

INTERNATIONAL TRUST LAWS AND ANALYSIS

Company Laws, Wealth Management,
& Tax Planning Strategies

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William H. Byrnes and Robert J. Munro

of Texas A&M University School of Law



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FOREWORD

ACKNOWLEDGEMENTS

Primary Authors

Professor William H. Byrnes, an Associate Dean of Texas A&M University School of Law, is one of the leading authors in the professional markets, authoring and co-authoring over 20 books and treatises that have sold in excess of 120,000 copies in print and online, with over 2,000 online database subscribers. He is the primary co-author of the Kluwer 10-volume compendium *International Trust Laws and Analysis, Company Laws, Wealth Management & Tax Planning Strategies*, as well as the U.S. contributor for the Kluwer International Tax Blog. At Texas A&M University School of Law, William Byrnes has established an online wealth management graduate program, having pioneered online legal education in 1995. William Byrnes held a senior position of international tax for Coopers & Lybrand and has been commissioned by a number of governments for fiscal and education policy. He may be contacted at williambyrnes@gmail.com.

Dr. Robert J. Munro is the author of 35 published books including co-author of the Kluwer 10-volume compendium *International Trust Laws and Analysis, Company Laws, Wealth Management & Tax Planning Strategies*. He is an adjunct professor of Texas A&M University School of Law's risk management program. Dr. Munro retired after a distinguished career as a Law Librarian of the University of Florida College of Law, wherein he served as the Co-Director of the Center for International Financial Crimes Studies. He continues as a Senior Research Fellow and Director of Research for North America of CIDOEC at Jesus College, Cambridge University, England. Dr. Munro has addressed audiences at Cambridge University, the University of Florida, the University of London, the CIA and the U.S. State Department and created, organized and chaired over twenty conferences in Miami, Aruba, Curacao, the Bahamas, Washington, D.C., New York City, Cambridge, England and San Francisco. He may be contacted at wwrlm1320@hotmail.com.

Editorial Team

Joshua Wahl is the managing student editor for Wolters Kluwer's *International Trust and Company Laws and Analysis*. Joshua earned an undergraduate degree in marketing, a Master of Business Administration degree, and five years of business experience, before transitioning to law school. He is a creative problem solver and enjoys writing. Joshua will graduate from Texas A&M School of Law in Spring of 2018. He can be contacted at josh9245@gmail.com.

John Robinson is the lead student editor on a forthcoming publication on private equity investing, and an assistant editor for publications on international corporate law. John is a second year law student at Texas A&M School of Law, and has previously worked as an analyst and management consultant. John graduated from the University of Texas at Austin in 2013.

Cameron Frysinger is the former managing student editor of the Kluwer 10-volume compendium *International Trust Laws and Analysis, Company Laws, Wealth Management & Tax Planning Strategies*, keeping abreast of the substantive changes in over 80 countries through research and interacting with foreign attorneys. Mr. Frysinger is engaged with the Texas A&M University Entrepreneurship Law Clinic advising small business clients cradle to grave, such as the process of corporate formation to business risk challenges, while pursuing his law degree with a business concentration. He is a graduate of the University of Oklahoma's Price College of Business where he received his Bachelor of Business Administration degree in Finance. Mr. Frysinger may be contacted at camfry@tamu.edu.

FOREWORD

Sofia Malysheva is the managing alumni editor of the Kluwer 10-volume compendium *International Trust Laws and Analysis, Company Laws, Wealth Management & Tax Planning Strategies*, keeping abreast of the substantive changes in over 80 countries through research and interacting with foreign attorneys. Ms. Malysheva is the Vice President of Business Development of Kettner Law, P.C. Ms. Malysheva is fluent in Russian, German and English, and works with U.S. and European clients with regard to corporate and strategic IP development, support of commercial activities, corporate finance, and tax planning. Professionally, Sofia worked for several years as an in-house counsel for a commercial firm in Russia advising on contract and labor law and supporting all its commercial activities. Moreover, she had a unique experience participating in a comparative legal research project on municipal bankruptcy and budgetary stability legislation in Russia, the United States and Europe (supported by the Russian Government). She has authored multiple publications for Russian and American law magazines. Academically, Sofia holds a Russian and an U.S. law degree as well as a German legal studies certificate. Ms. Malysheva may be contacted at malyshevasofia@gmail.com.

Contributing Experts

The authors would like to acknowledge with thanks the following individuals and organizations for their contributions and cooperation in maintaining updated analysis of the trust and company laws of this 10-volume set. These experts are available for additional information and/or consultation in their respective jurisdictions and topic areas.

AUSTRIA

Dr. Friedrich Schwank is the senior partner of the Law Office of Dr. F. Schwank, based in Vienna, Austria. He speaks German, English, French and Spanish, and worked in London and Paris before heading his own international practice since 1986. He specializes in corporate and private tax planning, private foundations, philanthropy, international succession and cross-border taxation. His firm provides legal services of the highest quality to family offices, private and corporate clients with international operations in the European Union, Russia, Central and Eastern Europe. Dr. Schwank may be contacted at schwank@schwank.com.

BANGLADESH

A.B.M. Nasirud Doulah is a partner at a leading Dhaka based law firm Doulah & Doulah (www.doulah.net). He completed his LLB from University of London and Master of Business Administration in Finance from IBA. His specialization is corporate law, taxation and infrastructure finance. Nasir is the contributor for Lexis' Foreign Tax and Trade Briefs, and update contributor of Money Laundering, Asset Forfeiture & Compliance. He may be contacted at ndoulah@doulah.com.

Amina Khatoon is a partner at a leading Dhaka based law firm Doulah & Doulah (www.doulah.net). She completed her LLB from University of Dhaka. Her specialization is corporate law, taxation and employment law. Amina is the contributor for Law Business Research's Project Finance and Practical Law Company's Doing business in Bangladesh. She may be contacted at akhatoon@doulah.com.

BARBADOS

Dr. Trevor A. Carmichael, Barrister-at-Law, Chancery Chambers, Chancery House, High Street, Bridgetown, Barbados. Tel.: (246) 431-0070; Fax: (246) 431-0076.

FOREWORD

BRAZIL

Ana Paula Terra Caldeira is a partner at Azevedo Sette and has over 15 years' experience advising clients in complex transactions involving commercial contracts, foreign investments, mergers and acquisitions, matters, especially in Mining sector. Ana is also a Professor of Corporate and M&A in the Program for Development of Shareholders – PDA of Fundação Dom Cabral. She may be contacted at anapaula@azevedosette.com.br.

Liliane Campos is an associate attorney at Azevedo Sette Advogados. She may be contacted at lcampos@azevedosette.com.br.

BULGARIA

Alexander Stefanov is a junior partner at Penkov, Markov & Partners, a leading law firm in Bulgaria. He co-heads the firm's Corporate and M&A department as well as the Insolvency & Litigation department. He graduated with his LLM from Sofia University and obtained a Diploma in English and EU Law from the University of Cambridge. He has now been practicing law for over ten years. He may be contacted at alexander.stefanov@penkov-markov.eu.

CAYMAN ISLANDS

Daryl O'Brien is based in Walkers' Cayman Islands office where he is an associate in the firm's Investment Funds Group. He advises on all aspects of funds work and has experience in a broad range of funds formations and funds transactions. Daryl advises asset managers, private equity houses and their onshore counsel in relation to Cayman Islands corporate and partnership structures. Daryl may be contacted at Daryl.OBrien@walkersglobal.com.

Michael Padarin is a partner in the Investment Funds group in Walkers' Cayman Islands office. He has over a decade's experience advising on all aspects of the formation, operation, governance and restructuring of investment funds, including hedge, private equity and venture capital funds. Michael frequently represents start-up, emerging growth and public companies as well as venture capital investors, in relation to private financings, joint ventures and acquisition transactions. He previously spent over four years with the firm's Investment Funds and Corporate team in Walkers' Hong Kong office, and has a wealth of experience dealing with inbound and outbound china deals. Michael may be contacted at MICHAEL.PADARIN@WALKERSGLOBAL.COM.

CHILE

Jaime Munro is a partner of Baker & Mckenzie Santiago. He holds a Master of Laws (LL.M degree) from the University of Chicago School of Law. Mr. Munro's practice covers major projects/project finance, merger & acquisitions, securities, capital markets, and real estate projects in the retail industry. Mr. Munro has assisted several clients with respect to all aspects of M&A Transactions (public and privates), international joint ventures, project financing, foreign investments, corporate and commercial arrangements, major infrastructure and power projects. He is fluent in Spanish and English. Mr. Munro may be contacted at Jaime.Munro@bakermckenzie.com.

Cristóbal Larrain is an associate of Baker & Mckenzie Santiago, and Assistant Professor of civil law with Pontificia Universidad Católica de Chile. He focuses his practice mainly on corporate matters, mergers and acquisitions, capital markets, private equity and banking and finance, advising Chilean and foreign clients from a variety of industries. He is fluent in Spanish and English. Mr. Larrain may be contacted at crisobal.larrain@bakermckenzie.com.

FOREWORD

CHINA

Mark Schaub is an international partner and registered foreign lawyer for King & Wood Mallesons. He may be contacted at schaub@cn.kwm.com.

Timothy Lamb is the Managing Director of the Sovereign Group, China and may be contacted at tlamb@sovereigngroup.com.

CUBA

Yosbel A. Ibarra, Esq., is a shareholder at Greenberg Traurig LLP, where he serves as Co-Chair of the firm's Latin American and Iberian practice, Co-Managing Shareholder of the firm's Miami office, and a member of the steering committee for the firm's Energy & Infrastructure practice. He may be contacted at ibarray@gtlaw.com /+1 (305) 579 0706.

Osvaldo Miranda is a foreign law clerk with Greenberg Traurig LLP, where he practices on matters related to investment in Latin America, including Cuba. He practiced law in Cuba, where he represented foreign investors and served as a judge in one of Cuba's commercial courts. He may be contacted at mirandao@gtlaw.com / +1 (305) 579 0599.

CYPRUS

David D.S. Stokes is a consultant for Andreas Neocleous & Co LLC, one of the largest firms in south-east Europe and the Middle East. He has written several publications concerning the laws and financial regulation of Cyprus. He may be contacted at david.stokes@neocleous.com.

DOMINICA

Aretha Frances, Assistant Manager, International Business Unit, Ministry of Finance, Industry and Planning, Government Headquarters, Kennedy Avenue, Roseau, Commonwealth of Dominica, West Indies; Tel.: (767) 448-2401; Fax: (769) 448-0406.

ECUADOR

Agustín Acosta Cárdenas is partner at Paz Horowitz Abogados in Quito, Ecuador. He is the author of numerous publications on international corporate law, and holds an L.L.M. from NYU. He can be reached at aacosta@pazhorowitz.com. Also contributing to the chapter are junior associates Isabel Samaniego and Esteban Vivero.

ETHIOPIA

Fikadu Demmisie is the founder and senior partner at Fikadu Asfaw & Associates in Addis Ababa, Ethiopia. He holds an L.L.M and an L.L.B. from Addis Ababa University. His firm practices the following areas of law: corporate and business, intellectual property, immigration, tax, mergers and acquisitions, labor and employment, insurance, infrastructure and commodities, mining and energy, competition, extra contractual liability/tort litigation and dispute resolution, property and real estate matters, inheritance and family law, criminal cases, non-profit and association (NGO/CSO), legal due diligence. He can be reached at fikadu@ethiopianlaw.com.

FINLAND

Mikko Heinonen is the Managing Partner of the Hannes Snellman Attorneys Ltd Helsinki Office. Mr. Heinonen's practice focuses on public and private M&A, equity issues and general securities regulation. He also provides advice regarding governance matters to corporations and their boards, as well as industrial and technology companies in their acquisitions, joint ventures, financing and licensing transactions. Mr. Heinonen is entrusted with various non-executive board memberships and is

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acting as the secretary for boards of directors in various public and private companies. He holds the LL.M. from Harvard Law School and from the University of Turku, Finland. He may be contacted at mikko.heinonen@hannessnellman.com and his firm's website can be viewed at www.hannessnellman.com.

FRANCE

Laura Tanganelli is an Associate Attorney at The Ghilezan Law Firm, a litigation firm based in Los Angeles. She specializes in business litigation and employment law. Ms. Tanganelli is admitted to practice law before all courts in the State of California, as well as the United States District Courts for the Central and Northern Districts of California. Ms. Tanganelli is a French native. She received her LL.M from the Thomas Jefferson School of Law, USA. She also holds a LL.B from the University of Nice, France, and a LL.M in International and European Law from the University of Westminster, U.K. Ms. Tanganelli serves as a pro-bono attorney for the Legal Aid Society of San Diego and as a committee member of the Human Trafficking Task Force, Communications subcommittee. She is also a member of the San Diego and Los Angeles County Bar Associations, as well as the Lawyers Club of San Diego. Ms. Tanganelli can be contacted at laura@ghilezanlaw.com.

GERMANY

Thomas Graedler is an attorney-at-law with honert + partner mbB, Munich (Germany) and assistant professor with Steinbeis-University Berlin. He advises corporations and partnerships, as well as their shareholders and partners, on all corporate and tax law matters, and counsels companies and financial investors on M&A transactions. He may be contacted by E-mail t.graedler@honert.de or phone Tel.: + 49 89 388 381 0.

GHANA

Theophilus Tawiah is the Managing Partner at NobisFields Attorneys at Law & Tax Advisors in Achimota, Ghana. His areas of practice include banking and finance, corporate and commercial law, energy, employment, corporate governance, mergers and acquisitions, capital markets, tax and litigation. He has provided legal and tax services to a number of multinational and local companies doing business in Ghana. He has a wide experience assisting clients in in financial services, energy, mining & utilities, consumer and industrial products and telecommunications sectors. He holds an L.L.M. from Cardiff University in Wales, and an L.L.B. from the University of Leicester. He can be reached at theophilus.tawiah@nobisfields.com.

GIBRALTAR

Kyra Romano-Scott is a director of Sovereign Trust (Gibraltar) Limited, the Gibraltar office of Sovereign Group, the international corporate service provider. Kyra qualified as a Solicitor in the UK in 2000 and before moving to Gibraltar in 2006, she was in private practice in the UK specializing in matrimonial and children issues. She is a member of STEP and on the Board of the Association of Trust and Company Managers. Kyra can be contacted at kromano-scott@sovereigngroup.com and telephone +350 200 76173.

GREECE

Christos Vardikos is an Attorney of Vardikos & Vardikos. He can be contacted at info@vardikos.com and Tel.: +30 2103611505.

Alexandra Botsiou is an Attorney of Vardikos & Vardikos. Shee can be contacted at info@vardikos.com and Tel.: +30 6937161618.

Charles Edward Andrew Lincoln, IV, is the chapter update editor for Wolters Kluwer's International Trust and Company Laws & Analysis, Greece company law chapter. In 2016, Charles Lincoln received his J.D. from Texas A&M University School

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of Law after completing his A.L.B. from Harvard University, cum laude, in 2013. Charles Lincoln will begin the LL.M. Program in International Tax Law at the University of Amsterdam in September. He may be reached at charlesedwardandrewlincolniv@post.harvard.edu.

GUERNSEY

Stephen Hare is Managing Director of Sovereign Trust (Channel Islands) Limited, the Guernsey office of The Sovereign Group, the international, privately-owned corporate service provider. Prior to opening the office in 2010, he was a director of the Group's Gibraltar operation. Stephen qualified as a Solicitor in the UK in 1998 and before moving to Gibraltar in 2004, he was a partner with CooperBurnett, a Tunbridge Wells boutique law firm, specialising in private client matters, including estate planning and trusts. He may be contacted at share@sovereigngroup.com.

HONG KONG

Ernest Marais is in-house legal counsel for Sovereign Trust (Hong Kong) Limited and assist in overseeing the legal operations of the Sovereign Group in both Asia and Africa. He has been admitted as an attorney in the High Court of South Africa and has specialized in the field of Tax and Trust law. Some of his written opinions on tax law has been internationally published in well recognized academic journals such as the African Tax Journal. He graduated from the University of Stellenbosch, South Africa with a B.Com LLB degree and later completed a postgraduate diploma in tax (cum laude) with the International Institute of Tax and Finance in association with Thomas Jefferson School of Law, San Diego. He may be contacted on emarais@sovereigngroup.com or +85253626145. Contribution includes the company law chapter for Hong Kong.

HUNGARY

Ágnes Bejó is one of the leading corporate and commercial lawyers of the firm. She joined the firm in 2013. Earlier, she gained more than 12-year professional experience at a "Magic Circle" international law firm. Ágnes advises on commercial law issues as well as on commercial transactions, including mergers and acquisitions and private equity transactions. She also has deep knowledge and wide experience in employment law advisory work. She may be contacted at abejo@jalsovszky.com.

Gábor Kerekes is a trainee lawyer at the M&A and real estate groups of the firm. Gábor has been working for the firm since 2012. Before joining the firm, still during his university studies, he gained over 4-year experience in the field of corporate and commercial law by assisting the work of an international-oriented law firm. He assists the corporate and property law practices of the firm. Occasionally he is also involved in commercial law and intellectual property rights advisory. He may be contacted at gkerekes@jalsovszky.com.

INDIA

Rahul Sibal is a student of the premier Nalsar University of Law. He is the editor of the Nalsar Journal of Corporate Affairs and Corporate Crimes and a founder member of the Centre for Corporate and Tax Law, Nalsar. He can be reached at sibbalrahul@gmail.com.

IRELAND

John Alden, Solicitor, A & L Goodbody, 1 Earlsfort Centre, Hatch Street, Dublin 2, Ireland. Tel.: 353-1-661-3311; Fax: 353-1-661-3278.

FOREWORD

ISLE OF MAN

Tess Bates is a solicitor and the Money Laundering Reporting Officer for Sovereign Trust (Isle of Man) Limited, the Isle of Man office of Sovereign Group. She may be contacted at tbates@sovereigngroup.com and telephone +44 1624 699 800.

ISRAEL

Dr. Alon Kaplan, LL.M. (Jerusalem), PhD (Zurich), TEP, was admitted to the Israel Bar in 1970, and also was appointed notary in 1989. He is a member of the Israel, New York and Frankfurt Bar Associations. He practices law in Tel Aviv specializing in Trusts and Estates. He is General Editor of *Trusts in Prime Jurisdictions* (4th edition, April 2016), and author of *Trusts and Estate Planning in Israel*, Juris Publishing (2016). He may be contacted at alon@alonkaplan-law.com.

Lyat Eyal, LL.B., TEP is a founding partner of Aronson, Ronkin-Noor, Eyal law firm, admitted in New York and Israel, managing the private client practice of the firm. Lyat is also a member of the New York state bar association trusts and estates and international section; tax specialist group; an academician of international academy of estate and trust law; and a fellow of ACTEC. Lyat publishes in leading professional journals and lectures widely in her areas of expertise. She may be contacted at lyat@are-legal.com.

Diana Apelboim Ladovsky, BA (accounting), LL.B., graduated in 2013 and was admitted to the Israel Bar in 2014. She worked as a legal intern at Alon Kaplan Law Firm, Tel Aviv, Israel, in the field of trust law, company's law, succession law, real property law. She practices law at Aronson, Ronkin-Noor, Eyal Law Firm specializing in trust, companies, estate planning, real property transactions and succession. She may be contacted at diana@are-legal.com.

Orna Ronkin-Noor is a partner at Aronson, Ronkin-Noor, Eyal Law Firm. Orna provides comprehensive legal advice in the areas of real estate, corporate, labor law, wills and probate, to high net worth private clients and families, Israelis and foreign residents. She also advises Israeli and foreign corporations on setting up operations in Israel and then ongoing legal advice on a wide variety of commercial matters including corporate, contracts, real estate and labor law. Orna is involved in the opening and management of bank accounts for clients including obtaining bank mortgages. She may be contacted at orna@are-legal.com.

ITALY

Giovanni Battista Bruno, LL.M. at Columbia Law School (Harlan Fiske Stone Scholar for superior academic achievements) and Ph.D. in Civil Law at the University of Rome La Sapienza, is a dual qualified attorney licensed to practice in the State of New York and in Italy. Mr. Bruno is an associate at Shearman & Sterling LLP, practicing in the areas of mergers and acquisitions, bankruptcy and reorganizations and arbitration. Giovanni has been an adjunct professor in Bankruptcy and is a teacher assistant in Civil Law at the University of Rome La Sapienza. Giovanni can be contacted at giovanni.bruno@shearman.com and his profile can be viewed at shearman.com.

KENYA

Wangui Kaniaru is a senior associate at Anjarwalla & Khanna, Kenya's largest law firm. Her practice focuses on corporate law. Wangui has advised acquiring firms and targets in various commercial transactions, including structuring joint ventures in multiple jurisdictions, asset purchase acquisitions, disposals of businesses, share purchase acquisitions which require due diligence investigations and group restructurings in regulated and unregulated industries. She has also advised on many telecommunications and data protection matters. She can be contacted at wk@africalegalnetwork.com.

FOREWORD

LIBERIA

Hilary Spilkin is an international tax attorney and alumna of the Thomas Jefferson School of Law Master of Laws program. As Managing Director of the Liberian Corporate Registry, Hilary oversees the development and administration of the non-resident domestic business registry, while also being responsible for reviewing and recommending changes and providing policy determinations on the Liberian Associations Law and other legal provisions affecting Liberia's non-resident domestic business entities. Hilary may be contacted at hspilkin@lisrc.com.

LIECHTENSTEIN

Helene Rebholz has been working in Liechtenstein as a trust practitioner since 2001 and as a lawyer (bar exam in Liechtenstein and Austria) since 2004. She is a partner of the law firm Anwaltskanzlei König Rebholz Zechberger and formerly a partner with Advokaturbüro Batliner & Gasser with a focus in her practice on financial markets, M&A, corporate law issues and litigation. Ms. Rebholz can be contacted at rebholz@akrz-law.com with further information on the law firm to be found at <http://www.akrz-law.com>

LUXEMBOURG

Sonia Bellamine is an Associate at Wildgen. She holds a Master degree in private Law and post-graduate diploma in Islamic finance. Sonia specialises in cross-border corporate transactions, international corporate restructuring, mergers and acquisitions and transactional business law and corporate finance. As member of Wildgen's Islamic Finance department, she has been involved in various projects relating to the setting up of Sharia compliant investment funds. She is also member of the editorial board of Jurisnews.

Daniel Boone is a partner in Wildgen's Corporate and Finance Department. With more than 15 years of legal practice, Daniel Boone is actively involved in both international M&A deals and major debt restructuring transactions in which he provides his sound corporate law, civil law and collaterals' law expertise. He has a large and international experience and in particular in the Asia-Pacific region. He is the author of numerous publications and lectured Private Law and Contract Law at Strasbourg and Metz Universities. He currently lectures Corporate Law at the University of Luxembourg.

MEXICO

Jorge Luna studied law and international business at the University of Burgos, Spain and international business at the Universidad Iberoamericana. He developed his practice at González H. y Asociados, and also at Díaz de Rivera and Mangino, SC, participating mainly in mergers and acquisitions. He has also participated as a partner at Nava and González Martí, SC. Today he is dedicated to corporate law, representing clients in securities matters, mergers and acquisitions, financing and banking, intellectual property and has participated in arbitration proceedings related matters. Do not hesitate to contact him at jluna@knp.com.mx phone: +52 (55) 5257-5419 or (444) 812-2424.

PAKISTAN

Zainab Adam is a family office advisor for her family's business interests in South Asia, MENA, and the United States. She holds two undergraduate accounting degrees (Pakistan and USA), a law degree (USA), and is currently pursuing an LL.M. (tax). She may be contacted at mintzainab@gmail.com.

POLAND

Tomasz Rysiak is a senior associate at the Warsaw office of Magnusson. He is responsible for corporate law matters. Mr. Rysiak can be contacted at tomasz.rysiak@magnussonlaw.com.

FOREWORD

PORTUGAL

Fernando Messias is a lawyer, PhD in Tourism, independent arbitrator and mediator (international commercial arbitration, litigation, mediation, transnational business disputes and other methods of dispute resolution), consultant in tourism and real estate (cruise shipping and international trade; leadership and hotel management; resort development; hotel operation projects; tourism projects; leadership and transnational strategic tourism management disputes), lawyer in commercial and investment litigation, intellectual property and business law. His offices are located in Portugal and he can be contacted at fm@fernandomessias.pt.

PUERTO RICO

Stolberg Law, LLC is a corporate law firm focused on providing solutions to clients in the areas of private equity, startup law and venture capital, mergers and acquisitions, product distribution and merchandising, art law, hospitality law, real estate and other transactional matters. Stolberg Law represents international clients expanding their businesses and operations to the United States and Puerto Rico, with a particular focus on Puerto Rico tax incentive certifications under Acts 20 and 22 of 2012. Juan Stolberg may be reached at jstolberg@stolberglaw.com.

SOUTH AFRICA

Daan-Ribbens, Ribbens Attorneys and Conveyors, Zuidervliet, Nuweland/Rondebosch, 7700 Republic of South Africa; Tel.: 021 698-9780/1/2; Fax: 021 686 9783.

SPAIN

Guillermo García Berdejo and Jorge Azagra Malo are attorneys admitted to practice in Spain. They earned their degrees on economics and law at Universitat Pompeu Fabra (Barcelona). Their practice focuses on civil and mercantile litigation. Guillermo and Jorge are currently associates at Uría Menéndez Abogados, S.L.P. and can be contacted at guillermo.garcia@uria.com and jorge.azagra@uria.com.

ST. LUCIA

Ellaine T. French, LL.B. B.V.C., L.E.C is an Attorney at law who is a member of the Bars of England and Wales, Saint Lucia, St. Kitts & Nevis, OECS Bar Association and the International Trade Mark Association. Ms. French practices presently in Saint Lucia and while having special experience in the areas of corporate and intellectual property matters, also practices in other civil areas. She can be contacted at ellainefrench@legalstlucia.com and her website can be viewed at www.legalstlucia.com.

SWITZERLAND

Nicolas Bonassi is an attorney-at-law in Switzerland. He is a partner of the business law firm SwissLegal in Zurich and mainly practices in the fields of commercial and contract law, mergers & acquisitions as well as banking and financial markets law. Before joining SwissLegal, Nicolas was a senior associate with Lenz & Staehelin, Switzerland's largest law firm. Nicolas is a graduate of the Law Faculty of the University of Berne (Master of Law, summa cum laude) and the University of San Diego School of Law (LL.M. with specialization in business and corporate law). Nicolas can be contacted at bonassi@swisslegal.ch.

UNITED ARAB EMIRATES

Chris Williams (Managing Partner, Dubai) - Being resident in the UAE since 2008, Chris uses his keen understanding of the region to guide his leadership of Bracewell's Dubai office, as well as his own active corporate practice. Chris has particular experience in advising on mergers and acquisitions, joint ventures, complex commercial contracts and corporate advisory work, as well as experience advising on labour and employment matters (contentious and non-contentious), and managing litigation disputes in the UAE.

FOREWORD

David Pang (Senior Associate, Dubai) - David focuses his practice on corporate transactions and commercial matters. He advises on cross-border M&A, private equity investments, share and/or asset acquisitions/disposals, JVs, LDD, commercial contracts, corporate restructuring and corporate governance. He has represented a range of clients, including private and listed companies, high net worth individuals and family groups, sovereign wealth funds, private equity funds, banking and financial institutions, energy and utilities majors in the Middle East, U.S. and Europe.

Suna Mirza (Associate, Dubai) – Suna’s practice focuses on corporate and commercial work throughout the Middle East and Europe with particular experience of advising on mergers and acquisitions, private equity and investment funds, and general company advisory work. Suna’s clients are drawn from numerous sectors, including private equity, retail and energy. She also has experience advising on the corporate law aspects of international energy projects, with a particular focus on the acquisition of independent power projects in the Middle East.

UNITED STATES

Charne van Biljon is Legal Counsel for Sovereign Trust (Hong Kong) Ltd, one of the largest independent trust companies in the world. Sovereign offers a range of high value advisory and support services to assist investors to enter or expand into foreign markets, and to establish and manage structures to meet their personal or business objectives. Ms van Biljon graduated from the University of Pretoria with a Bachelor Degree of Laws (with distinction). Prior to being admitted as an Attorney in the High Court of South Africa, Charne completed her articles of clerkship and practiced in the Insolvency, Business Rescue and Corporate Recovery Department of ensafrica, Africa’s largest law firm. She may be contacted at cvanbiljon@sovereigngroup.com. Charne’s contributions include updating the Company Law Analysis of Delaware.

Roger A. Stong is a director and shareholder of Crowe & Dunlevy, A Professional Corporation, Oklahoma City, Oklahoma. He may be reached at email roger.stong@crowedunlevy.com and telephone number (405) 239-6614. Roger’s contributions include creating the Company Law Analysis of Oklahoma.

Scott G. Morita is a member of the Honolulu, Hawaii, law firm of Schlack Ito, a limited liability law company, where he advises clients in the areas of business transactions and real estate. Mr. Morita is a graduate of the University of California, San Diego and the University of Hawaii at Manoa, William S. Richardson School of Law. He may be contacted at smorita@schlackito.com and (808) 532-6031. Scott’s contributions include creating the Company Law Analysis of Hawaii.

Anna Chaykina holds the position of the Associate in the Corporate and M&A division of Borenius Attorneys LTD, based in St. Petersburg, Russia. Anna advises clients on corporate and employment law matters and assists in M&A transactions, including acquisition and legal due diligence of companies and assets. Anna is a graduate of St. Petersburg State University Law School (Bachelor of Laws) and Washington University in St. Louis (LL.M. in U.S. Law). She may be contacted at anna.chaykina@borenius.com. Anna’s contributions include updating the Company Law Analysis of Nevada and of Wyoming.

Spencer W. Romney is a shareholder at the law firm of Parr Brown Gee & Loveless. His specializations include mergers, acquisitions, and divestitures; private equity fund formation; and general corporate law. Spencer has advised clients in transactions in a variety of industries in jurisdictions across the country. Spencer lives in Salt Lake City, Utah with his wife and daughter. He may be contacted at sromney@parrbrown.com and 801-532-7840.

FOREWORD

ALTERNATIVE RISK TRANSFER

Marion Frings holds a BSc (Hons)|Dipl.-Betriebsw (FH) degree in business administration and economics with main focus on insurance management & financial services. Her studies specialized in particular on risk management and corporate governance. During her career she held positions with varying seniority, always working in an international environment. Marion is currently based in Gibraltar and serves as Executive Director at Sovereign Fund Management (SFM) where she has been instrumental in obtaining the AIFMD license under the EU Directive. She is primarily focused on sourcing new business opportunities for funds that come into scope. Ms. Frings also continues to work as Investment Consultant at Sovereign Asset Management (SAM) servicing UHNWI/HNWI, Trust or Family Office clients globally by providing tailored custody solutions. Prior to these positions, Ms. Frings was a Senior Account Manager in the institutional business division of the asset management firm AllianceBernstein (AB) with headquarters in New York. Her clients included state, sovereign and corporate pension funds, banks as well as insurance companies of the CEMEA region. Ms. Frings initially joined AB as Business Development Associate in 2005, specialized in pitches for RFP tenders on behalf of the firm and its investment platform. Pre-ceeding the period with AllianceBernstein, where Marion was based in London, she worked in the audit department of KPMG in Frankfurt. She may be contacted at mfrings@sovereigngroup.com.

MISCELLANEOUS

Dr. Shu-Chien Chen is a researcher at the Amsterdam Centre for Tax Law of the University of Amsterdam. She is admitted to the Taiwanese Bar. She lectures at the University of Amsterdam on EU tax law and international tax law. She received her LL.M. degrees in European Law and European Business Law and she completed her Ph.D. in the Netherlands. She may be contacted at s.chen@uva.nl or 93a21063@nru.edu.tw. Shu-chien's contribution includes Company Law Analysis updates for Australia, British Virgin Islands, Ireland, and New Zealand.

Valeriya H Zamulko has served as a Chief Specialist and a Counsel of the Deputy Head of the Russian Federation Tax Service. She completed her LL.M. at Voronezh State University, and is now pursuing her PhD and a BA of legal studies at Drexel University. Valeriya's contributions include the Company Law Analysis updates for Pennsylvania and for Czech Republic.

International trusts have been a popular mechanism in estate planning since the early Roman days when emperors hoped to retain plundered treasures for their descendants. These trusts were later refined by the Crusaders when they left their homes for foreign ventures. However, it is only since the 1980s trusts have leaped to the forefront as a prime avenue in offshore financial planning.

International Business Companies (IBCs), Limited Liability Companies (LLCs), Foundations and Offshore Life Insurance are also vehicles used in offshore financial planning.

For Americans, use of international trusts or entities may comply with Regulation S of the 1933 Securities Act allowing access to worldwide investments. Some investments are closed to Americans because the foreign funds do not want to register under the 1933 Securities Act and the Regulation S exemption can be met if the acquirer, such as a trustee of an international trust, is classified as a non-US person.

International trusts are commonly referred to as offshore trusts, offshore asset protection trusts or foreign asset protection trusts.

FOREWORD

FUNDS INVESTED IN FOREIGN TRUSTS

Trillions of offshore funds are placed in tax havens of the world (or offshore financial centers, as they are widely known) and a substantial portion of these funds are moved abroad for safekeeping through foreign trusts, foreign entities and offshore life insurance. Multinationals, professionals, individuals, and entrepreneurs in every corner of the globe have learned to rely on these tax haven financial centers more than ever to secure their profits, savings, property, and other assets.

As of the mid 1980s, the so-called asset protection trust (APT) has emerged as one of the most dependable vehicles in the expanding world of cross — border trusts. Of the trillions of assets now converted into international trusts, approximately is represented by transfers to APTs. The remaining balance of offshore investment funds, consists of deposits in private financial institutions, real and personal property, captive insurance companies, ships and marine installations, aircraft and other leasing equipment, and various miscellaneous funds.

Leading Offshore Investment Centers. Some of the leading financial centers include the Cayman Islands, Switzerland, Luxembourg, Liechtenstein, Hong Kong, Singapore, the British Virgin Islands, The Bahamas, United Arab Emirates (particularly Dubai and Abu Dhabi) and the Channel Islands.

Offshore Outlook. Considerable attention was focused on a new element that may support an expanding offshore industry as a result of a Boston College research project based on a modest assumption covering transfer of wealth to younger generations. The latest study released estimates that \$41 trillion will be transferred between generations by 2050 based on a 2% annual inflationary indexation and \$136 trillion assuming a 4% annual real growth rate as adjusted for inflation. The revelation of the vast size of present wealth to be transferred to younger generations in the next 50 years opens up a huge market for the offshore industry heretofore overlooked by many persons providing off-shore services to clients. Based on statistics showing that roughly 10% of world wealth is placed in offshore accounts, a minimum of \$4.1 trillion over a 50-year period, or \$80 billion annually, would be added to offshore coffers.

However the high cost-of-living in certain of shore jurisdictions, especially in Bermuda, Hong Kong and Singapore, is behind the slowdown in the pace of globalization and will affect expansion of the financial services industry in the future, according to a survey of Pricewaterhouse Coopers. This study also found that 50% of the companies reported that that between 10% and 20% of their current activity was a result of outsourcing. Financial service entities provide offshore employment as a cost savings strategy or as a way to benefit from greater operational efficiency and increased shareholder value.

Asset protection trusts and other types of trust entities will continue to be the big drawing card in the 2000s. One may expect various new versions of offshore trusts to emerge in addition to the frequently used purpose, spendthrift, charitable, protective, special, unit, bare, blind, honorary, inter vivos, grantor, simple, testamentary, and support or accumulation trusts.

Government's View of APT. The incredible rush of overseas companies and individuals to establish trusts and other operations in the British Virgin Islands continues despite the decision of the government not to adopt an APT law. This sudden reversal in direction primarily is a result of (1) the government's decision not to disturb the course of the highly successful International Business Company Law and (2) the conflict between the business community and government officials on the time limit before a creditor's action to bring suit is no longer permissible. After several drafts of a proposed new trust act in which the business community sought

FOREWORD

a Belize-type trust of “instant immunity” versus a government preferred “Cayman Islands six — year period” for a creditor to bring suit, a three-year agreement was reached, and then the bill was finally phased out altogether.

MAJOR CONSIDERATIONS WHEN CREATING FOREIGN TRUSTS

Surveys show that nine out of ten major legal and accounting firms in the key cities of the world (particularly in the United States and the United Kingdom) frequently are reluctant to recommend a specific nation among the tax havens that have adopted foreign trust legislation unless they have the actual laws as approved by the respective governments in their possession. With this in mind, *International Trust Laws and Analysis* is designed to fulfill these needs.

Analysis and Comparative Country Charts. To facilitate the selection of the offshore center most suitable for the potential settlor, we analyze 29 of the leading issues for each of the countries that should be considered by practitioners before a decision can be made. In an effort to further ease any anxiety a lawyer may confront, a comparison chart at the beginning of the text analyzes each of the 29 vital elements required to make a recommendation with confidence.

Statute of Limitations. The strategy of a settlor or his or her professional adviser may be to select a politically stable offshore center with a reasonably short statute of limitations period for protection against a creditor’s suit.

The Cook Islands, the sophisticated Polynesian island country in the South Pacific, might be the adviser’s first choice with a two-year statute. In contrast, the Central American republic of Belize (known as British Honduras prior to independence in 1969) because of its desire to become the world’s most advantageous APT center, offers instant immunity from court action by creditors. Still the adviser may have reason to choose the Cook Islands with its two-year time limit. Even though liberal asset protection features of Belize’s 1992 Trusts Act have made this Central

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COMPARATIVE COUNTRY CHARTS

This section summarizes on two facing pages the 29 vital elements that form the basic rules for creating and maintaining an international trust in each of 62 countries, 11 US states, and the Hague Convention.

You can use these uniformly arranged charts to find and compare essential information about each country's trust laws quickly and easily. For example, to determine whether Bermuda provides asset trust protection, simply page to the Bermuda chart on pages BER-a and BER-b. Asset protection can be found at ¶23 on page BER-b in the middle column of the fourth row. Similarly, asset protection is denoted as ¶23 and is located in the same position on all the other country charts.

Each of these 29 vital elements are described in more detail under each country's Analysis section, which precedes that country's trust statutes.

These comparative charts cover the jurisdictions listed below.

Andorra
Anguilla
Antigua and Barbuda
Aruba
Australia
Austria
Bahamas
Bangladesh
Barbados
Belize
Bermuda
Brazil
British Virgin Islands
Bulgaria
Cayman Islands
China
Cook Islands
Costa Rica
Cuba
Cyprus
Dominica
Ethiopia
Germany
Gibraltar
Grenada
Guernsey
Hague Convention on Trusts
(includes Netherlands, Portugal, Italy, France, Belgium, Spain, Luxembourg, etc.)
Hong Kong
Hungary
Ireland
Isle of Man
Israel
Jersey
Kenya
Labuan
Liberia
Liechtenstein

COMPARATIVE COUNTRY CHARTS

Macau
Madeira
Malaysia
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Montserrat
Nauru
Netherlands Antilles
Nevis
New Zealand
Niue
Northern Ireland (See United Kingdom)
Panama
Poland
Prince Edward Island
Puerto Rico
Russian Federation
St. Kitts
St. Lucia
St. Vincent and the Grenadines
Samoa
Scotland (See United Kingdom)
Seychelles
Singapore
South Africa
Switzerland
Turkey
Turks and Caicos
United Kingdom
(includes Northern Ireland and Scotland)
United Arab Emirates
United States
Alaska
California
Colorado
Delaware
Hawaii
Montana
Nevada
New York
Oklahoma
Rhode Island
Tennessee
Utah
Vanuatu

COMPARATIVE COUNTRY CHARTS

UTAH

This chapter is up-to-date as of 1 September 2017

Company Types ¶1	Licensing of ¶2 Corporate Agents	Company Name ¶3
A list of business structures available for companies in Utah includes (but not limited to): Domestic Corporation; Limited Partnership; Limited Liability Company; Limited Liability Partnership; and General Partnership.	Every Utah corporation is required to have and maintain a registered agent in Utah.	In general, a Utah corporation's name must identify the entity as a corporation by including the word "Corporation," "Corp.," "Incorporated," "Inc.," "Company," or "Co."
Registration Fees ¶4	Registered Office ¶5	Registration ¶6
Incorporation Fee for a domestic Utah corporation is USD 70.	Every Utah corporation must maintain a registered address in Utah. <i>Registered Agent</i> Every corporation must maintain a registered agent in Utah.	A Utah corporation is formed by filing executed articles of incorporation with the Utah Division of Corporations and Commercial Code. <i>Conversion</i> A foreign corporation may become a Utah corporation by filing articles of domestication with the Utah Division of Corporations and Commercial Code. A domestic limited liability company may convert to a Utah corporation by filing articles of incorporation with the Utah Division of Corporations and Commercial Code. <i>Foreign Company Registration</i> Foreign corporations must register with the Utah Division of Corporations and Commercial Code prior to conducting business in the State of Utah.
Reporting and ¶7 Recordkeeping	Formative ¶8 Documents	Powers ¶9
<i>Annual Filing</i> Every Utah corporation must file an annual report and pay its annual franchise taxes with the Utah Division of Corporations and Commercial Code.	Every Utah corporation must have articles of incorporation.	Generally, a Utah corporation has the power to do all things necessary or convenient to carry out its permitted and lawful purposes, activities, and affairs.

COMPARATIVE COUNTRY CHARTS

UTAH

Shareholders ¶10	Single Member ¶11 Companies	Share Capital ¶12
<p>Every Utah corporation must have at least one shareholder.</p> <p><i>Registration and Reporting</i></p> <p>Utah corporations are not required to submit a list of shareholders to the Utah Division of Corporations and Commercial Code.</p> <p><i>Residency and Nationality</i></p> <p>There are no residency or nationality requirements for shareholders of a Utah corporation.</p>	<p>Single shareholder corporations are permitted in Utah.</p>	<p><i>Minimum Authorized Capital</i></p> <p>There is no minimum authorized capital requirement.</p> <p><i>Bearer Shares</i></p> <p>Bearer shares are permitted</p> <p><i>Par/No-Par Value</i></p> <p>A Utah corporation may issue classes of shares with and also shares without a par value.</p> <p><i>Redeemable Shares</i></p> <p>A Utah corporation may issue redeemable shares and may redeem those shares at its option.</p>
Directors and Officers ¶13	Meetings ¶14	Resolutions ¶15
<p>A Utah corporation must have at least three (3) directors; provided, that if after shares are issued the Utah corporation has fewer than three (3) shareholders, the Utah corporation may have directors equal to or greater than the number of shareholders.</p> <p><i>Appointment</i></p> <p>Directors are appointed by vote of the shareholders.</p> <p>Unless otherwise provided in the Utah corporation's certificate or bylaws, vacancies on the board may be filled by vote of the board of directors or the shareholders.</p> <p><i>Removal/Resignation</i></p> <p>A director may be removed from office by shareholders holding a majority of shares with voting power on the election of directors.</p> <p><i>Duties and Powers</i></p> <p>Directors have the duty to discharge his or her duties:</p> <ul style="list-style-type: none"> – in good faith; – with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and – in a manner that the director reasonably believes to be in the best interests of the Utah corporation. <p><i>Officers.</i></p> <p>Officers may be appointed as required or permitted by a Utah corporation's bylaws or by its board of directors.</p>	<p><i>Organization Meeting</i></p> <p>After filing the articles of incorporation, the incorporator (or initial directors, if named in the articles of incorporation) must hold an organizational meeting to complete the organization of a Utah corporation by appointing officers, adopting bylaws, electing directors and officers, and carrying on other business</p> <p><i>Annual Meeting</i></p> <p>An annual meeting must be held at a time state in or fixed in accordance with the bylaws.</p> <p><i>Special Meetings</i></p> <p>Special meetings may be called by the directors or shareholders holding at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting.</p>	<p>Shareholder resolutions are governed by the Utah corporation's Bylaws.</p>

COMPARATIVE COUNTRY CHARTS

UTAH

Directors and Officers ¶13	Meetings ¶14	Resolutions ¶15
<p><i>Liability and Indemnification of Directors and Officers</i></p> <p>A Utah corporation may limit the liability of its directors other than liability arising from a financial benefit received by a director to which he or she is not entitled; an intentional infliction of harm on the Utah corporation or its shareholders; a distribution by the Utah corporation that exceeds the amount allowed by the Utah Revised Business Corporation Act; and an intentional violation of criminal law.</p> <p>A Utah corporation may indemnify and advance expenses to its directors and officers.</p>	<p>Shareholder meetings may be held in or out of the State of Utah at the place stated in or fixed in accordance with the Bylaws.</p> <p>Unless otherwise provide in the Bylaws, any or all of the shareholders may participate in annual or special meetings by any means of communication by which all persons participating in the meeting can hear each other during the meeting.</p> <p>Written notice of shareholder meetings must be given to shareholders at least 10, but no more than 60, days prior to the meeting. Shareholders may waive the notice requirement either before or after the time for notice.</p> <p>Except as otherwise provided in the URCBA, by applicable law, or in the Articles, each outstanding share, regardless of class, is entitled to one vote, and each fractional share is entitled to a corresponding fractional vote, on each matter voted on at a shareholders' meeting.</p>	
General Accounting ¶16 Practices	Mergers & Acquisitions ¶17	Liquidation/Dissolution ¶18
<p><i>Books of Account</i></p> <p>While a Utah corporation must maintain appropriate accounting records, the accounts need not be filed with the Utah Division of Corporations and Commercial Code.</p> <p><i>Audit</i></p> <p>There is no audit requirement for Utah corporations.</p>	<p>A Utah corporation may merge into another domestic or foreign entity. A subsidiary Utah corporation may be merged with its parent, and vice versa.</p>	<p>A Utah corporation may be dissolved voluntarily or involuntarily.</p>
Governing Law ¶19	Forms ¶20	
<p>Utah Code, Title 16, Chapter 10a, enacted by L. 277, 1992 General Session (Utah Revised Business Corporation Act).</p>	<p>Forms are available at. <https://corporations.utah.gov/business/dp.html>.</p>	

COMPARATIVE COUNTRY CHARTS

UTAH

This chapter is up-to-date as of 1 September 2017

UTAH

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ANALYSIS OF THE COMPANY LAWS

Utah corporate filings and governance are administered by the Utah Divisions of Corporations and Commercial Code (the “Division”).

¶1] Company Types. A list of business structures available for companies in Utah includes (but not limited to):

- Domestic Corporation;
- Limited Partnership;
- Limited Liability Company;
- Limited Liability Partnership;
- General Partnership.

This guide focuses on corporations with a share capital and does not address other forms of companies.

¶2] Licensing of Corporate Agents. Every Utah corporation is required to designate a registered agent in the State of Utah in its articles of incorporation (its “Articles”).¹ The Utah corporation’s Articles shall state:

- (1) the name of the Utah corporation’s commercial registered agent; or
- (2) the title of an office or other position with the corporation, and the address of the business office of that person, to whom service of process should be sent.²

¶3] Company Name. The name of a Utah corporation must contain the following words or abbreviations (or similar words in a different language):

- Corporation or corp.;
- Incorporated or Inc.; or
- Company or co.³

The name of a Utah corporation may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by the Utah Revised Business Corporation Act (the “URBCA”). Additionally, the name of a Utah corporation may not contain any of the following words without consent from the US Olympic Committee:

- Olympic;
- Olympiad; or
- Citius Altius Fortius.⁴

Without the written consent of the Utah Division of Consumer Protection issued under Section 13-34-114 of the Utah Code, the name of a Utah corporation may not contain the following words:

- University;
- College;
- Institute; or
- Institution.⁵

* Chapter by Spencer W. Romney, shareholder at Parr Brown Gee & Loveless. He may be contacted at sromney@parrbrown.com and 801-532-7840.

¹Utah Code § 16-10a-202(1).

²Utah Code § 16-17-203(1).

³Utah Code § 16-10a-401(1)(a).

⁴Utah Code § 16-10a-401(1)(c).

⁵Utah Code § 16-10a-401(1)(d).

¶4] Fees.

Service Type	Fee
Corporation Filings/Services	
Articles of Incorporation	USD 70.00
Reinstatement	USD 70.00
Voluntary Dissolution or Withdrawal	Free
Merger/Amendment/Restated Articles	USD 37.00
Conversion	USD 37.00
Domestication/Transfer	USD 37.00
Statement of Correction	USD 12.00
Registration Information Change Form	USD 15.00
Annual Renewal	USD 15.00
Late Annual Renewal	USD 25.00
DBA Registration/Renewal	USD 22.00
DBA Change Form	USD 15.00
DBA Cancellation/Transfers	Free
Business Name Reservation	USD 22.00
Foreign Name Registration	USD 22.00
Certified Items	
Certified Copies	USD 12.00 + USD 0.30 per page
Certification of Status	USD 12.00
Certification of Good Standing/Existence	USD 12.00
Long Form Good Standing	USD 20.00
Letter of Nonexistence	USD 12.00

The Division charges an expedited processing fee of USD 75.00 (per filing/transaction). Additionally, the Division charges a fee for telecopier (FAX) transmittals of USD 5.00 for the first page and USD 1.00 for each additional page.

¶5] Registered Office and Resident Agent. Every Utah corporation is required to designate a registered agent in the State of Utah in its Articles.⁶ Every Utah corporation must also designate an address in the State of Utah for its registered agent. The Utah corporation's Articles shall state:

- (1) the name of the Utah corporation's commercial registered agent; or
- (2) the title of an office or other position with the corporation, and the address of the business office of that person, to whom service of process should be sent.⁷

⁶Utah Code § 16-10a-202(1).

⁷Utah Code § 16-17-203(1).

[¶6] Registration. A Utah corporation is formed by filing executed Articles with the Division.⁸ The corporation's existence begins on the date the Articles are filed.⁹

Conversion. A foreign corporation may become a Utah corporation by filing articles of domestication with the Division.¹⁰ Domestic limited liability companies may convert to a Utah corporation by filing articles of incorporation with the Division and complying with the applicable provisions of the Utah Revised Uniform Limited Liability Company Act.¹¹

Foreign Corporation Registration. Foreign corporations must register with the Division prior to conducting business in the State of Utah. Foreign corporations are not "transacting business" if they are only carrying on one or more of the following activities:

- maintaining, defending, or settling a legal proceeding;
- holding meetings;
- maintaining bank accounts;
- selling through independent contractors;
- soliciting orders (if the orders require acceptance outside of the state before they become contracts);
- creating as borrower or lender or acquiring indebtedness, mortgages, or security interests in real or personal property;
- securing or collecting debts on their own behalf, or enforcing mortgages or security interests;
- owning real or personal property;
- conducting isolated transactions;
- transacting business in interstate commerce; and
- other activities at the discretion of the Division.¹²

Time Requirement. The Division offers expedited services for an additional fee.

Confidentiality. Utah does not require disclosure of shareholder or director names. Only registered agents and principal officers are a matter of public record. Utah has an information sharing agreement with the Internal Revenue Service and certain other federal, governmental agencies.

[¶7] Reporting and Recordkeeping.

A Utah corporation is required to keep the following records at its principal office:

- its Articles currently in effect;
- its bylaws currently in effect;
- the minutes of all shareholders' meetings, and records of all actions taken by shareholders without a meeting, for the past three years;
- all written communications within the past three years to shareholders as a group;
- a list of the names and business addresses of its current officers and directors;
- its most recent annual report; and
- all financial statements prepared for period ending during the previous three years that meet the requirements of Utah Code Section 16-10a-1605.¹³

Any shareholder or director of a Utah corporation is entitled to inspect and copy, during regular business hours at the Utah corporation's principal office, any records of the Utah corporation described in Utah Code Section 16-10a-1601(5) if he or she gives the Utah corporation at least five business days' advance written notice.¹⁴

⁸Utah Code § 16-10a-203(1).

⁹Utah Code § 16-10a-203(1).

¹⁰Utah Code § 16-10a-1533(1).

¹¹Utah Code § 16-10a-1501(1).

¹²Utah Code § 16-10a-1501(2).

¹³Utah Code § 16-10a-1601(5).

¹⁴Utah Code § 16-10a-1602(1).

Annual Reports. All Utah corporations must file an annual report with the Division. The annual report may be filed electronically or by mail. The annual report is filed on a form provided by the Division and includes the following information:

- the Utah corporation’s name and its assumed name, if any;
- the Utah corporation’s jurisdiction of incorporation;
- the registered agent information for the Utah corporation;
- the street address of the Utah corporation’s principal address; and
- the name of the Utah corporation’s principal officers.

The annual report must be filed annually with the Division, no later than the second calendar month following the calendar month in which the Division mails the report form to a Utah corporation. The filing fee for the annual report is USD 15.00, with an additional USD 10.00 for late filings.

Franchise Returns. All Utah corporations must file an annual franchise tax return. Franchise tax returns may be filed electronically or by mail. All Utah corporations must pay the annual franchise tax, with the exception of S-corporations or corporations that have received an exemption from the Utah state tax commission. The franchise tax rate is computed at 5% of a Utah corporation’s net income, with a minimum payment of USD 100.00. The franchise tax returns are due by April 15 of each calendar year.

¶8 Formative Documents. *Articles of Incorporation.* Every Utah corporation must have Articles. The Articles must include the following information:¹⁵

- the purpose or purposes for which the Utah corporation is incorporated;
- a corporate name for the Utah corporation that satisfies Utah Code Section 16-10a-401;
- the number of shares that the Utah corporation is authorized to issue;
- the information required by Utah Code Section 16-10a-601 regarding each class of stock that the Utah corporation is authorized to issue;
- the registered agent information required under Utah Code Section 16-17-203(1); and
- the name and address of each incorporator.

Additionally, the Articles may include the following information so long as it is not inconsistent with law:¹⁶

- the names and addresses of the persons who will serve as the initial directors of the Utah corporation;
- provisions for the management of the business and affairs of the Utah corporation;
- provisions defining, limiting, and regulating the powers of the Utah corporation, its board of directors and its shareholders;
- a par value for authorized shares or classes of shares;
- the imposition of personal liability of shareholders for debts of the Utah corporation to a specified extent on specified conditions; and
- any provision that Utah law requires or permits to be included in the bylaws of a Utah corporation.¹⁷

The Articles must be signed by the incorporator(s).

Amendment to Articles. To amend its Articles, a Utah corporation must file articles of amendment. Articles of amendment must contain the following information:¹⁸

¹⁵Utah Code § 16-10a-202(1).

¹⁶Utah Code § 16-10a-202(2).

¹⁷Utah Code § 16-10a-202(2).

¹⁸Utah Code § 16-10a-1006.

- the name of the Utah corporation;
- the text of each amendment adopted;
- if an amendment provides for an exchange, classification, or cancellation of issued shares, provisions for implementing the amendment (if not contained in the amendment itself);
- the date of each amendment’s adoption; and
- if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and a statement that shareholder action was not required.

If an amendment was approved by the shareholders of a Utah corporation, the articles of amendment must also include the following information:¹⁹

- the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes by each voting group indisputably represented at the meeting; and
- either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number of votes cast for the amendment by each voting group entitled to vote separately on the amendment was sufficient for approval by that voting group.

Bylaws. The bylaws (“Bylaws”) of a Utah corporation may contain any provision for managing the business and affairs of the Utah corporation that is consistent with its Articles. In the event of a conflict between the Articles and the Bylaws, the Articles will control.²⁰

Initial Bylaws may be adopted by any of the following:²¹

- the board of directors;
- the incorporators, if no directors have been elected; or
- the shareholders, if neither incorporators nor directors have adopted initial Bylaws.

Amendment to Bylaws. The Bylaws may be amended at any time by:

- the board of directors, unless the Articles, the Bylaws, or Utah law reserves this power to the shareholders; or
- the shareholders, even if the board of directors can amend the Bylaws.²²

[¶9] Powers. Unless its Articles provide otherwise, and except as restricted by the Utah Constitution, every Utah corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its permitted and lawful purposes, activities, and affairs, including without limitation the following powers:²³

- (1) to sue and be sued, complain and defend in the Utah corporation’s corporate name;
- (2) to have a corporate seal, which may be altered at will, and to use the corporate seal, or a facsimile of the corporate seal, by impressing or affixing the corporate seal or in any other manner reproducing the corporate seal;
- (3) to make and amend Bylaws, not inconsistent with the Utah corporation’s Articles or with Utah law, for managing the business and regulating the affairs of the Utah corporation;

¹⁹Utah Code § 16-10a-1006.

²⁰Utah Code § 16-10a-206(2).

²¹Utah Code § 16-10a-206(1).

²²Utah Code § 16-10a-1020.

²³Utah Code § 16-10a-302.

- (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of the Utah corporation's property and assets;
- (6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) to make contracts and guarantees, incur liabilities, borrow money, issue the Utah corporation's notes, bonds, and other obligations that may or may not be convertible into or include the option to purchase other securities of the Utah corporation, and secure any of the Utah corporation's obligations by mortgage or pledge of any of the Utah corporation's property, assets, franchises, or income;
- (8) to lend money, invest and reinvest the corporation's funds, and receive and hold real and personal property as security for repayment;
- (9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) to conduct the Utah corporation's business and activities, locate offices, and exercise the powers granted by this chapter within or without this state;
- (11) to elect directors and appoint officers, employees, and agents of the Utah corporation, define their duties, fix their compensation, and lend them money and credit;
- (12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of the Utah corporation's current or former directors, officers, employees, and agents;
- (13) to operate, and to make donations, for the public welfare or for charitable, religious, scientific, or educational purposes;
- (14) to transact any lawful business that will aid governmental policy;
- (15) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the Utah corporation; and
- (16) to establish rules governing the conduct of the business and affairs of the Utah corporation in the event of an emergency.

A Utah corporation's power to act may be challenged by:²⁴

- in a proceeding by a shareholder against the Utah corporation to enjoin the act;
- in a proceeding by the Utah corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the Utah corporation; or
- in a proceeding by the Utah attorney general under Utah Code Section 16-10a-1430.

Except as set forth above, the validity of a Utah corporation to act may not be challenged on the grounds that the Utah corporation lacks or lacked the power to act.²⁵

¶10] Shareholders/Members.

Registration and Reporting. Utah corporations are not required to submit a list of shareholders to the Division.

Residency and Nationality. There are no residency or nationality requirements for shareholders.

²⁴Utah Code § 16-10a-303(2).

²⁵Utah Code § 16-10a-303(1).

Nominees. A Utah corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the Utah corporation as the shareholder.²⁶

¶111 Single Member Companies. Single shareholder Utah corporations are permitted.

¶112 Share Capital. Share Certificates. Shares may, but need not be, represented by certificates.²⁷ Unless the Articles or Bylaws provide otherwise, the board of directors of a Utah corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates.²⁸ Each share certificate must state on its face:²⁹

- the name of the issuing Utah corporation and that it is organized under the laws of the State of Utah;
- the name of the person to whom the certificate is issued; and
- the number and class of shares and the designation of the shares, if any, the certificate represents.

Each share certificate:³⁰

- shall be signed by two officers designated in the Bylaws or by the board of directors;
- may bear the corporate seal or its facsimile; and
- may contain any other information as the Utah corporation considers necessary or appropriate.

Shares. Unless the Articles or Utah law provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.³¹ The Articles may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided by Utah law.³²

If the issuing Utah corporation is authorized to issue different classes of shares or different series within a class, the designations, preferences, limitations, and relative rights applicable to each class, the variations in preferences, limitations, and relative rights determined for each series, and the authority of the board of directors to determine variations for any existing or future class or series, shall be summarized on the front or back of each share certificate.³³ Alternatively, each certificate may state conspicuously on its front or back that the Utah corporation will furnish the shareholder this information on request in writing and without charge.³⁴

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

Scrip/Bearer Shares. A Utah corporation may issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.³⁵ Each certificate representing scrip shall be conspicuously labeled “scrip” and shall contain the information required to be included on a share certificate by Utah Code Subsections 16-10a-625(2) and (3) and Section 16-10a-627.³⁶ The holder of scrip is not entitled to exercise the rights of a shareholder, including the right

²⁶Utah Code § 16-10a-723.

²⁷Utah Code § 16-10a-625(1).

²⁸Utah Code § 16-10a-626.

²⁹Utah Code § 16-10a-625(2).

³⁰Utah Code § 16-10a-625(4).

³¹Utah Code § 16-10a-725(1).

³²Utah Code § 16-10a-727(1).

³³Utah Code § 16-10a-625(3).

³⁴Utah Code § 16-10a-625(3).

³⁵Utah Code § 16-10a-604.

³⁶Utah Code § 16-10a-604(2).

to vote, to receive dividends, and to participate in the assets of the Utah corporation upon liquidation, unless the scrip provides otherwise.³⁷

Fractional Shares. A Utah corporation may (i) issue fractions of a share or pay in money the value of fractions of share, and (ii) arrange for disposition of fractional shares by the shareholders.³⁸ The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the Utah corporation upon liquidation.³⁹

Stock Options. Subject to any provisions in its Articles, a Utah corporation may create and issue, whether or not in connection with the issuance and sale of any shares or other securities of the Utah corporation, rights or options for the purchase of shares or assets of the Utah corporation.⁴⁰ The board of directors shall determine the terms upon which the rights or options are issued, their form and content, and the consideration for which the shares are to be issued.⁴¹

Par Value. A Utah corporation may, but is not required, to designate a par value in its Articles.⁴²

Transfer of Shares. Utah permits restrictions on the transferability of shares. The Articles, the Bylaws, an agreement among shareholders, or an agreement between one or more shareholders and the Utah corporation may impose restrictions on the transfer or registration of transfer of shares of the Utah corporation.⁴³

A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by Utah Code Section 16-10a-627 and its existence is noted conspicuously on the front or back of the certificate, or if the restriction is contained in the information statement required by Utah Code Subsection 16-10a-626(2); unless so noted, a restriction is not enforceable against a person who does not have knowledge of the restriction.⁴⁴

Redeemable Shares. A Utah corporation may issue redeemable shares and may redeem those shares at its option.⁴⁵

Outstanding Shares. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.⁴⁶

Dividends/Distributions. A board of directors may authorize, and the Utah corporation may make, distributions to its shareholders subject to any restriction in its Articles and the following limitations: no distributions may be made if, after giving it effect:

- the Utah corporation would not be able to pay its debts as they become due in the usual course of business; or
- the Utah corporation's total assets would be less than the sum of its total liabilities plus, unless its Articles permit otherwise, the amount that would be needed, if the Utah corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.⁴⁷

³⁷Utah Code § 16-10a-604(3).

³⁸Utah Code § 16-10a-604(1).

³⁹Utah Code § 16-10a-604(3).

⁴⁰Utah Code § 16-10a-624(1).

⁴¹Utah Code § 16-10a-624(1).

⁴²Utah Code § 16-10a-202(2).

⁴³Utah Code § 16-10a-627(1).

⁴⁴Utah Code § 16-10a-627(2).

⁴⁵Utah Code § 16-10a-601(3).

⁴⁶Utah Code § 16-10a-603(1).

⁴⁷Utah Code § 16-10a-640.

¶13 Directors and Officers. A Utah corporation’s business and affairs is managed by its board of directors, unless otherwise set forth in an agreement of the shareholders.⁴⁸ A Utah corporation must have at least three (3) directors, subject to the following exceptions:⁴⁹

- Before any shares are issued, a Utah corporation’s board of directors may consist of one (1) or more individuals.
- After shares are issued and for as long as a Utah corporation has fewer than three (3) shareholders entitled to vote for the election of directors, its board of directors may consist of a number of individuals equal to or greater than the number of those shareholders.

The directors of a Utah corporation must be individuals.⁵⁰

Appointment. Directors are appointed by vote of the shareholders.⁵¹

Unless a Utah corporation’s Articles provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:⁵²

- the shareholders may fill the vacancy;
- the board of directors may fill the vacancy; or
- if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

Removal/Resignation. The shareholders of a Utah corporation may remove one or more directors with or without cause unless the Articles provide that directors may be removed only for cause.⁵³ If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.⁵⁴

If cumulative voting is in effect, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative voting is not in effect, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast against removal.⁵⁵

Duties and Powers. Every director of a Utah corporation owes certain duties to the Utah corporation, but those duties don’t necessarily correspond to traditional fiduciary duties. The drafters of the URBCA explicitly chose not to call the duties owed by directors to a Utah corporation “fiduciary duties” so as to avoid confusion with the obligations imposed on a fiduciary of a trust by trust law.⁵⁶

The URBCA requires that each director discharge his or her duties as a director:

- in good faith;
- with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and
- in a manner the director reasonably believes to be in the best interests of the Utah corporation.⁵⁷

⁴⁸Utah Code § 16-10a-801.

⁴⁹Utah Code § 16-10a-803(1).

⁵⁰Utah Code § 16-10a-803(1).

⁵¹Utah Code § 16-10a-803(3).

⁵²Utah Code § 16-10a-810(1).

⁵³Utah Code § 16-10a-808(1).

⁵⁴Utah Code § 16-10a-808(2).

⁵⁵Utah Code § 16-10a-808(3).

⁵⁶Comment to Utah Code § 16-10a-808(3).

⁵⁷Utah Code § 16-10a-840(1).

In discharging his or her duties a director can rely on information provided by:⁵⁸

- the employees or officers of the Utah corporation, or of any corporation of which at least fifty percent (50%) of the outstanding shares of stock entitling the holder of the shares to vote in the election of directors is owned directly or indirectly by the Utah corporation, if the director reasonably believes them to be reliable and competent;
- legal counsel, public accountants, or other persons as to matters the director or officer reasonably believes are within the person’s professional or expert competence; or
- a committee of the board of directors of which the director is not a member, provided (i) the committee is designated in accordance with the Articles or the Bylaws; (ii) the information is within the committee’s designated authority; (iii) the director reasonably believes the committee merits confidence; and (iv) the director is acting in good faith when relying on the committee.

A director will not be liable to the Utah corporation, its shareholders, or any conservator or receiver, or any assignee or successor-in-interest thereof, for any action taken, or any action not taken, as a director unless:⁵⁹

- the director has breached or failed to perform the duties set forth above; or
- the breach constitutes (i) gross negligence, (ii) wilful misconduct; or (iii) intentional infliction of harm on the Utah corporation or its shareholders.

Directors’ Meetings. Directors’ meetings may be held in or out of the State of Utah.⁶⁰ Participation in a directors’ meeting may take place by any means of communication by which all directors participating may hear each other during the meeting.⁶¹

Unless the Articles, Bylaws, or the URCBA provide otherwise, the directors may take action by unanimous written consent of the directors without a meeting.⁶²

Committees. Unless the Articles or the Bylaws provide otherwise, the board of directors may delegate its powers and duties to committees, each consisting of at least two members.⁶³ The sections of the URCBA that govern meetings, actions without meetings, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.⁶⁴

Officers. A Utah corporation shall have the officers designated in its Bylaws or by the board of directors in a manner not inconsistent with the Bylaws.⁶⁵ Any officer shall be a natural person. The same individual may simultaneously hold more than one office in a Utah corporation.⁶⁶

Liability of Directors. If so provided in the Articles and the Bylaws, a Utah corporation may eliminate or limit the liability of a director to a Utah corporation or to its shareholders for monetary damages for any action taken or failure to take any action as a director, except for:⁶⁷

- the amount of a financial benefit received by a director to which he or she is not entitled;
- an intentional infliction of harm on the Utah corporation or the shareholders;

⁵⁸Utah Code § 16-10a-840(2).

⁵⁹Utah Code § 16-10a-840(4).

⁶⁰Utah Code § 16-10a-820(1).

⁶¹Utah Code § 16-10a-820(2).

⁶²Utah Code § 16-10a-821(1).

⁶³Utah Code § 16-10a-825(1).

⁶⁴Utah Code § 16-10a-825(3).

⁶⁵Utah Code § 16-10a-830.

⁶⁶Utah Code § 16-10a-830(3).

⁶⁷Utah Code § 16-10a-841(1).

- a distribution by the Utah corporation that exceeds the allowable amount under the URCBA; or
- an intentional violation of criminal law.

Indemnification of Directors and Officers. Unless otherwise limited by the Articles or Bylaws, a Utah corporation shall indemnify a director or officer who was successful, on the merits or otherwise, in the defense of any claim, issue, or matter in the proceeding, to which he or she was a party because he or she is or was a director of the Utah corporation, against reasonable expenses incurred by him or her in connection with the successful proceeding or claim.⁶⁸

Additionally, a Utah corporation may indemnify an individual made party to a proceeding because he or she is or was a director against liability incurred in a proceeding if:⁶⁹

- his or her conduct was in good faith; and
- he or she reasonably believed that his or her conduct was in, or not opposed to, the Utah corporation's best interest; and
- in the case of any criminal proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful.

A Utah corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of the final disposition of the proceeding if:⁷⁰

- the director furnishes the Utah corporation a written affirmation of his or her good faith belief that he or she has met the applicable standard of conduct provided by Utah Code Section 16-10a-902;
- the director furnishes to the Utah corporation a written undertaking to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct; and
- a determination is made that the facts then known to those making the determination would not preclude indemnification under Utah Code Section 16-10a-904.

A Utah corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent, if not inconsistent with public policy, and if provided by the Articles, the Bylaws, general or specific action of its board of directors, or contract.⁷¹

A Utah corporation may purchase liability insurance on behalf of its directors, officers, employees and agents even where the Utah corporation is not permitted to indemnify those persons.⁷²

¶14 Meetings. Shareholder meetings may be held in or out of the State of Utah at the place stated in or fixed in accordance with the Bylaws.⁷³ Unless otherwise provide in the Bylaws, any or all of the shareholders may participate in annual or special meetings by any means of communication by which all persons participating

⁶⁸Utah Code § 16-10a-903.

⁶⁹Utah Code § 16-10a-902(1).

⁷⁰Utah Code § 16-10a-904(1).

⁷¹Utah Code § 16-10a-907(3).

⁷²Utah Code § 16-10a-908.

⁷³Utah Code § 16-10a-701.

in the meeting can hear each other during the meeting.⁷⁴ Written notice of shareholder meetings must be given to shareholders at least 10, but no more than 60, days prior to the meeting.⁷⁵ Shareholders may waive the notice requirement either before or after the time for notice.⁷⁶

Except as otherwise provided in the URCBA, by applicable law, or in the Articles, each outstanding share, regardless of class, is entitled to one vote, and each fractional share is entitled to a corresponding fractional vote, on each matter voted on at a shareholders' meeting.⁷⁷

A proxy appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment form.⁷⁸

In lieu of acting at a general or special meeting, and unless otherwise provided in the Articles, shareholders may take action by written consent of those shareholders holding outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted.⁷⁹

Organizational Meeting. After filing the Articles, the incorporator (or initial directors, if named in the Articles) must hold an organizational meeting to complete the organization of a Utah corporation by appointing officers, adopting Bylaws, electing directors and officers, and carrying on other business.⁸⁰

Annual Meeting. An annual meeting must be held at a time stated in or fixed in accordance with the Bylaws.⁸¹

Special Meetings. Special meetings may be called by the directors or shareholders holding at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting.⁸²

¶15 Resolutions. Shareholder resolutions are governed by the Bylaws.

¶16 General Accounting Practices. *Books of Account.* While a Utah corporation must maintain appropriate accounting records, the accounts need not be filed with the Division.

Audit. There is no audit requirement for Utah corporations.

¶17 Mergers & Acquisitions. A Utah corporation may merge into another domestic or foreign entity if:⁸³

- the board of directors of the Utah corporation adopts the merger and the Utah corporation's shareholders, if required by the URBCA, approve the plan of merger; and
- any other entity that plans to merge approves the plan of merger as provided by the statutes governing that entity.

⁷⁴Utah Code § 16-10a-708.

⁷⁵Utah Code § 16-10a-705(1).

⁷⁶Utah Code § 16-10a-706(1).

⁷⁷Utah Code § 16-10a-721(1).

⁷⁸Utah Code § 16-10a-722(3).

⁷⁹Utah Code § 16-10a-704.

⁸⁰Utah Code § 16-10a-205(1).

⁸¹Utah Code § 16-10a-701(1).

⁸²Utah Code § 16-10a-702(1).

⁸³Utah Code § 16-10a-1101(1).

A Utah corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may either merge the subsidiary into itself or merge itself into the subsidiary.⁸⁴

When a merger takes effect:⁸⁵

- every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- the title to all real estate and other property owned by each corporation party to the merger is transferred to and vested in the surviving corporation without reversion or impairment;
- the surviving corporation has all liabilities of each corporation party to the merger;
- the Articles of the surviving corporation are amended to the extent provided in the plan of merger; and
- the shares of each corporation party to the merger, which are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into money or other property, are converted, and the former holders of the shares are entitled only to the rights provided in the Articles or their dissenters' rights under the URBCA.

Shareholders dissenting from a merger have appraisal rights (the right to require the Utah corporation to purchase the dissenting shareholder's shares).⁸⁶

¶18] Liquidation/Dissolution. *Voluntary Dissolution.* If a Utah corporation has not yet issued shares, a majority of its directors, or if no directors have been elected or if elected directors are no longer serving, a majority of its incorporators may authorize the dissolution of the Utah corporation.⁸⁷ Otherwise, a Utah corporation may be voluntarily dissolved by adoption of a resolution by the directors to that effect (unless the directors determine that due to a conflict of interest or other special circumstance they cannot make a recommendation to the shareholders) and approval by affirmative vote of a majority of shareholders holding the Utah corporation's outstanding stock.⁸⁸ A dissolved Utah corporation will continue its existence for the purpose of winding up its affairs and disposing of its property.⁸⁹

Involuntary Dissolution. The Division may commence a proceeding for administrative dissolution if:⁹⁰

- the Utah corporation does not pay any taxes, fees, or other penalties imposed by the URBCA or other applicable state law when they are due;
- the Utah corporation does not deliver a corporate or annual report to the Division when it is due;

⁸⁴Utah Code § 16-10a-1104(1).

⁸⁵Utah Code § 16-10a-1106(1).

⁸⁶Utah Code § 16-10a-1302.

⁸⁷Utah Code § 16-10a-1401.

⁸⁸Utah Code § 16-10a-1402.

⁸⁹Utah Code § 16-10a-1405.

⁹⁰Utah Code § 16-10a-1420.

- the Utah corporation is without a registered agent in the State of Utah for thirty (30) days or more;
- the Utah corporation does not give notice to the Division within thirty (30) days that its registered agent has been changed or that its registered agent has resigned; or
- the Utah corporation’s period of duration stated in its Articles expires.

Additionally, a Utah corporation may be dissolved by a proceeding by the attorney general of the State of Utah, a proceeding by a shareholder, a proceeding by a creditor, or a proceeding by the Utah corporation itself, under certain circumstances.⁹¹

[¶19] Governing Law. Utah Code, Title 16, Chapter 10a, enacted by L. 277, 1992 General Session (Utah Revised Business Corporation Act).

[¶20] Forms. Forms are available at <<https://corporations.utah.gov/business/dp.html>>.

⁹¹Utah Code § 16-10a-1430.