CHAPTER 369E

EXECUTIVE ENTITIES

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CHAPTER 369E

EXECUTIVE ENTITIES

An Act to facilitate the establishment of executive entities in The Bahamas, to establish the purpose for which such executive entities may be used and the creation, operation, management, and termination thereof and for matters incidental thereto. *52 of 2011*

[Assent 30th December, 2011]

[Commencement 1st February, 2012]

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the Executive Entities Act.

Interpretation.

2. In this Act —

"Articles" means the document provided for in section 8;

"assets" mean property in whatever form and wherever situate;

"auditor" means the auditor of an Executive Entity provided for in section 19;

"authorised signatories" means —

(a) the person or persons authorised to sign singly or jointly in a particular circumstance on behalf of the Executive Entity by the Charter or the Articles or as resolved by the officers or the council (as the case may be) from time to time in accordance with the Charter or the Articles; or

(b) if no person or persons are so authorised in the Charter or the Articles or in resolutions of the officers or the council, all the officers or, if no officer is appointed, all of the council members, signing jointly;

"Charter" means the document provided for in section 7;

"Court" means the Supreme Court;

"endow" means to pass, transfer or otherwise vest, or covenant to pass, transfer or otherwise vest, assets, with or without consideration, to or in an Executive Entity (as the case may be) so that such assets are executive entity assets and "endows" shall be construed accordingly;

"Executive Entity" means the legal entity defined in section 3;

"executive entity agent" means the agent of an Executive Entity provided for in section 13;

"executive entity assets" means assets owned beneficially by the Executive Entity in accordance with section 4(1);

"council" means the council of an Executive Entity provided for in section 17;

"council member" means a member of the council provided for in section 17;

"executive functions" means —

(a) any powers and duties of an executive, administrative, supervisory, fiduciary and office holding nature including, but not limited to, the powers and duties of—

(i) an enforcer, protector, trustee, investment advisor and the holder of any other office (and a committee of any of the aforementioned) of any trust; and

(ii) the holder of any office (and a committee of the aforementioned) of any legal person; and

(b) the ownership, management and holding of —

(i) executive entity assets; and

(ii) trust assets;

"Founder" or "Founders" means, subject to section 9(4), the person who subscribes his name, or the persons who subscribe their names (as the case may be) to the Charter establishing an Executive Entity;

Ch. 309. "International Business Company" means a company incorporated under the International Business Companies Act;

"legal person" means any company, corporation, partnership, limited partnership, foundation or other structure or entity (of whatever kind) having a separate legal personality;

"Minister" means the Attorney-General;

"officer" means an officer of an Executive Entity provided for in section 11;

"ordinary resolution" means a resolution of the officers or the council passed by a simple majority of the officers or the council members who, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a meeting which has been duly convened and held in accordance with the Charter, the Articles or this Act and includes a unanimous written resolution;

"Purpose" means the Purpose of the Executive Entity provided for in section 5;

"register" means the Register of Executive Entities to be kept by the Registrar in compliance with section 56;

"registered" means registered as an Executive Entity under this Act;

"Registrar" means the Registrar General;

"regulator" means a governmental agency vested with regulatory oversight or power as specified under any of the regulatory laws or by order of the Minister;

"regulatory laws" means the —

(a) Banks and Trust Companies Regulation Act; Ch. 316.

(b) Securities Industry Act Ch. 363.

(c) Financial and Corporate Service Providers Act; Ch. 369.

(d) this Act,

or any other law specified by order of the Minister;

"secretary" means the secretary of an Executive Entity provided for in section 15;

"special resolution" means a resolution of the officers or the council passed as a special resolution by a majority of not less than seventy-five percent of the officers or the

council members who, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a meeting which has been duly convened and held in accordance with the Charter, the Articles or this Act and includes a unanimous written resolution;

"termination" means the revocation of an Executive Entity or the dissolution of an Executive Entity following its winding up as provided for in sections 46 and 47;

"trust", subject to section 69, means any type of trust, whether for persons or purposes or a combination thereof, which is governed by the laws of The Bahamas or any other jurisdiction;

"trust assets" means assets held by an Executive Entity on the terms of any trust.

Definition of Executive Entity.

3. (1) An Executive Entity is a legal person established by a Charter to perform only executive functions and registered in accordance with this Act.

(2) An Executive Entity which satisfies the requirements of subsection (1) shall be resident and domiciled in The Bahamas and able to sue and be sued in its own name.

Executive Entity Assets.

4. (1) The executive entity assets shall at all times be comprised only of—

(a) assets, other than trust assets, reasonably required by the Executive Entity from time to time or at any time during its existence as necessary to meet any capital adequacy requirement in compliance with any regulatory law and the expenses of carrying out its executive functions, which expenses shall include any liabilities for which any person is entitled to be indemnified from executive entity assets, including, but not limited to the cost of any indemnity insurance policies and expenses referred to in section 21; and

(b) subject to section 69, shares, securities or other ownership interests in a legal person the business of which is the carrying out of executive functions, provided that the value of such shares, securities or other ownership interests shall be restricted to such value as is

reasonably required by such legal person to meet the expenses of carrying out its executive functions.

(2) Subject to any regulatory law, the executive entity assets shall be managed exclusively in accordance with the Charter, the Articles and the Act for the furtherance of the Purpose or on dissolution.

Purpose of an Executive Entity.

5. (1) Subject to section 69, the Purpose of an executive entity shall be limited to the carrying out of such of the executive functions as are set out in its Charter.

(2) The Purpose and executive functions of an Executive Entity shall comply with any relevant regulatory law.

(3) An Executive Entity which carries on any activity in breach of subsection (2) shall be in default and the provisions of sections 47, 50 and 65 shall apply.

PART II – ESTABLISHMENT

Mode of establishment of an Executive Entity.

6. (1) A person or persons may, by subscribing his name or their names (as the case may be) to a Charter and otherwise complying with the requirements of this Act, establish an Executive Entity.

(2) The formation and establishment in The Bahamas of an Executive Entity shall not be completed until the Executive Entity has been registered under the provisions of section 28.

Charter of an Executive Entity.

7. (1) The Charter shall state —

(a) the name of the Executive Entity with the words "Executive Entity", or the abbreviation of such words to "EE" or "E.E" or, in the discretion of the Registrar, a foreign language version of the words "Executive Entity", "EE" or "E.E." as the last two words of the name;

(b) the following details of the Founder —

(i) the name and address of the Founder;

(ii) where the Founder is a legal person, the number and place of registration of that legal person; and

(iii) the address in The Bahamas for service of documents on the Founder;

(c) the Purpose;

(d) that the Executive Entity is an "Executive Entity";

(e) the number and description of the officers (if any) and, in the case where no officer is appointed, the Charter shall include provision for the appointment of a council;

(f) whether the Executive Entity is established for an indefinite period or a definite period and, where it is established for a definite period, that period;

(g) the event (if any) upon the happening of which the Executive Entity shall be revoked or wound up and the Charter shall further provide for the disposition of surplus executive entity assets on dissolution; and

(h) the name and address in The Bahamas of the executive entity agent and the address of the registered office in The Bahamas of the Executive Entity, which shall be the same address as the executive entity agent.

(2) Subject to the provisions of this Act, the Charter may without limitation include provisions—

(a) for the reservation of any rights or powers to the Founder;

(b) for the appointment, removal, period of office and the authority of officers to bind the Executive Entity;

(c) for the appointment, removal, period of office and the authority of a council to bind the Executive Entity;

(d) for the appointment, removal and period of office of an auditor;

(e) for the appointment, removal and period of office of a secretary;

(f) permitting the amendment of the Charter and specifying the circumstances in which the Charter may be amended;

(g) requiring or permitting the making of Articles, permitting amendment of the Articles and specifying the circumstances in which the Articles may be amended;

(h) specifying such higher standards of care, higher or lower levels of exoneration and indemnification for officers or council members to apply in place of those specified in this Act, including, but not limited to, those set out in sections 12(2), 18(8), 20 and 21, provided that such person may be exonerated or indemnified from any liability where he has acted honestly and in good faith with a view to the best interest of the Executive Entity;

(i) other than as provided in sections 18(1) and 18(2) or in respect of any other duties imposed by this Act which cannot be excluded or modified, specifying the duties, powers and rights (including, but not limited to, the right to remuneration) of any or all officers or council members;

(j) specifying any persons or classes of persons who in addition to the Executive Entity, any officers and council member (who have standing in accordance with section 31) have standing (as a right and not a duty) to enforce any or all of the duties of any or all officers, council members or the executive entity agent;

(k) specifying the notice, quorum, voting, consents and other matters governing the conduct of meetings (and the adoption of resolutions *in lieu* of such meetings) of officers or council members;

(l) setting any minimum level of executive entity assets; and

(m) specifying any alternative dispute resolution procedures.

(3) In the absence from the Charter of a provision on any of the discretionary matters specified in subsection (2), this Act shall apply in respect of that matter.

(4) The Charter shall be executed by the Founder and, where a Founder is —

(a) an individual, be signed by each such Founder in the presence of the executive entity agent named therein or another witness; or

(b) a legal person, be signed on behalf of such Founder by the person or persons authorised for

that purpose in the presence of the executive entity agent named therein or another witness.

(5) The Charter shall be —

(a) in English;

(b) typed or printed; and

(c) divided into paragraphs numbered consecutively.

Articles of an Executive Entity.

8. (1) Where the Charter provides that Articles shall be made or may be made, such Articles may without limitation include provisions regarding any or all of the matters described in paragraphs (a) to (e) and (g) to (m) of section 7(2).

(2) In the absence —

(a) of Articles; or

(b) from such Articles of a provision on any matter,

this Act shall apply in respect of that matter.

(3) The Articles shall be executed by the Founder and, where a Founder is —

(a) an individual, be signed by each such Founder in the presence of the executive entity agent or another witness; or

(b) a legal person, be signed on behalf of each such Founder by a person or persons authorised for that purpose in the presence of the executive entity agent or another witness.

(4) The Articles shall be —

(a) in English;

(b) typed or printed; and

(c) divided into paragraphs numbered consecutively.

Powers and obligations of Founder.

9. (1) Where there is more than one Founder, the power of the Founder under the Charter, the Articles and this Act shall be exercised by all the Founders acting jointly, unless where the Charter or the Articles otherwise provide and then in accordance with the Charter or Articles.

(2) The Founder may, in the Charter or by instrument in writing (revocable or irrevocable), assign any or all of his rights, powers and obligations under this Act, the Charter or the Articles to such person or persons as the Founder

shall in his absolute discretion determine subject to such person's or persons' consent in writing.

(3) Except where the Charter, the Articles or the terms of the assignment otherwise provide for a prior termination, any rights, powers or obligations vested in the Founder or any person to whom he has assigned any such rights, powers or obligations under subsection (2) shall terminate —

(a) in the case of an individual, if he —

(i) dies; or

(ii) is or becomes mentally incapacitated; or

(b) in the case of a legal person, if it is dissolved or otherwise ceases to exist.

(4) Where any or all of the rights, powers or obligations are so assigned, any reference to the Founder in relation to such rights, powers or obligations in this Act, the Charter or the Articles shall be deemed to refer to the assignee, or transferee thereof as applicable.

(5) Any assignment under this section shall not be effective until written notice thereof is delivered to the Executive Entity together with a copy of the consent under subsection (2).

(6) Except where the Charter and the Articles otherwise provide, a person who endows executive entity assets, or transfers trust assets, to an Executive Entity on or after the date on which it is registered shall not thereby acquire the powers of a Founder.

(7) Where a Founder has made an undertaking, recorded in the Charter, to endow executive entity assets to an Executive Entity, the Executive Entity may enforce that undertaking against the Founder or his estate as a covenant provided for in section 31.

(8) A Founder may be appointed —

(a) subject to section 11(3), as an officer; or

(b) subject to section 17(3), as a council member,

and, except where the Charter or the Articles otherwise provide, no such appointment shall affect —

(c) the reservation of any rights or powers to the Founder under section 7(2)(a);or

(d) any assignment by the Founder of his rights, powers or obligations pursuant to subsection (2).

PART III – OFFICERS, EXECUTIVE ENTITY AGENT, SECRETARY, COUNCIL AND AUDITOR

Exercise of powers of Executive Entity.

10. (1) Except where the Charter or the Articles otherwise provide, the officers and council shall have the powers set out in this Act.

(2) In the case where both officers and a council have been appointed, the powers of the officers shall not include those powers reserved to the council and, in particular, the powers reserved to the council in subsections (1) and (2) of section 18 shall not be exercised by the officers.

(3) In the case where no officer is appointed, the council shall perform the duties and may exercise the powers of the officers prescribed in this Act.

(4) Subject to subsections (1) and (2), in the case where no council is appointed, the officers shall be the governing body of the Executive Entity.

Appointment, removal and qualification of officers.

11. (1) The Charter may, and in the case where the Charter does not provide for the appointment of a council shall, provide for the appointment of any one or more persons, who are not prohibited from being officers under subsection (3), to be officers.

(2) The officers shall be appointed in accordance with the requirements of the Charter, the Articles and this Act and, except where the Charter or the Articles otherwise provide, if appointed—

(a) before the Executive Entity is registered, may be appointed by the Founder; or

(b) after the council is registered, may be appointed by the Founder or, if the Founder is unable or unwilling to do so —

(i) by a person who has been so empowered by the Founder in the Charter or the Articles;

(ii) if no person has been so empowered by the Founder in the Charter or the Articles, by the council; or

(iii) in the case where there is no council, by any officers.

(3) A person shall not be appointed as or remain an officer in the case of —

(a) an individual if he is —

(i) or becomes an undischarged bankrupt;

(ii) or becomes mentally incapacitated; or

(iii) except where the Charter or the Articles otherwise provide, convicted of a crime other than a minor traffic offence;

(b) a legal person if —

(i) it is dissolved or otherwise ceases to exist; or

(ii) any shareholder, director, secretary, manager, employee, partner or controller (which expression shall include any person in accordance with whose instructions any shareholder, director, secretary, manager, employee, partner or controller is accustomed to act) of that legal person is appointed as a council member or the auditor; or

(c) any person —

(i) if he is a council member or the auditor; or

(ii) unless before appointment —

(A) he satisfies a person that he complies with any requirement of this Act or any other written law, to be so appointed; and

(B) he has by himself, or by his agent authorised in writing, signed and delivered to the Founder (before the Executive Entity is registered) or to the Executive Entity (after the Executive Entity is registered) a consent in writing to act as such an officer; and

(iii) unless after appointment his name and address is delivered to the Executive Entity.

(4) An officer shall, in the event that he ceases to comply with any of the requirements of this section, deliver notice in writing of that event to the Executive Entity within seven days after the occurrence thereof.

(5) Except where the Charter and the Articles otherwise provide, the council acting by special resolution may remove an officer and, in the case where no council is appointed, the officers may by special resolution remove

an officer provided that no officer shall be entitled to vote in respect of his removal as an officer.

(6) An officer who intends to cease acting in that capacity shall deliver notice in writing of his intention to the Executive Entity no later than seven days (or such other period as the Charter or the Articles may provide) before he intends to cease to so act.

(7) Subject to subsection (12), where a person is appointed as an officer, he shall continue to hold such office and this Act shall apply to that person until the—

(a) discharge of that person as an officer in accordance with the Charter or the Articles;

(b) death of that person;

(c) removal of that person as an officer in accordance with subsection (5);

(d) expiration of the period referred to in subsection (6);

(e) Executive Entity ceases to be registered;

(f) termination of the Executive Entity; or

(g) occurrence of any other event which disqualifies the person from acting as an officer under subsection (3),

whichever event occurs first, whereupon he shall cease to be an officer.

(8) Where for the time being the number of officers appointed is less than that required by the Charter, the Articles or this Act, an application may be made to the Court by a Founder, another officer (or person who is identified in the Charter or the Articles as an officer, but who has not been appointed as an officer), and council member or a person so empowered by the Charter or the Articles for the appointment by the Court of one or more officers for the purpose of complying with the requirements of the Charter, the Articles or this Act.

(9) Where the Court is satisfied that —

(a) an application made under subsection (8) is well founded; and

(b) without the order of the Court, the requirements of the Charter, the Articles or this Act in respect of the appointment of officers will not be met,

the Court may appoint one or more fit and proper consenting persons who comply with this section as officers.

(10) Where an officer has failed to comply with subsection (3) or (4), or has failed to carry out, or failed to carry out properly, the duties required of him in fulfilment of his obligations under the Charter, the Articles or this Act, on an application to the Court by a Founder, another officer, any council member or a person so empowered by the Charter or the Articles, the Court may order the removal of such officer and the appointment in his place as an officer of a fit and proper consenting person who complies with this section.

(11) The provisions of the Charter, the Articles and this Act in respect of officers shall apply to a person appointed as an officer in accordance with subsection (9) or (10) as they apply to an officer appointed in any other way provided for in this Act, the Charter or the Articles.

(12) Notwithstanding that a person has ceased to be an officer, any liability to the Executive Entity which he may have incurred as an officer shall continue to be a liability enforceable against him by the Executive Entity and by such other persons who are given standing to enforce the officer's duties in the Charter or the Articles.

(13) The acts of the officers or any officer are valid notwithstanding any defect that the Executive Entity may afterwards discover in the appointment or qualifications of the officers or any officer.

Duties, powers and rights of officers.

12. (1) The duties of an officer to an Executive Entity shall be to administer the Executive Entity in the furtherance of the Purpose and in accordance with the Charter, the Articles and this Act, and in carrying out such duties such officer shall —

(a) act *bona fide* in what he considers is in the best interests of the Executive Entity;

(b) not exercise his powers for a collateral purpose;

(c) not improperly fetter the exercise of his future discretion; and

(d) except where the Charter or the Articles otherwise provide, not place himself in a position where there is a conflict between his duties to the Executive Entity and either his

personal interests or his duties to any other person.

(2) An officer, in performing his duties to an Executive Entity, shall act honestly and in good faith with a view to the best interest of the Executive Entity and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(3) Except where the Charter, the Articles or this Act otherwise provide, the officers shall exercise all their powers in accordance with the provisions of Part VII.

(4) The appointment of a person as an officer is personal to that person and may not be assigned by him and, except where the Charter and the Articles otherwise provide and as provided in section 39(3), an officer may not delegate any of his powers to any other person.

(5) Except where the Charter or the Articles otherwise provide—

(a) the officers may delegate to any one of themselves or in writing to any other person any power of the officers on such terms as they think fit;

(b) the officers who make reasonable efforts to satisfy themselves that a delegate has appropriate knowledge, experience and integrity shall not be responsible for any loss by reason only of their having appointed the delegate or joined or concurred in that appointment; and

(c) the officers who have made reasonable efforts to keep themselves informed concerning the performance of a delegate shall not be liable or responsible for any default or wrongful act of the delegate which occurs at a time when the delegate appeared to the officers to be performing honestly and competently.

(6) Except where the Charter or the Articles otherwise provide, the officers shall be remunerated out of the executive entity assets in accordance with the duties they are required to perform and taking account of the financial position of the Executive Entity.

(7) Except where the Charter or the Articles otherwise provide for alternative dispute resolution procedures, a dispute in respect of the amount of the

remuneration of the officers may be referred by the officers, any officer, the council, any council member or any person so empowered by the Charter or the Articles to the Court, which shall determine that remuneration.

Appointment, removal and qualification of the executive entity agent.

13. (1) Before an Executive Entity is registered, the Founder shall appoint a person, satisfying the requirements of subsection (4), to be the executive entity agent.

(2) After an Executive Entity is registered, the Founder or, if the Founder is unable or unwilling to do so, the council or, in the case where no council is appointed, the officers—

(a) shall ensure that while an Executive Entity is registered, a person satisfying the requirements of subsection (4) is at all times appointed as the executive entity agent;

(b) shall deliver to the Registrar the name and address of every person who has been appointed as the executive entity agent; and

(c) subject to paragraph (a), may remove any executive entity agent then holding office at the same time as the appointment of a new executive entity agent.

(3) The person appointed as the executive entity agent in accordance with subsections (1) and (2) may also be appointed as an officer or a council member (but not both) in accordance with sections 11 and 17 respectively.

(4) The requirements referred to in subsections (1) and (2)(a) are that the executive entity agent—

(a) is duly licensed as a provider of financial and corporate services under the Financial and Corporate Service Providers Act, or as a trust company under the Banks and Trust Companies Regulation Act, and

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(b) has by himself, or by his agent authorised in writing, signed and delivered to the Founder (before the Executive Entity is registered) or to the Executive Entity (after the Executive Entity is registered) a consent in writing to act as the executive entity agent.

(5) The appointment of a person as executive entity agent is personal to that person and may not be assigned by him and an executive entity agent may not delegate any of his powers to any other person.

(6) An executive entity agent shall, in the event that he ceases to comply with any of the requirements of this section, deliver notice in writing of that event to the Executive Entity and the Registrar within seven days after the occurrence thereof.

(7) An executive entity agent who intends to cease acting in that capacity shall deliver notice —

(a) in writing of his intention to the Executive Entity; and

(b) to the Registrar that he has delivered the notice under paragraph (a),

and such notices shall be delivered no later than twenty-one days before the executive entity agent intends to cease to so act.

(8) Subject to subsection (10), where a person is appointed as an executive entity agent, he shall continue to hold such office and this Act shall apply to that person until the —

(a) appointment by the Executive Entity of another executive entity agent;

(b) expiration of a period of twenty-one days after the date on which a notice is delivered under subsection (7);

(c) Executive Entity ceases to be registered;

(d) termination of the Executive Entity; or

(e) occurrence of any other event which disqualifies the person from acting as an executive entity agent under subsection (4),

and whichever event occurs first, whereupon he shall cease to be the executive entity agent.

(9) Where the Registrar receives notice under subsection (2)(b), (6) or (7)(b), he shall retain the notice in the register.

(10) Notwithstanding that a person has ceased to be an executive entity agent, any liability to the Executive Entity which he may have incurred as executive entity agent shall continue to be a liability enforceable against him by the Executive Entity and by such other persons who are given standing to enforce the executive entity agent's duties in the Charter or the Articles.

(11) The acts of any executive entity agent are valid notwithstanding any defect that the Executive Entity may afterwards discover in his appointment or qualifications.

(12) An Executive Entity established under this Act shall at all times be subject to the regulatory oversight by the regulator that has licensed the executive entity agent.

Duties, powers and rights of the executive entity agent.

14. (1) The person appointed as executive entity agent shall have the duties, powers and rights provided for in this Act and if he is also appointed as an officer or a council member, then he shall have the additional duties, powers and rights provided for in this Act, the Charter and the Articles in respect of an officer or a council member as the case may be.

(2) Pursuant to subsection (1), an executive entity agent shall, in particular but without limiting the generality of the foregoing, on behalf of the Executive Entity, accept service of all documents in respect of legal proceedings against the Executive Entity, which may be served on the Executive Entity under this Act or any other written law and, where there is in this or in any other written law reference to any notice being served on or given to an Executive Entity, or any document being delivered to an Executive Entity or any requirement being made of an Executive Entity, the Executive Entity shall be deemed to have notice of that service, or have had delivery of that document or have knowledge of that requirement if the executive entity agent appointed to that Executive Entity shall have been served with or given the notice, or shall have had delivery of that document or shall have had notice of the requirement.

(3) The duties prescribed by subsections (1) and (2) shall be in addition to and shall not derogate from any other duties prescribed in relation to the executive entity agent by or under this Act or any other written law.

(4) An executive entity agent, in performing his duties to an Executive Entity, shall act honestly and in good faith with a view to the best interest of the Executive Entity and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(5) Except where the Charter or the Articles otherwise provide, the executive entity agent shall be remunerated out of the executive entity assets in accordance with the duties he is required to perform and

taking account of the financial position of the Executive Entity.

(6) Except where the Charter or the Articles otherwise provide for alternative dispute resolution procedures, a dispute in respect of the amount of the remuneration of the executive entity agent may be referred by the executive entity agent, the officers, any officer, the council, any council member or any person so empowered by the Charter or the Articles to the Court, which shall determine that remuneration.

Appointment and removal of a secretary.

15. The Charter or the Articles may provide for the appointment and removal of a secretary to carry out the usual secretarial duties and any such appointment of a secretary shall be additional to the requirements of section 13 for an executive entity agent and such secretary shall not perform or exercise any of the executive entity agent's statutory duties or powers prescribed under this Act and shall not be required to possess the qualification specified in section 13(4).

Registered office.

16. (1) An Executive Entity shall have a registered office in The Bahamas which shall be the address of the executive entity agent, to which all communications and notices may be addressed and an Executive Entity which carries on business without having a registered office shall be in default.

(2) Notice of any change in the situation of the registered office shall be given within twenty-eight days of the change to the Registrar, who shall retain the notice in the register.

(3) Where by virtue of the application of the Charter, the Articles or this Act, a person ceases to be the executive entity agent —

(a) the address of that person shall cease to be the registered office of the Executive Entity; and

(b) until such time as the Registrar has received notice of the situation of a new registered office in accordance with subsection (2) —

(i) except where notice has been given within the period of twenty-eight days referred to in subsection (2), the Executive Entity and any officer or council member shall be in default; and

(ii) the address of the registered office shall be deemed to be the address in The Bahamas of any officer or council member, and the requirements of this section and of section 14 in respect of the service of any document shall be satisfied by service at that address.

Appointment, removal and qualification of the council.

17. (1) The Charter may, and in the case where the Charter does not provide for the appointment of any one or more officers shall, provide for the appointment of a council and the council may consist of any one or more persons, who are not prohibited from being council members under subsection (3).

(2) A council or council member shall be appointed in accordance with the requirements of the Charter, the Articles and this Act and, except where the Charter or the Articles otherwise provide, if appointed —

(a) before the Executive Entity is registered, may be appointed by the Founder; or

(b) after the Executive Entity is registered, may be appointed by the Founder or, if the Founder is unable or unwilling to do so —

(i) by a person who has been so empowered by the Founder in the Charter or the Articles;

(ii) if no person has been so empowered by the Founder in the Charter or the Articles, by any council members; or

(iii) in the case where there are no council members, by the officers.

(3) A person shall not be appointed as or remain a council member in the case of —

(a) an individual if he is —

(i) or becomes an undischarged bankrupt;

(ii) or becomes mentally incapacitated; or

(iii) except where the Charter or the Articles otherwise provide, convicted of a crime other than a minor traffic offence; or

(b) a legal person if —

(i) it is dissolved or otherwise ceases to exist; or

(ii) any shareholder, director, secretary, manager, employee, partner or controller (which expression shall include any person in accordance with whose instructions any shareholder, director, secretary, manager, employee, partner or controller is accustomed to act) of that legal person is appointed as an officer or the auditor; or

(c) any person—

(i) if he is appointed as an officer or the auditor; or

(ii) unless before appointment—

(A) he satisfies a person that he complies with any requirement of this Act or any other written law, to be so appointed; and

(B) he has by himself, or by his agent authorised in writing, signed and delivered to the Founder (before the Executive Entity is registered) or to the Executive Entity (after the Executive Entity is registered) a consent in writing to act as such a council member; and

(iii) unless after appointment his name and address is delivered to the Executive Entity.

(4) A council member shall, in the event that he ceases to comply with any of the requirements of this section, deliver notice in writing of that event to the Executive Entity within seven days after the occurrence thereof.

(5) Except where the Charter and the Articles otherwise provide, the council acting by special resolution may remove a council member provided that no council member shall be entitled to vote in respect of his removal as a council member.

(6) A council member who intends to cease acting in that capacity shall deliver notice in writing of his intention to the Executive Entity no later than seven days (or such other period as the Charter or the Articles may provide) before he intends to cease to so act.

(7) Subject to subsection (12), where a person is appointed as a council member, he shall continue to hold

such office and this Act shall apply to that person until the—

(a) discharge of that person as a council member in accordance with the Charter or the Articles;

(b) death of that person;

(c) removal of that person as a council member in accordance with subsection (5);

(d) expiration of the period referred to in subsection (6);

(e) Executive Entity ceases to be registered;

(f) termination of the Executive Entity; or

(g) occurrence of any other event which disqualifies the person from acting as a council member under subsection (3),

whichever event occurs first, whereupon he shall cease to be a council member.

(8) Where for the time being the number of council members appointed is less than that required by the Charter, the Articles or this Act, an application may be made to the Court by a Founder, an officer, a council member (or person who is identified in the Charter or the Articles and who would be a council member if the council was duly constituted in accordance with the Charter, the Articles or this Act) or a person so empowered by the Charter or the Articles for the appointment by the Court of one or more persons to be council members for the purpose of complying with the requirements of the Charter, the Articles or this Act.

(9) Where the Court is satisfied that —

(a) an application made under subsection (8) is well founded; and

(b) without the order of the Court the requirements of the Charter, the Articles or this Act in respect of the appointment will not be met,

the Court may appoint one or more fit and proper consenting persons who comply with this section as a council member.

(10) Where a council or a council member has failed to comply with subsection (3) or (4) or has failed to carry out, or failed to carry out properly, the duties required of him in fulfilment of his obligations under the Charter, the Articles or this Act, on an application to the Court by a

Founder, an officer, another council member or a person so empowered by the Charter or the Articles, the Court may order the removal of that council member and the appointment in his place as a council member of a fit and proper consenting person who complies with this section.

(11) The provisions of the Charter, the Articles and this Act in respect of council members shall apply to a person appointed as such in accordance with subsection (9) or (10) as they apply to a council member appointed in any other way provided for in the Charter, the Articles or this Act.

(12) Notwithstanding that a person has ceased to be a council member, any liability to the Executive Entity which he may have incurred in such capacity shall continue to be a liability enforceable against him by the Executive Entity and by such other persons who are given standing to enforce the council member's duties in the Charter or the Articles.

(13) The acts of a council or any council member are valid notwithstanding any defect that the Executive Entity may afterwards discover in the appointment or qualifications of the council or any council member.

Duties, powers and rights of the council.

18. (1) The council shall act in accordance with the Charter, the Articles and this Act and —

(a) ensure compliance by the Executive Entity and the officers with the provisions of the Charter, the Articles and this Act;

(b) supervise generally the administration of the Executive Entity by the officers in the furtherance of the Purpose; and

(c) ensure that the officers act in accordance with the instructions of the council.

(2) The duties of a council member shall be to take such action as the council deems appropriate to carry out the provisions of subsection (1) and in carrying out such duties such council member shall —

(a) act *bona fide* in what he considers is in the best interests of the Executive Entity;

(b) not exercise his powers for a collateral purpose;

(c) not improperly fetter his exercise of future discretion; and

(d) except where the Charter or the Articles otherwise provide, not place himself in a

position where there is a conflict between his duties to the Executive Entity and either his personal interests or his duties to any other person.

(3) Subject to subsections (1) and (2), the Charter or the Articles may specify the powers of the council and provide for powers in addition to those provided for in this Act.

(4) The appointment of a person as a council member is personal to that person and may not be assigned by him and, except where the Charter and the Articles otherwise provide and as provided in section 42, a council member may not delegate any of his powers to any other person.

(5) Except where the Charter or the Articles otherwise provide —

(a) the council may delegate to any one of the council members or in writing to any other person any power of the council on such terms as they think fit;

(b) if the council makes reasonable efforts to satisfy itself that a delegate has appropriate knowledge, experience and integrity, it shall not be responsible for any loss by reason only of it having appointed the delegate or joined or concurred in that appointment; and

(c) if the council has made reasonable efforts to keep itself informed concerning the performance of a delegate, it shall not be liable or responsible for any default or wrongful act of the delegate which occurs at a time when the delegate appeared to the council to be performing honestly and competently.

(6) Each council member shall have a right of access at all times to the books, records, accounts and vouchers of the Executive Entity.

(7) In addition to the rights of the council provided for in the Charter, the Articles or this Act, each council member shall have the right—

(a) to be informed of all meetings of the officers;

(b) to attend and be heard but not to vote at such meetings; and

(c) where any business of an Executive Entity is conducted by the —

(i) circulation of documents, to be included in the circulation of documents at the time that they are circulated to the officers; and

(ii) delegation of powers to an officer, to be informed of the terms of the delegation and of any exercise of such delegated powers.

(8) A council member, in performing his duties to an Executive Entity, shall act honestly and in good faith with a view to the best interest of the Executive Entity and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(9) Except where the Charter or the Articles otherwise provide, the council shall be remunerated out of the executive entity assets in accordance with the duties it is required to perform and taking account of the financial position of the Executive Entity.

(10) Except where the Charter or the Articles otherwise provide for alternative dispute resolution procedures, a dispute in respect of the amount of the remuneration of the council or any council member may be referred by the officers, any officers, the council, any council member or any person so empowered by the Charter or the Articles to the Court, which shall determine that remuneration.

Appointment of an auditor.

19. Except where the Charter or the Articles otherwise provide, the Executive Entity may appoint an auditor on such terms as it shall determine, including, but not limited to, such auditor's access to minutes of the meetings of the officers (if appointed) and the council (if appointed) and to the financial statements, accounts and records of the Executive Entity.

Provisions as to liability of officers and council members.

20. (1) Except where the Charter, the Articles and this Act otherwise provide, no officer shall be personally responsible for any liability of an Executive Entity except to the extent that and in the circumstances where such liability arises from such officer's failure to act honestly and in good faith with a view to the best interest of the Executive Entity.

(2) Except where the Charter and the Articles otherwise provide, no officer shall be personally liable for

the acts, receipts, neglect or defaults of any other officer or any other person, or for joining in any receipt or other act for conformity, or for any loss or expense incurred by the Executive Entity as a result of insufficiency or deficiency of title to any property acquired by order of the officers for or on behalf of the Executive Entity, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Executive Entity shall be advanced or invested, or for any loss or damage arising out of the bankruptcy, insolvency, or tortious or criminal act or omission of any person with whom any money, securities or effects shall be deposited, or for any loss occasioned by an error of judgment, omission, default or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of his office or in relation thereto, except to the extent that and in the circumstances where such liability arises from such officer's failure to act honestly and in good faith.

(3) If, in any proceedings for negligence, default, misconduct or breach of duty against an officer, it appears to the Court that such person is or may be liable in respect of the negligence, default, misconduct or breach of duty, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, misconduct or breach of duty, the Court may relieve him, either wholly or partly, from his liability on such terms as the Court thinks fit.

(4) Where an officer has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, misconduct or breach of duty, he may apply to the Court for relief, and the Court on any such application shall have power to grant him relief in respect of such negligence, default, misconduct or breach of duty.

(5) This section shall apply to the council and any council member as if references to such a person are substituted for the references to an officer.

Indemnification.

21. (1) Except where the Charter, the Articles and this Act otherwise provide —

(a) each officer, council member and executive entity agent shall be entitled to reimbursement from the executive entity assets for all expenses

incurred in connection with his duties in such office; and

(b) in addition to the reimbursement of expenses under paragraph (a), but subject to subsection (2), an Executive Entity may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and incurred in connection with legal or administrative proceedings (including any application under subsections (3) and (4)) of section 20 any person who is or was—

(i) a party or is threatened to be made a party to any threatened, pending or completed proceedings whether civil, criminal or administrative, by reason of the fact that such person is or was an officer, a council member or the executive entity agent; or

(ii) at the request of the Executive Entity, serving as a director, officer or liquidator of, or in any other capacity is or was acting for, another legal person.

(2) Subsection (l)(b) only applies to a person referred to in that subsection if that person, in the performance of his duties, has acted honestly and in good faith with a view to the best interest of the Executive Entity.

(3) The amount of a person's entitlement under subsection (l)(a) and any amount for which indemnity is provided under subsection (l)(b) shall attach immediately as a lien on the executive entity assets, and have priority over any claims of the Executive Entity.

PART IV – NAME

Restriction on registration of the Executive Entity by certain names.

22. (1) No proposed Executive Entity shall be registered by a name which —

(a) includes —

(i) "foundation" or an abbreviation of "foundation";

(ii) "limited" or an abbreviation of "limited";

(iii) "company" or an abbreviation of "company";

(iv) "corporation" or an abbreviation of "corporation";

(v) "partnership" or an abbreviation of "partnership";

(vi) a translation of any words conveying a similar meaning to "foundation", "limited", "company", "corporation" or "partnership" in the language or practice of any other country; or

(vii) an abbreviation of any such translation as is referred to in paragraph (vi);

(b) is the same as or similar to the name of an existing Bahamian company, partnership, foundation, Executive Entity or other body, except where such company, partnership, foundation, Executive Entity or other body is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;

(c) is the same as or similar to the name of an existing Bahamian company, partnership, foundation, Executive Entity or other body, except where such company, partnership, foundation, Executive Entity or other body signifies its consent in such manner as the Registrar requires;

(d) is the same as or similar to a business name registered under the Registration of Business Names Act or any Act replacing same; Ch. 330.

(e) if used by the Executive Entity would in the opinion of the Registrar constitute a criminal offence;

(f) in the opinion of the Registrar is offensive;

(g) contains the words "Chamber of Commerce"; or

(h) contains the word "Bank", "Co-operative", "Building Society", "Insurance", "Stock Exchange", or "trust" or such other word or expression as in the opinion of the Registrar suggests or is calculated to suggest an activity to which section 5(2)(a) refers, but, such name may include the word "trustee".

(2) Except with the consent of the Registrar, a proposed Executive Entity shall not be registered by a name which contains the word "Royal", "Imperial",

"Empire", "Windsor" or "Crown", or which in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family.

(3) Except with the consent of the Registrar, a proposed Executive Entity shall not be registered by a name which —

(a) in the opinion of the Registrar is calculated to suggest a connection with the Government of The Bahamas or any department thereof;

(b) contains the word "Municipal" or "Chartered" or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or

(c) in the opinion of the Registrar is undesirable.

(4) In determining for the Purposes of paragraph (b) or (c) of subsection (1) whether one name is the same as another or so similar to as may in the opinion of the Registrar result in confusion between names —

(a) there are to be disregarded—

(i) the definite article, where it is the first word of the name;

(ii) "Executive Entity", "Entity", "EE" or "E.E." where those words appear at the end of a name; and

(iii) type and case of letters, accents, spaces between letters and punctuation marks; and

(b) "and" and "&" are to be taken as the same.

(5) The Registrar may reserve names for prospective Executive Entities for such period or periods as he shall in his absolute discretion deem appropriate.

(6) The Registrar shall enter the names of all Executive Entities in the register.

Change of name.

23. (1) An Executive Entity may, if permitted to do so by its Charter and as provided for in section 46, change its name.

(2) Where an Executive Entity changes its name, the Registrar shall enter the new name in the register in place of the former name, and shall issue a certificate of registration altered to meet the circumstances of the case.

(3) The change of name shall not affect any rights or obligations of the Executive Entity, or render defective any legal proceedings by or against the Executive Entity, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

(4) The provisions of section 22 shall apply in respect of the name to which the Executive Entity proposes to change as they apply to the name by which it was first registered.

Power to require an Executive Entity to change name.

24. (1) Where an Executive Entity has been registered by a name which is —

(a) the same as or, in the opinion of the Registrar, too similar to a name appearing in the register at the time of registration;

(b) the same as or, in the opinion of the Registrar, too similar to the name which should have appeared in the register at that time; or

(c) in the opinion of the Registrar, undesirable,

the Registrar may direct the Executive Entity in writing to change its name within such period as he may specify.

(2) Subsection (4) of section 22 applies in determining under subsection (1) of this section whether the name is the same as or too similar to another.

(3) If it appears to the Registrar that—

(a) misleading information has been given for the purpose of the registration of a proposed Executive Entity with a particular name; or

(b) undertakings or assurances have been given for that purpose and have not been fulfilled,

within two years of the date on which the Executive Entity was registered with that name, he may direct in writing the Executive Entity to change its name within such period as he may specify.

(4) Where a direction has been given under subsection (1) or (3), the Registrar may by a further direction in writing extend the period within which the Executive Entity shall change its name at any time before the end of that period .

(5) Section 22 applies to any name to which an Executive Entity may change under this section.

Misleading name.

25. (1) If, in the Registrar's opinion, the name by which an Executive Entity is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may direct the Executive Entity to change its name.

(2) A direction made under subsection (1) shall, if not duly made the subject of an application to the Court under subsection (3), be complied with within a period of six weeks from the date of the direction or such longer period as the Registrar may see fit to allow.

(3) An Executive Entity may, within a period of three weeks from the date of a direction made under subsection (1), apply to the Court to set aside the direction, and the Court may set the direction aside or confirm it and, if it confirms it, the direction shall specify the period within which the Executive Entity shall comply with the direction.

(4) Section 22 applies to any name to which an Executive Entity may change under this section.

Publication of name of the Executive Entity.

26. (1) Every Executive Entity shall have its name—

(a) engraved in legible characters on any seal; and

(b) mentioned in legible characters in all notices, advertisements and other official publications of the Executive Entity, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the Executive Entity, and in all bills of parcels, invoices, receipts and letters of credit of the Executive Entity.

(2) If an Executive Entity fails to comply with subsection (1), the Executive Entity is in default.

(3) An officer, or a council member, or any person on its behalf who —

(a) uses or authorises the use of any seal purporting to be a seal of the Executive Entity on which its name is not engraved as required by subsection (l)(a);

(b) issues or authorises the issue of any notice, advertisement or other official publication of the Executive Entity, or signs or authorises to be signed on behalf of the Executive Entity any bill

of exchange, promissory note, endorsement, cheque or order for money or goods, in which its name is not mentioned as required by subsection (1)(b); or

(c) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the Executive Entity, in which its name is not mentioned as required by subsection (1)(b),

is in default and is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the Executive Entity.

Particulars to be shown on letterheads.

27. (1) Every Executive Entity shall have the following particulars mentioned in legible characters in all business letters, order forms and receipts for goods and services of the Executive Entity, that is to say, its legal name, the place of registration of the Executive Entity and the number with which it is registered, and the address of its registered office.

(2) If an Executive Entity fails to comply with the requirements of this section, or the Executive Entity or any person on its behalf issues or authorises the issue of any business letter, order form or receipt for goods or services in contravention of this section, such Executive Entity and person is in default.

PART V– REGISTRATION

Registration of an Executive Entity.

28. (1) The following documents together with an application for registration shall be delivered to the Registrar, who shall retain in the register —

(a) a statement signed by the executive entity agent or the counsel and attorney engaged in the formation of the Executive Entity containing the following particulars extracted from the Charter—

(i) the name of the Executive Entity;

(ii) the date of the Charter and the date of any amendment made thereto prior to the submission of the statement to the Registrar;

(iii) the Purpose;

(iv) a statement that the Executive Entity is an "Executive Entity";

(v) the date of the Articles (if any) and the date of any amendment made thereto prior to the submission of the statement to the Registrar;

(vi) the name and address of the executive entity agent;

(vii) the period for which the Executive Entity is established; and

(viii) such other particulars as the executive entity agent or the counsel and attorney shall in his absolute discretion wish to include in the statement; and

(b) a statutory declaration of compliance made by the executive entity agent or counsel and attorney engaged in the formation of the Executive Entity regarding all relevant requirements of this Act, upon which the Registrar shall be entitled to rely as being sufficient evidence of that compliance.

(2) The documents mentioned in subsection (1) shall be accompanied by the prescribed fee.

(3) The Charter and Articles may, but need not be, delivered to the Registrar, who shall retain them in the register upon payment of the prescribed fee.

Effect of registration.

29. (1) On the delivery of the documents and payment of the fee to the Registrar in accordance with section 28 in respect of a proposed Executive Entity, the Executive Entity shall be deemed to have been registered and the Registrar shall issue a certificate of registration certifying that the Executive Entity is registered, the date on which it was registered and specifying the number with which it is registered.

(2) From the date on which the Executive Entity is registered, the Executive Entity shall be a legal person with the name contained in the Charter and capable, forthwith of exercising all powers conferred on it by the Charter, the Articles and this Act.

Conclusiveness of certificate of registration.

30. A certificate of registration given by the Registrar in respect of any Executive Entity shall be conclusive evidence that the Executive Entity is an

Executive Entity capable of being registered and is duly registered under this Act.

Effect of Charter and Articles.

31. On the date on which the Executive Entity is registered, the Charter and the Articles shall bind the Executive Entity and all officers and council members to the same extent as if they had been signed by any such persons and contained covenants on the part of each such person to observe all the provisions of the Charter and the Articles.

Pre-registration actions.

32. (1) Where —

(a) prior to the date on which the Executive Entity is registered, any action has been carried out in the name of that Executive Entity and purportedly by or on behalf of that Executive Entity; and

(b) that Executive Entity is not precluded from doing so by its Charter or Articles,

the Executive Entity may after that date by resolution of the council or, in the case where no council is appointed, by the officers, ratify that action, and that action shall then be deemed to be the action of the Executive Entity and the Executive Entity shall be entitled to the benefit of that action and shall be liable in respect of that action, and any failure to take any steps necessary to give effect to that ratification shall be a failure by the Executive Entity.

(2) Except where an Executive Entity has not ratified that action as provided for in subsection (1) or there is an agreement to the contrary, an action carried out in the name of an Executive Entity and purportedly by or on behalf of that Executive Entity prior to the date on which the Executive Entity is registered shall be the action of the person or persons by whom it was carried out and that person or those persons shall be jointly and severally liable in respect of that action and shall be entitled to the benefit of that action.

PART VI – CAPACITY AND EXECUTION OF DOCUMENTS

Validity of acts of an Executive Entity.

33. No act of an Executive Entity and no disposition of assets to or by an Executive Entity shall be invalid by reason only of the fact that the Executive Entity was without capacity or power to perform the act or to dispose

of or receive the assets, but the lack of capacity or power may be asserted in proceedings by —

(a) a Founder, an officer or a council member against the Executive Entity to prohibit the performance of any act, or the disposition of assets by or to the Executive Entity; and

(b) the Executive Entity, or a person representing or acting on behalf of an Executive Entity, against the incumbent or former officers, council or executive entity agent for loss or damage through their unauthorised act.

Power of officers and council members to bind the Executive Entity.

34. (1) In the furtherance of the Purpose and except where the Charter and the Articles otherwise provide, an Executive Entity shall have full power and authority to carry out any acts not prohibited under any law for the time being in force in The Bahamas.

(2) A person dealing with an Executive Entity in good faith may assume the power of any two officers or any two council members or any one officer and any one council member acting together to bind the Executive Entity, or authorise others to do so, but the lack of their authorisation or power may be asserted in proceedings by —

(a) a Founder, an officer or a council member against the Executive Entity to prohibit the performance of any act, or the disposition of assets by or to the Executive Entity; and

(b) the Executive Entity, or a person representing or acting on behalf of an Executive Entity, against the incumbent or former officers, council or executive entity agent for loss or damage through their unauthorised act.

Execution of contracts, deeds, instruments and other documents.

35. (1) An Executive Entity may, but need not, have a seal for use in The Bahamas and, except where the Charter or the Articles otherwise provide, if the Executive Entity has such a seal, the seal shall be affixed in the presence of and witnessed to by any officer or council member.

(2) Contracts, deeds, instruments or other documents on behalf of an Executive Entity may be made as follows —

(a) a contract, deed, instrument or other document which, if made between individuals, would by law be required to be in writing and to be made

by deed or under seal, or is otherwise intended to be so made, may be made on behalf of the Executive Entity in writing —

(i) if the Executive Entity has a seal for use in The Bahamas, under that seal; or

(ii) signed by the authorised signatories each signing or under the seal of the Authorised Signatory (as the case may be); and

(iii) only in the case of a deed, is expressed to be, or is executed on behalf of the Executive Entity and is expressed to be executed as (or otherwise makes it clear on its face that it is intended to be) a deed;

(b) a contract, instrument or other document which if made between individuals would by law be required to be in writing, signed by the parties to be charged therewith, or is otherwise intended to be so made, may be made on behalf of the Executive Entity in writing signed by the authorised signatories; and

(c) a contract which, if made between individuals would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the Executive Entity by any person acting under an express authority.

(3) A contract, deed, instrument or other document made according to this section shall have effect in law, and shall bind an Executive Entity and all other parties thereto.

(4) A contract, deed, instrument or other document made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(5) An Executive Entity may, by writing —

(a) if the Executive Entity has a seal for use in The Bahamas, under that seal; or

(b) signed by the authorised signatories each signing or under the seal of the Authorised Signatory (as the case may be),

empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds, instruments or other documents on its behalf in any place outside The Bahamas.

(6) A deed, instrument or other document signed by an attorney appointed in accordance with subsection (5) for and on behalf of an Executive Entity, if —

(a) he has a seal, under that seal; or

(b) signed by him or, where the attorney is a legal person, by the authorised signatories of such attorney,

shall bind the Executive Entity and have the same effect as if the deed, instrument or other document had been sealed or signed as provided for in subsection (2).

(7) An Executive Entity may have for use in any territory, district or place outside The Bahamas, an official seal, which if the —

(a) Executive Entity has a seal for use in The Bahamas, shall be a facsimile of that seal; or

(b) Executive Entity does not have a seal for use in The Bahamas, shall bear the name of the Executive Entity engraved in legible characters,

with, if its use is intended to be restricted to certain territories, districts or places, the addition on its face of the name of every territory, district or place where it is to be used.

(8) Where an Executive Entity executes a deed, instrument or other document outside The Bahamas, whether or not the Executive Entity has an official seal for use in the territory, district or place outside The Bahamas, it shall be sufficient and the Executive Entity shall be bound if that deed, instrument or document is executed in the manner provided for in subsection (2).

(9) An Executive Entity having an official seal for use in any territory, district or place outside The Bahamas may, by —

(a) resolution of the council, or if there is no council, the officers; or

(b) writing, sealed or signed as provided for in subsection (2),

authorise any person appointed for the Purpose in that territory, district or place, to affix the official seal to any deed, instrument or other document to which the Executive Entity is a party in that territory, district or place.

(10) The authority of a person appointed in accordance with subsection (9) shall, as between an Executive Entity and any person dealing with that person, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the person's authority has been given to the person dealing with him.

(11) The person affixing any official seal outside of The Bahamas shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

(12) An officer or a council member, when acting on behalf of an Executive Entity, shall prefix his signature by the statement that he is so acting.

(13) A document or proceeding requiring authentication by an Executive Entity may be signed by the authorised signatories.

PART VII – MEETINGS

Meetings of officers.

36. Except where the Charter or the Articles otherwise provide —

(a) where officers are appointed in accordance with section 11, the Executive Entity may, whenever it sees fit, hold a meeting of the officers;

(b) the officers present at the meeting shall be at liberty to discuss any matter relating to the business of the Executive Entity, whether previous notice has been given or not, but no resolution of which notice has not been given may be passed unless such resolution is passed unanimously by all officers then in office;

(c) the meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting;

(d) *in lieu* of passing a resolution at a formal meeting, any resolution may be consented to in writing unanimously by all officers then in office;

(e) where an Executive Entity has a sole officer, any resolution may be passed by such officer consenting to the same in writing; and

(f) the Founder or Founders, the council members and each officer shall be entitled to be notified of any meeting of the officers (including the annual meeting of the officers under section 37 and any meeting of the officers convened on requisition under section 38), table business to be considered at such meeting and attend and be heard at such meeting, but shall not be entitled to vote at such meeting.

Annual meeting of officers.

37. Where officers are appointed in accordance with section 11, the Executive Entity shall in each year hold at least one meeting of the officers as its annual meeting in addition to any other meeting that year and shall specify the meeting as such in the notices calling it.

Convening of meetings of officers on requisition.

38. Except where the Charter or the Articles otherwise provide —

(a) the officers shall, on the requisition of a Founder or the council, forthwith proceed duly to convene a meeting of the officers;

(b) the requisition shall state the objects of the meeting, be signed by the requisitioner and be delivered to the registered office of the Executive Entity;

(c) if the officers do not, within twenty-one days from the date of the deposit of the requisition, proceed duly to convene a meeting, the requisitioner may himself convene a meeting on not less than twenty-one, nor more than sixty days notice commencing on the last day of the original twenty-one day period;

(d) a meeting convened under this section by the requisitioner shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by officers; and

(e) any reasonable expenses incurred by the requisitioner by reason of the failure of the officers duly to convene a meeting shall be repaid to the requisitioner by the Executive Entity, and any sum so repaid shall be retained by the Executive Entity out of any sums due or to become due from the Executive Entity by way

of fees or other remuneration in respect of their services to such of the officers as were in default.

Provisions as to meetings and votes of officers.

39. (1) Except where the Charter, the Articles or this Act otherwise provide, the following provisions shall have effect —

(a) a meeting of officers may be called by seven days notice in writing, or on shorter notice if consented to in writing by all officers;

(b) any one officer may call a meeting;

(c) a quorum shall be at least two officers where the Executive Entity has two or more officers and a proxy shall count towards the quorum;

(d) the officers present shall elect from their number a chairman; and

(e) the officers shall pass resolutions by ordinary resolution.

(2) Except where the Charter or the Articles otherwise provide, a person may participate in a meeting of the officers by conference telephone or other communications equipment by means of which all the persons participating in the meeting can communicate with each other at the same time. Participation by a person in a meeting in this manner is treated as presence in person at that meeting. Unless otherwise determined by the officers, the meeting shall be deemed to be held at the place where the chairman is at the start of the meeting.

(3) Except where the Charter or the Articles otherwise provide, officers may attend meetings by proxy and the following provisions shall apply in relation to proxies —

(a) the instrument appointing a proxy shall be in writing, be executed under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, under the hand of an officer or attorney duly authorised for that purpose; a proxy need not be an officer;

(b) the instrument appointing a proxy shall be deposited at the registered office or at such other place as is specified for that purpose in the notice convening the meeting, or in any instrument of proxy sent out by the Executive Entity not less than forty-eight hours before the

time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, provided that the officers may in the notice convening the meeting, or in an instrument of proxy sent out by the Executive Entity, direct that the instrument appointing a proxy may be deposited (no later than the time for holding the meeting or adjourned meeting) at the registered office or at such other place as is specified for that purpose in the notice convening the meeting, or in any instrument of proxy sent out by the Executive Entity. The chairman may in any event at his discretion direct that an instrument of proxy shall be deemed to have been duly deposited. An instrument of proxy that is not deposited in the manner permitted shall be invalid;

(c) the instrument appointing a proxy may be in any usual or common form and may be expressed to be for a particular meeting or any adjournment thereof or generally until revoked; and

(d) votes given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental incapacity of the principal or revocation of the proxy or of the authority under which the proxy was executed unless notice in writing of such death, mental incapacity or revocation was received by the Executive Entity at the registered office before the commencement of the meeting, or adjourned meeting at which it is sought to use the proxy.

Minutes of proceedings of meetings of officers.

40. (1) Every Executive Entity shall cause minutes of all proceedings at meetings of officers to be entered in books kept for that purpose.

(2) Any such minute as is provided for in subsection (1), if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made, in accordance with the provisions of this section, of the proceedings at any meeting of the officers, then, until the contrary is proved, the meeting shall be deemed to have been duly

held and convened, and all proceedings thereat to have been duly conducted.

Inspection of minute books of officers.

41. (1) The books containing the minutes or copies of the minutes of proceedings of any meeting of the officers shall be kept at the registered office of the Executive Entity, and shall during business hours be open to the inspection of any Founder, officer, council member or any special auditor appointed under section 45 without charge.

(2) Any person entitled to inspect the books of minutes of proceedings shall be entitled to be furnished, within seven days after he has made such a request to the Executive Entity, with a copy of any such minutes without charge.

(3) If any inspection required under this section is refused, or if any copy required under this section is not sent within the proper time, the Executive Entity, and every officer who was aware of the request, is in default.

(4) In the case of any such refusal or default, the Court may by order compel an immediate inspection of the books in respect of all proceedings of meetings or direct that the copies required shall be sent to the persons requiring them.

Meetings of council members.

42. The provisions of sections 36 to 41 inclusive in relation to meetings of officers shall apply *mutatis mutandis* to meetings of the council, except that no officer shall have the right to attend or requisition meetings of the council, to receive notice of such meetings or to table business to be considered at such meetings (pursuant to sections 36 and 38) and no officer shall have the right to inspect the minutes of proceedings of any meeting of the council pursuant to section 41(1).

PART VIII – FINANCIAL

Keeping of books.

43. (1) An Executive Entity shall cause reliable accounting records to be kept in relation to —

(a) all sums of money received and, expended by the Executive Entity and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions;

(b) the assets and liabilities of the Executive Entity.

(2) For the purposes of subsection (1), accounting records shall —

(a) correctly explain all transactions;

(b) enable the financial position of the company to be determined with reasonable accuracy at any time;

(c) allow financial statements to be prepared; and

(d) include the underlying documentation, including invoices, contracts and receipts, necessary to facilitate (a), (b) and (c).

(3) Accounting records maintained pursuant to this section shall be kept for a minimum period of five years from the date of the transaction to which such records relate.

(4) Such accounting records of an Executive Entity shall be kept at the registered office of the Executive Entity or at such other place, whether or not in The Bahamas, as the council or, in the case where no council is appointed, the officers think fit, and shall at all times be open to inspection by the officers, the council, any council members or any special auditor appointed under section 45.

(5) A person who, being an officer or council member, fails to take all reasonable steps to secure compliance by the Executive Entity with the requirements of this section, or has by his own wilful act been the cause of any default by the Executive Entity thereunder, is himself in default.

(6) The officers or, in the case where no officer is appointed, the council shall, at some date not later than eighteen months after the Executive Entity was registered and subsequently once at least in every calendar year, lay before the Executive Entity at a meeting of the council, or in the case where no council is appointed, a meeting of the officers, an income and expenditure account and balance sheet for the period, in the case of the first accounts, since the Executive Entity was registered, and, in any other case, since the preceding account made up to a date not earlier than the date of the meeting by more than three months.

Right to receive copies of accounts and auditor's report.

44. Any Founder, officer, council member or special auditor appointed under section 45 shall be entitled to be furnished, within seven days after he has made a request to the Executive Entity, with a copy of the accounting records and auditor's reports, if any, at no charge and, if default is

made in furnishing such a copy, the Executive Entity is in default.

Special audit.

45. (1) Where, on an application by a Founder (if he has reserved such right in the Charter or the Articles), an officer, a council member, a person so empowered by the Charter or the Articles or the Registrar of the Court, the Court is satisfied that there is *prima facie* evidence of a failure to comply with the Charter, the Articles or the requirements of this Act in the management and administration of an Executive Entity, the Court may order the appointment of a special auditor and the carrying out of a special audit of the Executive Entity.

(2) The appointment of a special auditor under subsection (1) may be made conditional on the lodging by the applicant with the Court of an amount, to be determined by the Court, by way of security for the costs of carrying out the special audit.

(3) The person appointed as a special auditor shall have a right of access to information in accordance with sections 41(1), 42, 43(4) and 44 and shall be entitled to require from the officers or council such information and explanation as may be necessary for the performance of his duties as special auditor.

(4) The auditor appointed under this section shall submit his report to the Court within such time as the Court may determine.

(5) If, in the opinion of the Court, the report of the auditor is evidence of the failure complained of, or any other serious failure to comply with the Charter, the Articles or the requirements of this Act in the management and administration of an Executive Entity, the Court shall make such orders as it thinks fit for the furtherance of the Purpose.

(6) The Court shall make such order as to costs as it thinks fit, taking into account whether or not the application was well founded, and where the application was not well founded the Court may order that any loss or cost occasioned to the Executive Entity by the special audit be met by the applicant.

PART IX – AMENDMENT, TERMINATION AND REMOVAL FROM REGISTER

Revocation and amendment of Charter.

46. (1) Before an Executive Entity is registered—

(a) the Charter may be revoked in writing by the Founder and;

(b) except where the Charter and the Articles otherwise provide, the Charter or the Articles (or both) may be amended by the Founder.

(2) After an Executive Entity is registered, where —

(a) as provided for in section 7(2)(f), the Charter makes provision for the amendment of the Charter, the Charter may be amended in accordance with that provision; and

(b) as provided for in section 7(2)(g) or section 8(1), the Charter or the Articles make provision for the amendment of the Articles, the Articles may be amended in accordance with those provisions.

(3) Where there is no provision in the Charter or the Articles for the amendment of the Charter or the Articles after an Executive Entity is registered, the council or, in the case where no council is appointed, the officers may resolve by special resolution to make such amendments as they consider necessary or appropriate in the circumstances for the furtherance of the Purpose.

(4) Where an amendment is made in the Charter or the Articles, the —

(a) Executive Entity shall, within fourteen days of such amendment taking effect, deliver copies of such amendment to the Founder and all the officers, council members and the executive entity agent; and

(b) executive entity agent shall, within fourteen days of receipt of any copy of such amendment under paragraph (a), deliver to the Registrar a notice containing details of the amendment of any of the particulars contained in the statement delivered pursuant to section 28(1)(a), who shall retain such notice in the register.

(5) If, where any amendment has been made to the Charter or the Articles, the Executive Entity and any officer, council member or the executive entity agent, at

any time after they have notice of the amendment, issues or causes or permits to be issued any copies of the Charter or the Articles which are not in accordance with the amendment, such Executive Entity, officer, council member or the executive entity agent are in default.

Winding up.

47. (1) Subject to this section and sections 48 and 49, an Executive Entity may be wound up under any of the circumstances (insofar as such circumstances may be applied to an Executive Entity) in which a company incorporated under the Companies Act may be wound up and the provisions of the Companies Act relating to winding up and dissolution shall apply *mutatis mutandis* to the winding up and dissolution of the Executive Entity.

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(2) An Executive Entity shall be wound up —

(a) where the Executive Entity was established for a definite period and that period has expired;

(b) where the Court has ordered the winding up of the Executive Entity;

(c) where a relevant regulator petitions for the winding up of an Executive Entity whose licence or registration has been suspended or revoked;

(d) where the Executive Entity is insolvent as defined in section 187 of the Companies Act; or

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(e) in the circumstances specified in subsection (3).

(3) The council or, in the case where no council is appointed, the officers —

(a) shall resolve by special resolution to wind up an Executive Entity if —

(i) the effect of an amendment to the Charter under section 46 so requires;

(ii) the Purpose has been fulfilled or has become incapable of being fulfilled and the officers or the council (as the case may be) consider (and have so resolved) that it is impractical or inexpedient for the Purpose to be reformed cy-pres in accordance with section 62;

(iii) the Executive Entity is unable to pay its debts as and when they fall due; or

(iv) any provision of the Charter or the Articles so requires; or

(b) may resolve, in accordance with the Charter or the Articles or otherwise by special resolution, to place the Executive Entity into voluntary liquidation, but only if they are satisfied that the executive entity assets are sufficient to pay all claims, debts, liabilities and obligations of such Executive Entity existing at the time of such resolution.

(4) Pursuant to subsection (3), in the event that the council or, in the case where no council is appointed, the officers —

(a) fail to pass the special resolution required to be passed by subsection (3)(a); or

(b) other than in one of the circumstances listed in that subsection pass or purport to pass a resolution to wind up the Executive Entity,

a Founder, an officer, a council member or any person so empowered by the Charter or the Articles may apply to the Court for an order, in the case provided for in paragraph (a), requiring the winding up of the Executive Entity, or in the case provided for in paragraph (b), precluding the winding up.

(5) The Court shall order the winding up of an Executive Entity which has adopted, whether in the Charter or in practice, a Purpose precluded by section 5(2), and which has failed to comply with any order of the Court to remedy the default in the time specified in the order.

(6) The procedures specified in regulations made for this purpose (in accordance with section 68) and in accordance with section 48 and regulations made in accordance with section 48 shall apply to the winding up of an Executive Entity under this section.

Petitions for winding up.

48. (1) An application to the Court for the winding up of an Executive Entity shall be by petition, presented, subject to the provisions of this section and regulations made pursuant to section 68 for that purpose, either by the Executive Entity, by any creditor or creditors (including any contingent or prospective creditor or creditors), by a relevant regulator or by all or any of them, together or separately.

(2) Where an Executive Entity is being wound up voluntarily as a result of a decision, other than an order of the Court, to wind up the Executive Entity either in

accordance with the provisions of the Charter or the Articles, or if there are no such provisions, under section 47, a winding up petition may be presented by an official receiver of the Court as well as by any other person so authorised under subsection (1), but the Court shall not make a winding up order on the petition unless it is satisfied that the voluntary liquidation cannot be continued with due regard to the interests of the creditors.

Assets of an Executive Entity on dissolution.

49. (1) Subject to subsection (2), the executive entity assets remaining on dissolution shall be dealt with in accordance with the provisions of the Charter and the Articles.

(2) In the event that there is no relevant provision in the Charter or the Articles, on dissolution, the remaining executive entity assets shall be deemed to be *bona vacantia* and shall accordingly belong to the Treasurer of The Bahamas and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Treasurer of The Bahamas.

(3) The procedures to be adopted and the distributions to be made on dissolution shall be those provided in regulations made for that purpose pursuant to section 68 and —

(a) different procedures may be so provided in different circumstances; and

(b) the regulations —

(i) shall have effect in relation to an Executive Entity as if the provisions therein had been contained in this Act; and

(ii) may, in the application of this Act to dissolution, make such variations as may be necessary to properly dissolve the Executive Entity.

Suspension or revocation of registration.

50. (1) Where the Registrar has reasonable cause to believe that an Executive Entity no longer satisfies the requirements prescribed for an Executive Entity by sections 5(2) or 13, the Registrar shall serve on the Executive Entity a notice that its registration may be suspended or revoked resulting in its name being removed from the register if the Executive Entity no longer satisfies those requirements.

(2) If the Registrar does not receive a reply within ninety days immediately following the date of the service

of the notice referred to in subsection (1), he shall suspend or revoke the registration of the Executive Entity and remove its name from the register, unless the Executive Entity or any other person satisfies the Registrar that the registration of the Executive Entity should not be suspended or revoked, and the Registrar shall publish notice of the suspension or revocation in the *Gazette*.

(3) Where the Executive Entity has otherwise complied with the requirements of the Act, the Registrar shall upon request by the Executive Entity issue a notice confirming that the Executive Entity satisfies the requirements of the Act.

(4) If an Executive Entity has failed to pay any registration or licence fee due under this Act, the Registrar shall publish in the *Gazette* and serve on the Executive Entity a notice stating the amount of the fee payable by it and stating that the name of the Executive Entity will be removed from the register if the Executive Entity fails to pay the fee within thirty days of the date of service of such notice.

(5) If an Executive Entity fails to pay the registration or licence fee stated in the notice referred to in subsection (4) within thirty days of the date of service of such notice, the Registrar shall then suspend or revoke the registration of the Executive Entity and remove its name from the register.

(6) An Executive Entity whose name has been removed from the register under this section remains liable for all claims, debts, liabilities and obligations of the Executive Entity, and the removal does not affect the liability of any of its council members, officers or the executive entity agent.

(7) Where the Registrar has received a copy of a dissolution order from the Court, he shall issue a certificate of dissolution certifying that the Executive Entity has been dissolved and shall remove the name of the Executive Entity from the register.

Restoration of registration.

51. (1) If the name of an Executive Entity has been removed from the register under section 50, the Founder, a creditor, liquidator or any person who was previously an officer or council member thereof, may, within five years immediately following the date of the removal, apply to the Registrar to have the Executive Entity restored to the register and, upon payment to the Registrar of all

outstanding registration or licence fees and any other fees due and payable under this Act, the Registrar shall restore the registration of the Executive Entity, and upon restoration of the name of the Executive Entity to the register, the name of the Executive Entity shall be deemed never to have been removed from the register.

(2) If an Executive Entity has been dissolved, or the period of five years has expired under subsection (1), the Founder, the Executive Entity, a creditor or liquidator thereof, may apply to the Court, within ten years from the later of the date of the dissolution or the end of the five year period, to have the registration of the Executive Entity restored.

(3) If upon an application under subsection (2) the Court is satisfied that it would be fair and reasonable for the registration of the Executive Entity to be restored, the Court may order the registration of the Executive Entity to be restored upon payment to the Registrar of all outstanding registration or licence fees and other fees due and payable under this Act and, upon restoration of the name of the Executive Entity to the register, the name of the Executive Entity shall be deemed never to have been removed from the register.

(4) On restoration of the name of the Executive Entity to the register under subsection (1) or (3), the Registrar shall issue a restoration certificate certifying that the name of the Executive Entity has been restored to the register.

Effect of removal of name.

52. (1) Where the name of an Executive Entity has been removed from the register, the Executive Entity, any officers, the council and the executive entity agent may not—

(a) carry on any business or in any way deal with executive entity assets or trust assets;

(b) commence or defend any legal proceedings, make any claim or claim any right for, or in the name of the Executive Entity; or

(c) act in any way with respect to the affairs of the Executive Entity.

(2) Notwithstanding subsection (1), where the name of the Executive Entity has been removed from the register, the Founder, a creditor, liquidator or any person who was previously an officer or council member thereof, may —

(a) make an application to the Registrar for restoration of the name of the Executive Entity to the register;

(b) continue to defend proceedings that were commenced against the Executive Entity prior to the date of the removal; and

(c) continue to carry on legal proceedings that were instituted on behalf of the Executive Entity prior to the date of the removal.

(3) The fact that the name of the Executive Entity is removed from the register does not prevent —

(a) that Executive Entity from incurring liabilities pursuant to subsection (2);

(b) any creditor from making a claim against that Executive Entity and pursuing the claim through to judgment or execution; or

(c) the appointment by the Court of a liquidator for that Executive Entity.

(4) Subject to subsection (5), the executive entity assets remaining on removal of the name of the Executive Entity from the register shall be dealt with in accordance with the provisions of the Charter or the Articles.

(5) In the event that there is no relevant provisions in the Charter or the Articles, the executive entity assets remaining on removal of the name of the Executive Entity from the register shall remain the property of the Executive Entity until such time as the registration of the Executive Entity may no longer be restored pursuant to section 51 at which time such remaining executive entity assets shall be deemed to be *bona vacantia* and shall accordingly belong to the Treasurer of The Bahamas and shall vest and may be dealt with in the same manner as other *bona vacantia* accruing to the Treasurer of The Bahamas.

PART X – REGISTRAR

Documents to be kept at the registered office.

53. (1) Every Executive Entity shall keep at its registered office a file containing —

(a) originals or accurate copies of —

(i) all notices and documents delivered to the Registrar;

(ii) the Charter and Articles and all amendments thereto;

(iii) any assignments and consents to assignments under section 9(2);

(iv) written consents to the appointments of the officers and council members;

(v) the minutes of meetings and written resolutions of the officers (if any) and council (if any); and

(vi) any other notices or documents required to be delivered to the Executive Entity under this Act; and

(b) the name and address of—

(i) the Founder and his address in The Bahamas for service of documents; and

(ii) each of the officers and Executive Entity members.

(2) The documents required to be kept by an Executive Entity under this section shall during business hours be open to the inspection of any Founder, officer or council member, except that the originals or copies of the minutes of meetings of the council shall not be open to the inspection of any officer.

(3) If any inspection required under this section is refused, or if there is a failure to comply with subsection (1), the Executive Entity and every officer is in default.

(4) In the case of such a refusal as is referred to in subsection (3), the Court may by order compel an immediate inspection of the file.

Delivery to the Registrar of documents in printed form.

54. (1) This section applies to the delivery to the Registrar under any provision of this Act of documents in printed form.

(2) The document shall —

(a) be in English;

(b) state in a prominent position the name of the Executive Entity and the number with which it is registered;

(c) be in the form approved by the Registrar; and

(d) conform to such requirements as the Registrar may specify for the purpose of enabling him to copy any document.

(3) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or if there are two or more such persons, on any of them), a notice indicating the requirements in respect of which the document does not comply.

(4) Where the Registrar serves such a notice as is specified in subsection (3), then, unless a replacement document —

(a) is delivered to him within fourteen days after the service of the notice; and

(b) complies with the requirements of this section (or section 55) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(5) For the purposes of any provision requiring delivery within a specified period no account shall be taken of the period between the delivery of the original document and the end of the period of fourteen days after service of the Registrar's notice.

Delivery to the Registrar of documents otherwise than in printed form.

55. (1) This section applies to the delivery to the Registrar under this Act of documents other than in printed form.

(2) Any requirement to deliver a document to the Registrar, or to deliver a document in the approved form, is satisfied by the communication to the Registrar of the requisite information in any non-printed form approved by the Registrar.

(3) Where the document is required to be signed or sealed, it may instead be authenticated in such manner as may be approved by the Registrar.

(4) A document shall —

(a) contain in a prominent position the number with which the Executive Entity is registered;

(b) be in the form approved by the Registrar; and

(c) be furnished in such manner, and conform to such requirements, as the Registrar may specify for the purpose of enabling him to read and copy the document.

(5) If a document is delivered to the Registrar which does not comply with the requirements of this section, he

may serve on the person by whom the document was delivered (or, if there were two or more such persons, on any of them), a notice indicating the requirements in respect of which the document does not comply.

(6) Where the Registrar serves such a notice, then, unless a replacement document —

(a) is delivered to him within fourteen days after service of the notice; and

(b) complies with the requirements of this section (or section 54) or is not rejected by him for failure to comply with those requirements, the original document shall be deemed not to have been delivered to him.

(7) For the purposes of any provision requiring delivery within a specified period no account shall be taken of the period between the delivery of the original document and the end of the period of fourteen days after service of the Registrar's notice.

Keeping of the register by the Registrar.

56. (1) The Registrar shall keep a register of documents delivered to him and which he is required to retain under this Act and he may retain and store documents delivered to him in compliance with any requirement of this Act in whatever form he thinks fit provided it is possible to inspect the information contained in the document and to produce a copy of it in printed form and this shall be sufficient compliance with any duty of his to register any document.

(2) The originals of documents delivered to the Registrar in printed form and which are to be retained by him shall be kept by him for the duration of the Executive Entity and thereafter for ten years, after which time they may, in the Registrar's absolute discretion, be destroyed.

Inspection, production and evidence of documents kept by the Registrar.

57. (1) Any person may, on payment of the prescribed fee or fees, inspect the register and may require a copy in such form as the Registrar considers appropriate of any documents or information contained in the register.

(2) A copy of a document certified in writing by the Registrar (whose official position it is unnecessary to prove), to be an accurate record of the document delivered to him and retained by him under this Act, is in all legal proceedings, admissible in evidence as of equal validity with the original document and as evidence of any facts

stated therein, of which direct oral evidence would be admissible.

(3) Copies of or extracts from records furnished by the Registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.

(4) Any person may require a certificate of the registration of an Executive Entity, signed by the Registrar or authenticated by his official seal.

(5) Any requirement of this Act as to the supply by the Registrar of a document may, if the Registrar thinks fit, be satisfied by the communication by the Registrar of the requisite information in any non-printed form approved by him.

(6) Where the document is required to be signed by him or sealed with his official seal and is a communication in a non-printed form, it shall instead be authenticated in such manner as may be approved by the Registrar.

Enforcement of duty of the Executive Entity to deliver documents to the Registrar.

58. (1) If an Executive Entity, having made default in complying with any provision of this Act which requires it to deliver to the Registrar any account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service by the Registrar of a notice on the Executive Entity requiring it to do so, the Court may, on an application made by a Founder, any officer, council member, a person so empowered by the Charter or the Articles, a creditor or the Registrar, make an order directing the Executive Entity and any officer, council member or the executive entity agent thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the Executive Entity.

Official notification.

59. (1) The Registrar shall cause to be published in the *Gazette* notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the Executive Entity, the description of the document and the date of issue or receipt), that is any —

(a) copy of a winding up order in respect of an Executive Entity;

(b) copy of an order in respect of the dissolution of an Executive Entity; and

(c) notice of removal from the register of an Executive Entity.

(2) An Executive Entity shall not be entitled to rely against other persons on the happening of any of the above events if the event had not been officially notified at the material time and is not shown by the Executive Entity to have been known at that time to the person concerned, or if the material time fell on or before the fifteenth day after the date of official notification (or, where the fifteenth day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

(3) In subsection (2), "official notification" means the notification of the document relating to that event in the *Gazette* under subsection (1) and "officially notified" shall be construed accordingly.

Certificate of good standing.

60. (1) The Registrar shall, upon request by any person and payment of the prescribed fee, certify that an Executive Entity is of good standing in the following respects if he is satisfied that the —

(a) name of the Executive Entity is on the register;

(b) Executive Entity has paid all fees required by this Act to be paid; and

(c) Executive Entity has complied with all notices of the Registrar under this Act and any orders of the Court pursuant to section 58.

(2) The Certificate of good standing issued under subsection (1) shall indicate whether or not the Executive Entity is in the process of being liquidated or removed from the register.

PART XI – MISCELLANEOUS

Uncertainty.

61. (1) Subject to subsection (3), the Purpose is not rendered void by uncertainty as to the Purpose or the mode of execution of the Purpose.

(2) The Charter or the Articles may empower the officers, the council or other person to resolve an uncertainty as to the Purpose or the mode of execution of the Purpose.

(3) If an uncertainty as to the Purpose or the mode of execution of the Purpose arises and either the Charter or the Articles does not empower the officers, the council or other person to resolve it, or the Charter or the Articles contain such power but the officers, council or other person (as the case may be) fail to resolve it, the Court may —

(a) resolve the uncertainty by reforming the Purpose by settling a plan for the mode of execution of the Purpose or in any other way which the Court deems appropriate in each case which, in its opinion, best fulfils the intent of the Charter or the Articles in relation to that Purpose as can be ascertained from admissible evidence; or

(b) if and to the extent the intent of the Charter or the Articles in relation to that Purpose cannot be found from admissible evidence declare the Executive Entity void for that Purpose.

Reformation cy-pres.

62. (1) The Charter or the Articles may empower the officers or council to reform the Purpose in the event that it becomes in whole or in part —

(a) impossible or impracticable;

(b) unlawful or contrary to public policy; or

(c) obsolete in that by reason of changed circumstances it fails to achieve the general intent of the Executive Entity.

(2) If the execution of the Purpose in accordance with its terms is or becomes in whole or part —

(a) impossible or impracticable;

(b) unlawful or contrary to public policy; or

(c) obsolete in that, by reason of changed circumstances, it fails to achieve the general intent of the Executive Entity,

any officer, council member or person so empowered by the Charter or the Articles may apply to the Court to reform the Purpose cy-pres.

(3) On such an application the Court may reform the Purpose in accordance with the general intent of the Charter or the Articles or insofar as the Court finds that the Purpose cannot be so reformed then the Court shall declare that the Executive Entity be liquidated.

63. (1) In this section— Conflict of laws.

"dispose" and "disposition", in relation to property, means every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished;

"formalities", in relation to a disposition of property, means any documentary or other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature, without regard to —

(a) the fact that the particular disposition is made to an Executive Entity;

(b) the terms of the Executive Entity;

(c) the circumstances of the parties to the disposition; or

(d) any other particular circumstances,

but includes any special formalities required by reason that the party effecting the disposition is not of full age or is subject to a mental infirmity;

"heirship right" means any right, claim or interest in, against or to property of an individual arising, accruing or existing in consequence of, or in anticipation of, that individual's death, other than any such claim, or interest created by will or other voluntary disposition by such individual or resulting from an express limitation in the disposition of the property of such individual;

"personal relationship" includes every form of relationship by blood or marriage, including former marriage and in particular the relationship between two individuals which exists if —

(a) one is the child of the other, natural or adopted, whether or not the adoption is recognised by law, legitimate or illegitimate;

(b) one is married to the other, whether or not the marriage is recognised by law;

(c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parents and child or husband and wife; or

(d) a personal relationship exists between each of them and a third individual, but no change in circumstances causes the personal relationship once established to terminate;

"property" means movable and immovable property.

(2) This section applies to every Executive Entity and disposition of property to an Executive Entity established and existing in The Bahamas.

(3) Subject to subsection (4), all questions arising in regard to an Executive Entity established and existing under this Act or in regard to any disposition of assets to it, including, without prejudice to the generality of the foregoing, questions as to the —

(a) capacity of the founder;

(b) existence of the Executive Entity, or any aspect of the validity of the disposition or the interpretation or effect thereof;

(c) administration of the Executive Entity, whether the administration be conducted in The Bahamas or elsewhere, including questions as to powers, obligations, liabilities and rights of the officers, council members or the executive entity agent and their appointment and removal; or

(d) existence and extent of powers, conferred or retained by the founder, including powers of variation or revocation of the Charter and validity of any exercise thereof,

shall be determined in accordance with the laws of The Bahamas, without reference to the laws of any other jurisdictions with which the Executive Entity or disposition or Founder may be connected.

(4) Subsection (3) —

(a) shall not validate any —

(i) disposition of property which is neither owned by the Founder nor the subject of a power in that behalf vested in the Founder;

(ii) disposition of immovable property situate in a jurisdiction other than The Bahamas in which such disposition is invalid according to the laws of such jurisdiction; or

(iii) testamentary disposition which is invalid according to the laws of the testator's domicile;

(b) shall not affect the recognition of foreign laws in determining whether the Founder is the owner of the property or is the holder of a power to dispose of such property;

(c) shall take effect subject to any express term of a disposition to the contrary;

(d) shall not affect the recognition of foreign laws prescribing generally, without reference to the existence or terms of the Executive Entity, the formalities for the disposition of property; and

(e) as regards the capacity of a corporation, shall not affect the recognition of the place of its incorporation.

(5) Without limiting the generality of subsection (3), it is hereby expressly declared that no disposition of property to be held by an Executive Entity established and existing under this Act is void, voidable, liable to be set aside or defective in any manner by reference to a foreign law, nor is the capacity of any Founder to be questioned nor is the Executive Entity or any other individual to be subjected to any liability or deprived of any right by reason that the —

(a) laws of any foreign jurisdiction prohibit or do not recognise the concept of an Executive Entity; or

(b) disposition avoids or defeats rights, claims or interests conferred by foreign law upon any individual by reason of a personal relationship to the Founder or by way of heirship rights or contravenes any rule of foreign law or any foreign, judicial or administrative order or action

intended to recognise, protect, enforce or give effect to any such rights, claims or interests.

(6) An heirship right conferred by foreign law in relation to the property of a living individual shall not be recognised as —

(a) affecting the ownership of immovable property in The Bahamas or movable property wherever situate for the purposes of paragraphs (a) and (b) of subsection (4) or for any other purpose; or

(b) constituting an obligation or liability for the purposes of the Fraudulent Dispositions Act or for any other purpose.

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(7) A foreign judgment shall not be recognised or enforced or give rise to any estoppel insofar as it is inconsistent with subsection (5) or subsection (6).

(8) This section shall apply to every disposition of property to an Executive Entity made after the commencement of this Act, whether such property is situate in The Bahamas or elsewhere.

Exemptions.

64. (1) An Executive Entity shall not be subject to any business licence fee, (unless carrying on business in The Bahamas), income tax, capital gains tax or any tax on income or distributions accruing to or derived from such Executive Entity or in connection with any transaction to which that Executive Entity is a party.

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(2) The Exchange Control Regulations Act shall not apply to an Executive Entity or to any transaction by an Executive Entity, provided such Executive Entity does not have any Founder (including a person who has subsequently acquired the rights, powers or obligations of a Founder) who is resident for Exchange Control purposes.

(3) No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by a Founder or any other person with respect to any interest given to or received from an Executive Entity.

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(4) Notwithstanding any provision of the Stamp Act, all instruments to which an Executive Entity is a party relating to —

(a) transactions in respect of the executive entity assets or trust assets; and

(b) other transactions concerning the business of an Executive Entity,

shall be exempt from the payment of stamp duty, provided in the case of the executive entity assets or trust assets no Bahamian real property is included in such assets.

(5) The Registrar shall upon request by any person and payment of the prescribed fee certify that an Executive Entity is exempt (subject to any relevant exceptions) from the fees and taxes specified in subsections (1) and (3).

(6) For the purposes of subsection (1) an Executive Entity shall not be treated as carrying on business in The Bahamas by reason only that —

(a) it makes or maintains deposits with a person carrying on business within The Bahamas;

(b) it makes or maintains professional contact with counsel and attorneys, accountants, bookeepers, trust companies, management companies, investment advisors, or other similar persons carrying on business within The Bahamas;

(c) it prepares or maintains books and records within The Bahamas;

(d) it holds, within The Bahamas meetings of its Founders, council members, officers or executive entity agents;

(e) it holds a lease of property for use as an office from which to communicate with Founders, council members, officers or executive entity agents; or where books and records of the Executive Entity are prepared or maintained;

(f) it holds shares, debt obligations or other securities in a company incorporated under the Companies Act or under the International Business Companies Act, unless doing so in the course of conducting trust business;

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(g) debt obligations in the Executive Entity are owned by any person resident in The Bahamas or by any company incorporated under the Companies Act or the International Business Companies Act.

Default provisions.

65. (1) Where an Executive Entity or an officer, council member or the executive entity agent is in default under any provision of this Act, an application may be made to the Court by a Founder, an officer, the council or a person so empowered by the Charter or the Articles specifying the default and seeking a remedy.

(2) Where the Court is satisfied that it is just and equitable in the circumstances to do so, it may order the remedy sought, or may make such other order as it sees fit for the attainment of the purpose of this Act and to obtain compliance with this Act.

(3) Where the order of the Court under subsection (2) has the effect of granting the application, it may order that the costs of the applicant in bringing the application as well as the costs of the action shall be met, where the application and the order are in respect of default by—

(a) the Executive Entity;

(b) the Executive Entity but, in the opinion of the Court, the default was the responsibility of an officer, council member or the executive entity agent, by that officer, council member or the executive entity agent; and

(c) an officer, council member or the executive entity agent, by that officer, council member or the executive entity agent.

Offences.

66. An officer, council member, executive entity agent or auditor shall be guilty of an offence punishable on summary conviction by a fine of ten thousand dollars or imprisonment for two years or both if he knowingly and with intent to deceive —

(a) falsely represents the financial position of the Executive Entity to any person;

(b) withholds information relating to the financial position of the Executive Entity or any other matter regulated by this Act from any person entitled to receive that information; or

(c) falsifies any document—

(i) to be delivered under this Act to the Registrar; or

(ii) required by this Act to be prepared in respect of the Executive Entity.

Notice.

67. Where there is provision in this Act for the "service" of notice on, or the "giving" of notice to, any person (other than the Registrar), the notice shall be in writing and may be served or given in person, by post, by fax or electronically as follows —

(a) in person, the date of notice shall be the date on which the notice was deposited at the address last notified to the Executive Entity by the

person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications;

(b) by post, the date of notice shall be the fifth day following the day upon which the properly addressed and stamped envelope containing the notice was delivered to the Post Office and service shall be at the address last notified to the Executive Entity by the person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications; or

(c) by fax or electronic means, the date of notice shall be the date of transmission recorded by the transmitter and the address shall be the fax number or electronic address last notified to the Executive Entity by the person entitled to receive service as his number or address for receipt of fax or electronic communications,

and, for the avoidance of doubt, the above provisions of this section shall not apply to the "delivery" of notices and documents.

Regulations and forms.

68. (1) The Minister may make regulations for the purpose of prescribing anything required or permitted by this Act to be prescribed and, without prejudice to the generality of the foregoing, shall make provision by regulation for —

(a) such provisions in relation to the suspension and revocation of registration and restoration to the register, of an Executive Entity, as may be necessary for the purpose of giving effect to sections 47 to 51;

(b) the fees prescribed under this Act; and

(c) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act,

and such regulations may contain different provisions in respect of different matters and may make such transitional provisions as the Minister may determine.

(2) Where by this Act any person is required to —

(a) make an application;

(b) deliver a document;

(c) provide an extract; or

(d) confirm or certify any information,

to the Registrar he shall, subject to the provisions of this Act, do so in a form and, where appropriate, on a form approved for that purpose by the Registrar.

(3) Subject to the provisions of this Act, any certificate or other document to be issued by the Registrar shall be in a form approved by the Registrar.

Application.

69. The executive functions of an Executive Entity performed in relation to any entity, trust or other arrangements shall be limited to entities, trusts or other arrangements as are domiciled in or regulated by the laws of The Bahamas or a jurisdiction specified in the First Schedule to the Financial Transactions Reporting Act.

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