adequate to enable the directors of the company to ascertain the financial position of the company with reasonable accuracy on a quarterly basis; and
(b) a written record of the place or places outside Anguilla where its accounting records are kept.[164]

Audit. The shareholders of a public company shall, by ordinary resolution at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.[165]

Auditors' Powers and Duties. An auditor of a company shall make the examination that is in his opinion necessary to enable him to report on the financial statements required by this Act to be placed before the shareholders, except a financial statement or a part of a financial statement that relates to the immediately preceding financial year.[166]

Upon the demand of an auditor of a company, the present or former directors, officers, employees or agents of the company shall furnish to the auditor such information and explanations and such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries; as are, in the opinion of the auditor, necessary to enable him to make the examination and report required and that the directors, officers, employees or agents are reasonably able to furnish.[167]

Upon the demand of an auditor of a company, the directors of the company shall obtain from the present or former directors, officers, employees or agents of any subsidiary of the company the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are, in the opinion of the auditor, necessary to enable him to make the examination and report required and furnish the information and explanations so obtained to the auditor.[168]

[¶17] Mergers & Acquisitions. Merger means the amalgamation of 2 or more constituent companies into one of the constituent companies.[169]

Merger and Consolidation with Anguilla Company. Two or more companies may merge or consolidate in accordance with this Division.[170]

If, before a merger, the company that will be the surviving company—

(a) is a company limited by shares, the surviving company must be a company limited by shares;
(b) is a company limited by guarantee, the surviving company must be a company limited by guarantee; or

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[163]Companies Act §127(3).
[164]Companies Act §128(1).
[165]Companies Act §139(1).
[166]Companies Act §147(1).
[167]Companies Act §148(1).
[168]Companies Act §148(2).
[169]Companies Act §166.
[170]Companies Act §167(1).

(c) is a company limited by both shares and guarantee, the surviving company must be a company limited by both shares and guarantee.[171]

The directors of each constituent company that proposes to participate in a merger or consolidation must, by resolution, approve a written plan of merger or consolidation containing—

(a) the name of each constituent company and the name of the surviving company or the consolidated company;
(b) in the case of—
  (i) a merger, whether the company which will be the surviving company is a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee, or
  (ii) a consolidation, whether the consolidated company will be a company limited by shares, a company limited by guarantee or a company limited by both shares and guarantee;
(c) in respect of each constituent company limited by shares or limited by shares and guarantee—
  (i) the designation and number of outstanding shares of each class and series of shares, specifying each such class and series entitled to vote on the merger or consolidation, and
  (ii) a specification of each such class and series, if any, entitled to vote as a class or series;
(d) where the surviving company or the consolidated company will be a company limited by shares or a company limited by both shares and guarantee, the matters required to be set out in the articles of incorporation of a company under sections 7(1)(e) and (f);
(e) where the surviving or the consolidated company will be a company limited by guarantee or by both shares and guarantee, the matters required to be set out in the articles of incorporation of a company under section 7(1)(i);
(f) the terms and conditions of the proposed merger or consolidation including, if appropriate, the manner and basis of converting shares in each constituent company into shares, debt obligations or other securities in the surviving company or consolidated company, or money or other property, or a combination thereof;
(g) in respect of a merger, a statement of any amendment to the articles or by-laws of the surviving company, to be brought about by the merger; and
(h) in respect of a consolidation, all other matters required to be included in the articles of incorporation or by-laws of a company registered under this Act.[172]

The plan of merger or consolidation may specify the date on which the amalgamation is intended to become effective.[173]

Some or all shares of the same class or series of shares in each constituent company may be converted into a particular or mixed kind of property and other shares of the class or series, or all shares of other classes or series of shares, may be converted into other property.[174]

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[171]Companies Act §167(2).
[172]Companies Act §168(1).
[173]Companies Act §168(2).
[174]Companies Act §168(3).

Approval of Plan of Merger or Consolidation. Each constituent company must give at least 21 days notice to each of its shareholders of a resolution to approve a merger or consolidation, whether or not the shareholder is entitled to vote on or consent to the resolution, and the notice must be accompanied by—

(a) a copy of the plan of merger or consolidation;
(b) a copy of the resolution of the directors approving the plan of merger or consolidation; and
(c) such further information and explanation as may be necessary for a reasonable shareholder to understand the nature, and implications for the company and its shareholders, of the proposed merger or consolidation.[175]

The plan of merger or consolidation must be approved—

(a) by a special resolution of the shareholders of each constituent company incorporated under this Act; and
(b) by a resolution of the shareholders of every other constituent company;

and, in respect of each constituent company, the outstanding shares of a class or series of shares are entitled to vote on the merger or consolidation as a class or series if the articles or by-laws so provide or if the plan of merger or consolidation contains any provisions that, if contained in a proposed amendment to the articles or by-laws, would entitle the class or series to vote on the proposed amendment as a class or series.[176]

After approval of the plan of merger or consolidation by the shareholders of each constituent company in accordance with subsection (2), articles of merger or consolidation setting out the information in prescribed form must be executed by each company.[177]

[¶18] Liquidation/Dissolution.[178]

[¶19] Governing Law.

Companies Act
Companies Regulations
Companies Registry Act
Company Management Act
Company Management Regulations
Company Management Fees Regulations
International Business Companies Act
International Business Companies Regulations
Limited Liability Company Act
Limited Liability Company Regulations
Limited Partnership Act
Limited Partnership Rules
Companies (Amendment) Act, 2019
International Business Companies (Amendment) Act, 2019
Limited Partnership (Amendment) Act, 2019
Limited Liability Company (Amendment) Act, 2019

[¶20] Forms. Found at http://www.commercialregistry.ai/

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[175]Companies Act §169(1).
[176]Companies Act §169(2).
[177]Companies Act §169(3).
[178]Companies Act §209.