

Incorporation in Anguilla Under the International Business Companies Act

1. Introduction

The following is a brief summary of the significant features of an Anguillan International Business Company (“IBC”) together with an outline of the incorporation procedure under the International Business Companies Act.

2. Significant Features of IBCs

- Subject to any provisions in the Articles of Incorporation and By-Laws (which together form the constitutional documents of the IBC), the prohibitions contained in the Act (which are set out in paragraph 3.1.8(ii) below), or any other enactment or law for the time being in force in Anguilla, an IBC has the power, irrespective of corporate benefit, to carry on or undertake any business or activity, do any act, or enter into any transaction. It may carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Anguilla to the extent that the laws of Anguilla and of that jurisdiction permit.
- An IBC which does not do business in Anguilla is exempt from any corporate tax, income tax, withholding tax, capital gains tax or other taxes based on or measured by assets originating outside Anguilla or in connection with matters of company administration which may occur in Anguilla. No estate, inheritance, succession or gift tax is payable by persons not resident or domiciled in Anguilla with respect to any shares, debt obligations or other securities of an IBC.
- Confidentiality and Disclosure - there is no requirement for a public record to be maintained as to the identity of shareholders or directors, although an IBC may file such registers publicly if it so chooses. A copy of the shareholders’ register must be kept either at the registered office of the company or at the office of its registered agent. A shareholder of an international business company is, upon request, entitled to one copy of the articles and by-laws of the company and any amendments thereto, without charge; and to additional copies of the articles and by-laws of the company and any amendments thereto, upon the payment of such fee as the directors may determine to be reasonably necessary to defray the costs of preparing and furnishing them. It is open to shareholders to request inspection of the register, books, records, minutes and consents kept by the IBC, and if refused by the company, application may be made to the court for an order to allow inspection.

- Nominee shareholders may be used.
- Public records of IBCs consist only of the Certificate of Incorporation and the Articles of Incorporation (for details of which see Section 3 below). It is not necessary to lodge the company's By-Laws as documents of public record. A copy of the company's Articles, By-laws (for details of which see Section 3 below) and any amendments thereto must be kept at the company's registered office.
- An IBC may have a single shareholder and it may also have a single director, both of which may be corporate and non-resident. Resolutions of either may be consented to in writing in the manner provided for in the By-Laws.
- Companies incorporated under the Anguillan Companies Act, the Limited Liability Companies Act or under the laws of a jurisdiction outside Anguilla may be "continued" as IBCs. In the case of a foreign company, it may continue as an IBC notwithstanding any provision to the contrary in the laws of the jurisdiction under which it is incorporated.
- A foreign company may provisionally continue as an IBC conditional upon instructions for continuation being given to the Registrar by a nominated third party.
- An IBC may change its domicile to another jurisdiction or may continue under the Anguilla Companies Act.
- An IBC may fully indemnify directors, officers and liquidators from corporate funds.
- Reduction in authorized and paid-up capital requires the minimum of formalities compatible with the protection of creditors and minorities.
- An IBC may merge or consolidate with other IBCs, companies incorporated under the Anguilla Companies Act or the Limited Liability Companies Act and with foreign companies.
- An IBC may issue bearer shares.
- An IBC may purchase and own its shares.
- Shares may be issued with or without par value.
- The Act makes no distinction between private and public IBCs.
- Subject to the provisions in the Articles of Incorporation or By-Laws, the shareholders of an IBC may, by a simple majority, amend the Articles of Incorporation, change the name, go into voluntary liquidation, etc. The power to amend the Articles of Incorporation may be given to the directors.
- Where a governmental authority in any jurisdiction outside Anguilla, expropriates or imposes confiscatory taxes upon the shares or other interests in an IBC, the IBC or any person holding shares or other interests may apply to the High Court for an order that the

IBC disregard such action and continue to treat as shareholders or interest holders those persons whose shares or interests were subject to the action by the foreign governmental authority.

- There are provisions within the Act covering the rights of minority shareholders.
- An IBC may rescind voluntary winding up proceedings after the commencement thereof.
- An IBC may apply to a Judge in chambers, without the necessity of joining any other party, for a declaration on any question of interpretation of the Act or of its Articles of Incorporation or By-Laws.
- An IBC does not have to file annual returns.
- Subject to its Articles of Incorporation, an IBC may create a charge over its property and register the charge with the Registrar of Companies. Generally, registered charges have priority over unregistered charges and subsequent registered charges on the property.

3. Formation

An Anguilla IBC is formed by filing Articles of Incorporation with the Registrar of Companies. If satisfied that the requirements of the Act in respect of incorporation have been complied with, the Registrar shall, upon receipt of such Articles, issue a Certificate of Incorporation. The Certificate of Incorporation is conclusive proof of the incorporation of the company named in the Certificate.

3.1 Articles of Incorporation

The Articles of Incorporation must be in an approved form and must contain the following 7 items of mandatory information:

3.1.1 Name

- (i) The proposed name of the corporation. This can be in any language. One of the following words, phrases or abbreviations shall form the last part of the name of every IBC:
 - (a) “Limited” or the abbreviation “Ltd.”;
 - (b) “Corporation” or the abbreviation “Corp.”;
 - (c) “Incorporated” or the abbreviation “Inc.”;
 - (d) “Sendirian Berhad” or the abbreviation “Sdn Bhd”;
 - (e) “Société à Responsabilité Limitée” or the abbreviation “SARL”;
 - (f) “Société Anonyme” or the abbreviation “S.A.”

- (g) “Sociedad Anónima” or the abbreviation “S.A.”
- (h) “Besloten Vennootschap” or the abbreviation “B.V.”;
- (i) “Gesellschaft mit beschränkter Haftung” or the abbreviation “GmbH”;
- (j) “Naamloze Vennootschap” or the abbreviation “N.V.”;

In addition, the legislation provides that one or more words, or an abbreviation thereof, approved by the Registrar which, in his opinion, denote the existence of a body corporate with limited liability in a jurisdiction other than Anguilla may be used in place of the word or words or abbreviations set out above.

- (ii) The name of an IBC cannot:
 - (a) suggest or imply the patronage of Her Majesty or any member of the Royal Family or any connection with Her Majesty’s Government or any department thereof in the United Kingdom or elsewhere;
 - (b) suggest or imply a connection with a political party or a leader of a political party;
 - (c) suggest or imply a connection with a university or a professional association recognized by the laws of Anguilla unless written consent to such use is obtained; or
 - (d) be a name that is prohibited under any regulations made to facilitate the better administration of the Act.
- (iii) A name intended for future adoption may be reserved for 120 days.

3.1.2 First Registered Office Address

This must be an address in Anguilla and must be provided by a person who holds a relevant licence¹. Harneys Corporate Services (Anguilla) Limited (a fully licensed affiliate of Harney Westwood & Riegels) will provide this.

3.1.3 First Registered Agent’s Name and Address

The Registered Agent must be a person who holds a relevant licence¹. Harneys Corporate Services (Anguilla) Limited will provide this.

¹ Under the Company Management or the Offshore Banks and Trust Companies Acts

3.1.4 Share Capital

A statement as to whether the company is authorized to issue par value, no par value or a combination of both types of share must be included. The aggregate par value of all shares and the par value of each share must be given.

3.1.5 Classes, Maximum Number and Designation of Powers of Shares

- (i) A statement must be included of the classes and any maximum number of shares that the company is authorised to issue;
- (ii) If there are to be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class must be set out; and
- (iii) If a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of and the rights, privileges, restrictions and conditions attaching to the shares of each series must be included.

3.1.6 Restrictions on Transfer of Shares

If the right to transfer shares is to be restricted, a statement to this effect, and the nature of the restrictions must be included in the Articles of Incorporation. A notification to this effect must also be given on each share certificate issued in respect of such shares.

3.1.7 Additional Provisions

It is possible to set out in the Articles of Incorporation any provisions permitted by the Act or by law to be set out in the By-Laws of the company, but these will then become part of the public record.

In addition to the above, we would draw your attention to the following:

3.1.8 Objects or Purpose

- (i) An IBC does not need to have any form of objects clause as, pursuant to the Act (and subject to any limitations in the Act or any other law), an IBC has the power, irrespective of corporate benefit, to carry on or undertake any business or activity, do any act, or enter into any transaction. If required, any restrictions on the business that the company may carry on can be set out in the Articles of Incorporation.
- (ii) To qualify for registration as an IBC, however, a company **may not**:
 - (a) carry on business with persons resident in Anguilla;
 - (b) carry on a banking or trust business within the meaning of the Trust Companies and Offshore Banking Act, 2000;

- (c) carry on business as an insurance or a reinsurance company, insurance agent, insurance broker, or insurance manager;
 - (d) carry on company management business within the meaning of the Company Management Act, 2000;
 - (e) own or hold an interest, whether legal or beneficial, in real property situate in Anguilla, (other than property referred to at paragraph 3.1.8(iii)(e) below).
- (iii) For the purposes of item 3.1.8 (ii)(e) above an IBC shall be deemed to own or hold an interest in real property situate in Anguilla if it owns or holds, legally or beneficially, securities in an Anguilla company or in any other body corporate;
- (a) that owns or holds an interest, legal or beneficial, in real property situate in Anguilla; or
 - (b) that owns or holds, legally or beneficially, securities in an Anguilla company or in any other body corporate that owns or holds an interest, legal or beneficial, in real property situate in Anguilla
- (iv) For the purposes of item 3.1.8(ii)(a) above, an IBC shall not be treated as carrying on business with persons resident in Anguilla by reason only of the fact that;
- (a) it makes or maintains deposits with, or borrows money from, a bank which has a licence to carry on banking business granted under the Banking Ordinance, 1991 or a bank which has an offshore banking licence of any Class granted under the Trust Companies and Offshore Banking Act, 2000;
 - (b) it makes or maintains professional contact with solicitors, barristers, accountants, bookkeepers, trust companies, administration companies, investment advisers or other similar persons carrying on business within Anguilla;
 - (c) it prepares or maintains books and records within Anguilla;
 - (d) it holds, within Anguilla, meetings of its directors or shareholders;
 - (e) it holds property for use as an office from which to communicate with shareholders or where books and records of the company are prepared or maintained;

- (f) it holds shares, debt obligations or other securities in another international business company or company incorporated under the Companies Act;
- (g) shares, debt obligations or other securities in the company are owned by any person resident in Anguilla or by any international business company or company incorporated under the Companies Act; or
- (h) it owns a vessel or vessels registered in Anguilla in accordance with the Merchant Shipping Act.

3.1.9 Currency of Issued Shares

Shares may be issued in one or more foreign currencies.

3.1.10 Directors

A minimum of one is required. Directors may be corporations or individuals. Harneys Corporate Services (Anguilla) Limited can provide directors in suitable cases. Directors' meetings can be held anywhere in the world and can be conducted by telephone. Annual meetings are not required.

3.1.11 Registered and Bearer Shares

A statement indicating whether the shares are to be designated as either registered or bearer shares and the number of each to be issued should be given, or an express grant of authority to the directors to fix the same by resolution must be included in the Articles of Incorporation. A statement must be included in the Articles of Incorporation indicating any particular restrictions on the transferability of registered shares, usually this is subject to the prior or subsequent approval of the shareholders or directors.

3.1.12 Exchange of Shares

Registered shares and bearer shares may be exchanged for each other.

3.1.13 Notice to Holders of Bearer Shares

A statement as to the manner in which notice to shareholders is to be given to the holders of bearer shares may be included in the Articles of Incorporation, if applicable.

3.1.14 Custody of Bearer Shares

Where a International Business Company incorporated in Anguilla on or after 23 November 2006² issues a bearer share or disposes of a treasury share that is a bearer share it shall deliver the share to a custodian who has agreed to hold same. An IBC incorporated or continued in Anguilla before this date is required to deposit its bearer shares, or convert its bearer shares to, or exchange its bearer shares for, registered shares, on or before 31 December 2010³.

Custodian in relation to any bearer share, means a person who-

- (i) holds a licence issued under the Trust Companies and Offshore Banking Act that has not been suspended;
- (ii) holds a licence issued under the Company Management Act that has not been suspended
- (iii) is a foreign regulated person who has agreed with the registered agent of the relevant international business company to comply with the provisions of the Custody of Bearer Shares Regulations R.R.A I20-3 relating to custodians; or
- (iv) has, on an application made by a licensee under the Trust Companies and Offshore Banking Act or the Company Management Act, obtained written approval from the Anguilla Financial Services Commission to act as a custodian and has agreed with the registered agent of the relevant international business company to comply with the provisions of the Custody of Bearer Shares Regulations R.R.A I20-3;

and who has under its direct control facilities for the safekeeping in custody of bearer shares which are satisfactory to the Anguilla Financial Services Commission.

3.2 By-Laws

The By-Laws of an IBC contain the regulations for the company. These are not registered and do not form part of the public record. The shareholders or the directors are responsible for making the By-Laws of an IBC. Regulations made pursuant to the Act contain a form of By-Laws which may be suitably adapted or modified.

3.3 Tax Exemption

The Act specifically provides for a blanket tax exemption and an exemption from registration of documents for IBCs not doing business in Anguilla which exemption extends to stamp duty (other than in respect of transfers of property situate in Anguilla) and to the registration of documents under the Registration and Records Act.

² Pursuant to the Custody of Bearer Shares Regulations,2006 (R.A. 14/2006) (revoked) bearer shares issued on or after 30 June 2006 were required to be deposited with a Custodian.

³ Custody of Bearer Shares Regulations R.R.A. I20-3.

3.4 ACORN

Anguilla's Commercial On-line Registration Network system, (**ACORN**) was introduced in 1998. ACORN is an on-line electronic Companies Registry system which allows a user to do electronically all of the things that required physical filings with the Anguilla Companies Registry. Working through the Internet, it allows licensed company managers and trust companies in Anguilla, together with their approved overseas agents, to incorporate IBC's (as well as Companies Act Companies, Limited Liability Companies and Limited Partnerships) electronically. Users of the system can also transact other registry activities (and submit other documents) electronically. Using ACORN, IBCs can be incorporated instantly from anywhere in the world 24 hours a day, 365 days a year.

3.5 Timing

Using ACORN, Articles of Incorporation can be prepared and filed and a Certificate of Incorporation issued by the Registrar of Companies directly online. For paper incorporations not using ACORN, Articles of Incorporation can be prepared and filed within one to two working days.

3.6 Good Standing Certificate

These are available and can be obtained for an additional fee.

3.7 Shelf Corporations

Previously incorporated "shelf" corporations are available.

If you would like further information on the subject matter of this Guide please contact Kissock Laing at kissock.laing@harneys.com or your usual contact at Harneys. Alternatively, you can visit our website at www.harneys.com.

This Guide is general in scope and is not intended to be comprehensive. It is not a substitute for legal advice.

January 2008

Anguilla IBC – Fee Schedule

Incorporation Fees

➤ Professional Fee

Standard Incorporation (includes maintenance for calendar year)

Professional client US\$ 500

Non-professional/first time client US\$ 850

Additional Fees:

Standard Registered Office and Registered Agent for 12 months (apportioned at \$30 per month)⁴ US\$ 360

Organisational Minutes (optional but recommended) US\$ 100

Corporate Seal US\$ 52

Courier US\$ 60

Additional Certified Copies (Government Fees) US\$ 25

Certificate of Good Standing (Government Fees) US\$ 50

➤ Government Registration Fee

All shares are par value and authorised capital is \$50,000 or less US\$ 250

All shares are par value and authorised capital exceeds \$50,000

using ACORN US\$ 250

non-ACORN US\$ 1,015

Some or all shares have no par value and authorised capital is \$50,000 or less US\$ 250

All shares have no par value and there is no authorised capital US\$ 250

Continuation of company into Anguilla via ACORN US\$ 100

⁴ Discounts on Registered Office/Agent fees can be negotiated based on volume of incorporations

Annual Maintenance Fees for Subsequent Years

➤ Professional Fees

Registered Office and Registered Agent	US\$ 360
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➤ Government Fees

All shares are par value <u>and</u> authorised capital is \$50,000 or less	US\$ 200
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All shares are par value <u>and</u> authorised capital exceeds \$50,000	US\$ 200
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Some or all shares have no par value <u>and</u> authorised capital is \$50,000 or less	US\$ 200
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All shares have no par value <u>and</u> there is no authorised capital	US\$ 200
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Additional Services

Upon request and subject to our approval:

A corporate director (Westlaw (Anguilla) Limited) can be provided

Acceptance fee	US\$ 1,500
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Per annum fee thereafter	US\$ 1,500
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An individual director can be provided

Acceptance fee	US\$ 1,000
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Per annum fee thereafter	US\$ 1,000
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An individual or corporate director for Fund Companies

Acceptance fee	US\$ 2,000
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Per annum fee thereafter	US\$ 2,000
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A nominee shareholder can be provided

Acceptance fee	US\$ 250
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Per annum fee thereafter	US\$ 250
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Other Government and professional fees may be obtained on request

Anguilla IBC – Incorporation Questionnaire

1. **NAME OF COMPANY** - Please list three names in order of preference

(a)

(b)

(c)

2. **AMOUNT AND CURRENCY OF AUTHORIZED CAPITAL**

(The usual authorized share capital is US\$50,000 divided into 50,000 shares of US\$1.00 each)

3. **TYPE OF SHARES REQUIRED** - check one or both as the Articles of Incorporation allow the company to issue both registered and bearer shares as well as par value and no par value shares

Registered Bearer Both

Par value No par value Both

4. **STATE ANY DESIRED RESTRICTION(S) ON TRANSFERABILITY OF REGISTERED SHARES**

5. **AMENDMENTS** - State who can amend Articles of Incorporation

Shareholders only Shareholders and Directors Shareholders or Directors

6. **ANY OTHER REQUIREMENT(S)**

Anguilla IBC – Post-Incorporation Questionnaire

1. NAME AND ADDRESS OF SHAREHOLDER(S)

2. NUMBER AND TYPE OF SHARES TO BE ISSUED

(Shares may be issued in Registered or Bearer Form)

3. CORPORATE SEAL

Yes No (Please note that an IBC must have a Seal)

4. DIRECTOR(S)

OFFICER(S) AND TITLE(S)

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In the event that you are looking for increased confidentiality, or wish to preserve the offshore nature of your company, we can provide the services of an Anguilla director (see Fee Schedule). Please indicate whether you require this service:

No Go to question 5

Yes A member of our Fiduciary Services Department will contact you

- NOTE:** (a) There are no Residency or Citizenship requirements for IBCs
(b) Directors and Officers can be individuals or corporations
(c) An IBC is not required to appoint Officers

5. BILLING ADDRESS FOR ANNUAL MAINTENANCE (if different from instructing party)

(Please include contact name and telephone/facsimile numbers)

6. PLEASE INDICATE IF YOU ARE AN INDIVIDUAL INSTRUCTING THIS FIRM FOR THE FIRST TIME

- No Go to question 7
- Yes Please complete the First Time Individual Client Questionnaire contained in Appendix C

7. FIDUCIARY SERVICES

Will you require the provision of any of the following services: signatories on bank account; custodianship of documents; corporate trusteeships (see Fee Schedule)

- No Go to question 8
- Yes A member of our Fiduciary Services Department will contact you

8. OTHER REQUIREMENT(S)

9. METHOD OF PAYMENT

- Cheque enclosed Yes No
- Wire Transfer Yes No

Please refer to the payment instructions on the next page.

Payment by wire transfer

Funds can be remitted by wire transfer to:

Main Bank: Wachovia Bank, New York
Swift: PNBPUS3NNYC
ABA (routing #) 026005092

Receiving Bank: FirstCaribbean International Bank
P. O. Box 140, The Valley, Anguilla
Account # 2000192005487

Swift Code: FCIBAI

Beneficiary: **HARNEYS CORPORATE SERVICES (ANGUILLA) LIMITED**
Account No. 1405000

NOTE: To ensure proper credit of wire transfer funds please include the preferred name of the Company to be incorporated and “**Incorporation Fees**” in the wire transfer instructions. Also please advise Kimberly Fleming by fax on 264 498 5001 or e-mail at kimberly.fleming@harneys.com of the amount and date of the transfer made to ensure proper credit.

Payment by cheque

Payment can be made by cheque or bank draft in favour of Harneys Corporate Services Limited drawn on a U.S. mainland bank. Please mail payment to:

Attn: Kimberly Fleming
Harneys Corporate Services (Anguilla) Limited
Harlaw Chambers
P.O. Box 1026
The Valley
Anguilla

First Time Individual Client Questionnaire
Anguilla IBC

Important Notice: This information is required in order to comply with the due diligence requirements in Anguilla. All information will be held confidentially at our offices. Please do not hesitate to contact us if you have any questions.

Full Name of Beneficial Owner *(please complete a separate form for each proposed owner):*

Current Permanent Residential Address including Postal Code:

Date and Place of Birth:

Nationality:

Telephone/Fax:

E Mail Address:

Occupation:

Employer:

Correspondence Address (if different from above):

Notes: If Beneficial Owner(s) has had this address for a period of less than six months, please provide details of previous address

Client Signature

Date

Please have each beneficial owner of shares in the Company provide the following:

- a) Certified copies of the information pages of a valid passport;
- b) Copies of a utility or other bill, bank statement or credit/debit card statement addressed to the beneficial owner(s) at the mailing address given above.
- c) Two independent professional written references for the beneficial owner(s). One of the references must be from the beneficial owner(s)' bankers and the other from their professional services providers (e.g. lawyers or accountants). References must be either an original, or a facsimile with the original to follow by express mail or courier. Both references must contain the following information:-
 - (i) exactly how long the referee has had a professional relationship with the beneficial owner(s); and

Note: If the referee has had a professional relationship with the beneficial owner(s) for a period of less than two years, we reserve the right to request an additional further reference from the beneficial owner(s)' previous bankers or accountants

- (ii) that from personal knowledge or enquiries made, the beneficial owner(s) is a suitable person for us to deal with.

KINDLY RETURN COMPLETED FORMS AND DOCUMENTS TO:

ATTN: KIMBERLY FLEMING

**HARNEYS CORPORATE SERVICES (ANGUILLA) LIMITED
HARLAW CHAMBERS
P O BOX 1026
THE VALLEY
ANGUILLA**

Tel: (264) 498 5000

Fax: (264) 498 5001

E-mail: kimberly.fleming@harneys.com * Anguilla@harneys.com