

Companies & Corporate Services

Q: What types of companies can be incorporated in The Bahamas?

A: Both Domestic Companies, which will be incorporated under the Companies Act, 1992 & International Business Companies, incorporated under the International Business Companies, Act ("IBC's"), 2000, may be incorporated in The Bahamas.

Q: What advantages are there to incorporating a company in The Bahamas?

A: Advantages to incorporating companies in The Bahamas include:

- The ability to purchase and hold property including real property, as well as to facilitate investments, and to minimize risk;
- Companies are entities with their own Legal Personality and as such may enter into contracts and carry out transactions on its own behalf;
- Companies may also be used to establish an investment fund;
- A limited liability Company may be incorporated so that members may be limited to the amount unpaid on their shares.

Q: What is the process for incorporating a Domestic Company?

A: The process is as follows:

- In the presence of a witness, two or more persons are required to sign the company's memorandum (which is known as the company's memorandum of association);
- To incorporate the Company, the memorandum which must contain certain prescribed information, together with the Articles of Association must be submitted to the Companies Registry for filing along with the required fees;
- The company will be issued a certificate of incorporation which is conclusive evidence of the incorporation of the company after the filing of the said memorandum, Articles of Association and the payment of the required fees.

Q: What is the process for incorporating an IBC?

A: A body corporate comes into existence or an international business company is deemed incorporated when the certificate of incorporation is issued. This is done only after the memorandum and articles of association have been filed at the Companies Registry. The memorandum of association must be signed by two persons in the presence of a witness.

With the exceptions of Financial and Corporate Service Providers, banks or trust companies licensed under the Banks and Trust Companies Regulation Act, may incorporate an international business company.

Q: Who may sign a company's memorandum of association?

A: Any person 18 years or older, of sound mind and who is not bankrupt, may sign both domestic and IBC company's memorandum of association.

Q: Are there any restrictions as to my company's name?

A: Without obtaining prior approval from the Registrar of Companies, the company's name cannot contain the following word or words conveying a similar meaning:

- Assurance,
- Bank,
- Building Society,
- Chamber of Commerce,
- Chartered,
- Cooperative,
- Imperial,
- Insurance,
- Municipal,
- Royal,
- Trust.

Q: What is the minimum number of Directors required for Domestic Companies?

A: A private company should have at least two (2) directors.

Q: What is the minimum number of Directors required for an IBC?

A: An IBC may have one (1) director who may be an individual or a company.

Q: Can a "non-resident" hold or own shares in a Domestic Company?

A: For Bahamian exchange control purposes, a non-resident, may hold or own shares in a Domestic Company, but must first obtain the permission of the Central Bank of the Bahamas before doing so.

Q: Can a "resident" of The Bahamas hold or own shares in an IBC?

A: A resident of The Bahamas may hold or own shares in an IBC, for Bahamian exchange control purposes however, Central Bank approval must first be obtained.

Q: Are there any annual fees payable by a Domestic Company and if so what are they?

A: Domestic Companies that have 60% or more Bahamian ownership, pay annual fees to the Companies Registry, in the amount of \$350.00. Domestic Companies that have less than 60% Bahamian ownership are required to pay annual fees in the amount of \$1,000.00.

Q: What are the annual fees payable by IBC's?

A: IBC's whose authorized share capital is \$50,000 are required to pay annual fees in the amount of \$350.00 and in cases where the authorized share capital is \$50,001 and over the annual fee is \$1,000.

Q: Is there an annual general meeting requirement?

A: Yes, but only for Domestic Companies.

Q: Does information regarding directors, officers or shareholders remain private or is it a matter of public record?

A: In both the case of Domestic Companies and IBC's, the directors and officers of the company must be filed and publically disclosed. Further, Domestic Companies must disclose the names and addresses of its shareholders but, this is not the case with IBC's as the names and addresses of its shareholders are not required to be publicly disclosed.

Wills & Estates

Q: What is the purpose of appointing an Executor in a will?

A: An executor is appointed by the will of the testator prior to his death and is the person responsible for carrying out the provisions of a will.

Q: What is 'real property' or 'realty'?

A: Real property or realty, is land and anything attached to it, with the exception of anything that may be removed from the property without injury to the land.

Q: What is 'personal property' or 'personalty'?

A: Personal property or personalty, includes everything with the exception of real property. Examples are: furniture, automobiles, boats, books, clothing, bank accounts, insurance policies, company shares, etc.

Q: What is a 'devise'?

A: A devise is a gift of land or other real property in a will.

Q: What is 'a legacy' in a will?

A: A 'legacy' is a gift of personal property by Will, given to an individual who is called the 'legatee'.

Q: What is a 'bequest'?

A: A bequest is a gift of personal property.

Q: Who can make a Will?

A: Any person who is of sound mind and who has attained the age of eighteen (18) years or older, is by law capable of creating a valid Will.

Q: Do I need a will?

A: If you own real or personal property you should make a will so that your wishes are carried out regarding the distribution of your estate.

Q: Who is a 'beneficiary' of a will?

A: The beneficiary of a will is a person who benefits under the will.

Q: What is a trust?

A: A trust is an arrangement under which one person, called a trustee, holds legal title to property for another person, called a beneficiary.

Q: What is needed to create a valid trust?

A: A valid trust must involve specific property, reflect the Settlor's intent and it must be created for lawful purposes.

To be valid, the Trust Instrument must show the following three things:

- (1) Certainty of intention – it must be clear that the Settlor intends to create a trust;
- (2) Certainty of subject-matter – it must be clear which property is a part of the trust;
- (3) Certainty of object – it must be clear who the beneficiaries are.

Q: Who is a 'trustee' and who is a 'beneficiary'?

A: A **Trustee** is a legal term which refers to any person who holds property, authority, or a position of trust or responsibility for the benefit of another.

Employment Law

Q: Can an employee be terminated without any cause or explanation?

A: Yes he/she may. Part VII of the Employment Act, outlines the minimum period of notice required to be given by an employer prior to terminating an employee.

Q: Must an employee give notice to his employer before leaving?

A: Yes, Section 29 (2), provides thus:

“An employee shall not terminate his employment until after the expiry of (a) two weeks notice to the employer if the period of employment is one year or more, but less than two years; or (b) four weeks notice to the employer if the period of employment is two years or more.”

Q: Can an employer summarily dismiss an employee?

A: Section 31 of the Employment Act states, “An employer may summarily dismiss an employee without pay or notice when the employee has committed a fundamental breach of his contract of employment or has acted in a manner repugnant to the Employer.

Q: What constitutes ‘a fundamental breach of one's contract’?

A: Section 32 of the Employment Act states the following:

“Subject to provisions in the relevant contract of employment, misconduct which may constitute a breach of a contract of employment or may be repugnant to the fundamental interests of the employer shall include (but shall not be limited to) the following —

- (a) theft;*
- (b) fraudulent offences;*
- (c) dishonesty;*
- (d) gross insubordination or insolence;*
- (e) gross indecency;*

(f) breach of confidentiality, provided that this ground shall not include a report made to a law enforcement agency or to a government regulatory department or agency;
(g) gross negligence;
(h) incompetence;
(i) gross misconduct.”

Q: What is the standard of proof of misconduct?

A: Section 32 of the Employment Act 2001 provides:

An employer shall prove for the purposes of any proceedings before the Tribunal that he honestly and reasonably believed on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted.

Q: Can an employee be terminated because they are pregnant?

A: Section 38 of the Employment Act states,

“An employee shall be treated for the purposes of this Part as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is for any other reason connected with her pregnancy.”

Q: Is Discrimination covered under the Employment Act?

A: Section 6 of the Employment Act addresses discrimination and provides:

No employer or person acting on behalf of the employer shall discriminate against an employee or applicant for employment on the basis of race, creed, sex, marital status, political opinion, age or HIV/AIDS.

Q: What is ‘Unfair Dismissal’?

A: According to Part IX, Section 36 of the Employment Act, an employee has been unfairly dismissed when it relates to one of the four (4) following grounds:

- I. Trade union membership or participation;
- II. Redundancy
- III. Pregnancy
- IV. A lockout, strike or other industrial action.

Q: Are there any remedies available for Unfair Dismissal?

A: Sections 42 – 44 of the Employment Act, 2001, there are remedies available to an employee who has been unfairly dismissed:

i) reinstatement

ii) re-engagement,

iii) an award of compensation to be paid by the employer to the employee.

Real Estate Law

Q: What is an Agreement for Sale?

A: An agreement of sale is essentially a document that details the terms and conditions as agreed between the Owner of the property and the Buyer.

Q: What is Stamp Duty?

A: The Government Stamp Duty (tax on the conveyance of real property) is a graduated tax that is paid to the Public Treasury on the completion of a transaction calculated as follows:

- When the value of the consideration is less than or equal to \$20,000, the rate is 4%
- When the value of the consideration is greater than \$20,000 and is less than or equal to \$50,000, the rate is 6%
- When the value of the consideration is greater than \$50,001 and is less than or equal to \$100,000, the rate is 8%
- When the value of the consideration is greater than \$100,001 and less than 250,000, the rate is 10%

The usual practice in the Bahamas is for the tax to be shared equally between buyer and seller unless otherwise agreed upon.

First time buyers **may** be exempted from stamp tax on a dwelling house or vacant land purchased for a dwelling house, up to the value of \$500,000.

Q: What is a Title Search?

A: A **title search** is a process that is performed primarily to determine the answer to three questions:

- Does the seller have a saleable interest in the property?
- What kind of restrictions or allowances pertain to the use of the land (real covenants, easements, or other servitudes)?

- Do any liens exist on the property which need to be paid off at closing (mortgages, back taxes, mechanic's liens, or other assessments)?

Q: What is a 'good and marketable' title?

A: A 'good and marketable title' is one where the property owner can produce documentary evidence of ownership for 30 or more years. Documentary titles may also include Crown Grants or a Certificate of Title which does not require evidence of a 30 year title.

Q: What is Real Property Tax?

A: It is an annual tax levied on real property owners (residential, commercial and rental properties), by the Government to be paid to the Public Treasury. This tax is calculated and paid to the Public Treasury depending on the type of property being sold. It is calculated on all commercial, rental properties and also on various residential properties. This is paid on by the Seller before completion of this transaction.

Q: What is the "Completion Date?"

A: A Completion date in real estate law is defined as the date on which the Buyer's attorney undertakes to the Seller that he will pay the remaining amount of the purchase price owing to the vendor upon the Transfer of Title.

Q: Why should a security deposit be paid?

A: A security deposit is a sum of money held in trust either as an initial part-payment in a purchasing process (often used to prevent the seller selling an item to someone else during an agreed period of time while the buyer verifies the suitability of the item, or arranges finance) - also known as an earnest payment

Q: Define 'Joint Tenants'?

A: Joint Tenancy occurs when two or more persons own the same property. The individuals, who are called joint tenants, share equal ownership of the property and have the equal, undivided right to keep or dispose of the property. Joint tenancy creates a Right of Survivorship, which provides that if any one of the joint tenants dies, the remainder of the property is transferred to the survivor(s).

Q: Define 'Tenants-in-Common'?

A: This is where two or more persons own property together and in the event of one owner's death the property will revert to the deceased's estate.

Q: What is a Mortgage?

A: A mortgage is essentially an agreement between a bank and a borrower, to lend money in exchange for a piece of property. The agreement contains obligations by the Purchaser particularly regarding the repayment of the loan.

Q: What is a Conveyance?

A: It is the transfer of legal title of property from one person to another, in accordance with the Agreement for Sale.

Q: What is an Appraisal?

A: It is the process of valuing real property to determine the property's market value and is usually requested by the Purchaser.

Q: What is Stamp Duty exemption?

A: This is available to first time Buyers of a residential property or a vacant piece of land with the intention to build a home only. Qualified home buyers may apply to the Ministry of Finance to be exempted from paying stamp duty.

Divorce & Family Law

Q: How may I become legally separated from my spouse?

A: A petition for legal separation may be presented to the court by either party to a marriage on any of the following grounds:

- adultery,
- cruelty – mental/physical,
- desertion for two (2) years,
- Living separate and apart,
- homosexuality, and sodomy and best sexuality.

Q: What are the grounds for a divorce?

A: The grounds for divorce in the Bahamas, are the same as those for judicial separation which are:

- Adultery
- Cruelty (physical/mental)
- Desertion

- Living Separate and Apart
- Homosexuality, sodomy and bestiality

Q: Can I name the person who has committed adultery with my spouse?

A: Yes, that person is called the Co-Respondent.

Q: Is 'irreconcilable differences' or 'irretrievable breakdown of the marriage' a ground for divorce in The Bahamas?

A: No, The Bahamas has only 'fault' based divorces.

Q: Can I obtain alimony from my spouse?

A: While maintenance payments are available for spouses, particular circumstances determine whether spousal maintenance is available and the amount.

Q: Can either party to a marriage apply for maintenance in a Divorce?

A: Yes, either party may apply regardless of the gender.

Q: If I got married outside of The Bahamas, can I get a divorce in The Bahamas?

A: The Court can grant a divorce if one was married outside of the jurisdiction, however:

- (i) either parties to the marriage must have lived in the Bahamas on the date the proceedings begun,
- (ii) Three years prior to the divorce a party or both parties resided in The Bahamas

Q: Can the Court make orders regarding child support and the division of assets?

A: Yes, the court can make orders regarding child support and division of assets.

Immigration Law

Q: What are the functions of the Immigration Board?

A: Section 6 (1) of the Immigration Act of The Bahamas outlines the functions of the Immigration Board as follows:

- (a) To exercise a general supervision and control over matters (hereinafter in this section referred to as "the designated matters") connected with the entry of persons into The Bahamas, and the residence and occupation in The Bahamas of persons who are not permanent residents or citizens of The Bahamas;

- (b) Concerned with any matters in respect of which the permission, approval or consent of any Immigration Officer or the Board is required under this Act;
- (c) Obtain, record and publish statistical data, and such records or reports to be published, as it may think expedient;
- (d) Keep and maintain records of the entry of all persons into The Bahamas and of the departure of all persons from The Bahamas;
- (e) To exercise the powers and duties conferred upon the Board under the provisions of this Act.

Q: What is a general work permit?

A: A general work permit allows persons to engage in unrestricted gainful employment in The Bahamas.

Q: What do I need to secure Permanent Residence in The Bahamas ?

A: An applicant for Permanent Residency, must meet the following requirements:

- a) Be 18 years or over;
- b) Be of good character;
- c) Have stated on his/her application the desire to reside permanently in the Bahamas;
- d) Duly completed application form (we will assist you in completing);
- e) Two (2) passport sized photographs with signature on reverse side;
- f) Medical Certificate;
- g) Two (2) character references;
- h) Copy of Bank book;
- i) Copies of previous Work Permits over the past 15 years;
- j) Police certificate;
- k) Copy of Worker's Passport;
- l) Copy of Letter from the National Insurance Board.

Q: How soon after marriage can a foreign spouse of a Bahamian apply for Permanent Residency?

A: They may apply immediately if the applicant:

- Is married to a citizen of the Bahamas,
- Is not a citizen of the Bahamas or a permanent resident,
- Is not living apart from the other party to the marriage and,
- Being a husband, has so lived continuously with the other party to the marriage for a period of not less than five years.
- Duly completed application form (we will assist you in completing);

- Two (2) passport sized photographs with signature on reverse side;
- Medical Certificate;
- Two (2) character references;
- Copy of Bank book;
- Copies of previous Work Permits over the past 15 years;
- Police certificate;
- Copy of Worker's Passport;
- Copy of Letter from The National Insurance Board;

The Immigration Board has the discretion to grant a certificate of Permanent Residency to the applicant and where a certificate is granted it shall not contain any conditions restricting the right of the holder to engage in gainful employment.

Q: How long will a permanent residence certificate remain valid once I obtain it or does it remain valid indefinitely?

A Permanent Residence Certificate shall remain in force during the lifetime of the person to whom it is granted, when and unless revoked.

Q: If I am born in the Bahamas but my parents are non-citizens, can I become a citizen of the Bahamas?

A: You can apply on your 18th birthday or within 12 months thereafter to be registered as a citizen of the Bahamas.

Q: How often do I have to apply for a spousal permit?

A: The spousal permit remains valid only for the first 5 years of marriage. Therefore, if you have applied for a spousal permit in your third year of marriage for example, and it is approved, your spousal permit will only be valid for two additional years.

PERSONAL INJURY REQUIREMENTS:

- Copies of police report or accident report;
- Receipt /bills from medical care providers showing cost of visit, prescriptions, etc;
- Information regarding insurance coverage of your medical bills;
- Information regarding work missed as a result of injury;

- Evidence of loss of salary;
- A listing of all the ways life has been affected by your injury;
- A calendar, with all the important dates (date of injury, dates of surgery or other treatment and so forth) ;
- A description of any interaction with insurance companies;
- Copies of correspondence with insurance companies;
- Copies of any claims already filed with your employer or an insurance company;
- Copies of claims already filed with an attorney;
- Evidence of damaged clothing and other personal items;
- Names or information of witness (es) to the accident.

DEED POLL REQUIREMENTS:

- Birth certificate
- Copy of passport;
- Voter's card;
- Parents information, if necessary;
- An Affidavit is to prepared by the father, if the name is going to be changed to the father's name;
- Advertise in the Display Section of the Nassau Guardian for One (1) day;
- Advertise in the Display Section of the Tribune for One (1) day;

ADOPTION REQUIREMENTS:

- Passports of applicants and child;
- Certified copies of the Birth Certificates of applicants and child;
- Medical Certificates of applicants and child;
- Three (3) character references of the applicants.

DIVORCE REQUIREMENTS:

- Marriage Certificate;
- Birth Certificates of Children;

- Brief Description of Property if any.

WORK PERMIT APPLICATIONS

- Application form duly completed;
- Two passport sized photographs;
- Police Certificate;
- Health Certificate;
- Labour Certificate;
- Processing Fee.

SPOUSAL PERMIT

- Application form duly completed;
- Two (2) Passport size photographs of Spouse;
- Spouse's Police Certificate;
- Spouse's Health Certificate;
- Two (2) reference letters;

PERMANENT RESIDENCE APPLICATION FOR WORKER

- Duly completed application form (we will assist you in completing);
- Two (2) passport sized photographs with signature on reverse side;
- Medical Certificate;
- Two (2) character references;
- Copy of Bank book;
- Copies of previous Work Permits over the past 15 years;
- Police certificate;
- Copy of Worker's Passport;
- Copy of Letter from The National Insurance Board;

DOCUMENTATION FOR LETTERS OF ADMINISTRATION

- Two (2) copies of original or certified copy of Death Certificate of deceased;
- Original or certified copies of all siblings' Birth Certificates (if some siblings are deceased, Death Certificates are needed);
- Original or certified copy of Marriage Certificate (if applicable);
- Affidavit of Heirship if both parents are deceased or where there is only one parent;
- Letter(s) from Bank(s) stating amount on account;
- Shares and bonds – value and company;
- If insurance is part of the estate, contract;
- If property is part of the estate, copies of property documents.

DOCUMENTATION TO PROBATE AN ESTATE

- Original Will;
- original or certified copy of Death Certificate of the deceased;
- Letter(s) from bank(s) stating total amount on the account(s)
- Insurance Contract if insurance is payable to estate;
- Sworn Affidavit of Delay is needed if estate is not probated within two years of death;
- Copies of property documents, the value of the property and names of persons occupying property if property is part of the estate;
- Letter from company documenting value of stocks and bonds;
- Letter from institution(s) who owe money to estate.

ITEMS NEEDED FOR THE RESEALING OF A GRANT OF PROBATE MADE OUTSIDE OF THE BAHAMAS

- Two (2) original or certified copies of Death Certificate
- Two (2) original or certified copies of foreign grant
- Power of Attorney (if attorney is being assigned to probate estate on behalf of Executrix or Administrator)
- Copies of property documents (if property is part of estate)
- Letter from bank stating balance on account (if funds are part of the estate)