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## **MEMORANDUM ON COMPANY FORMATION**

### **COMPANIES ACT, 1992**

#### **1. INFORMATION REQUIRED TO INCORPORATE**

##### **1.1 Proposed Name of the Company**

We suggest a minimum of three choices be submitted listed in order of preference, so that one may receive approval from the Bahamas Registrar General.

##### **1.2 Proposed Activities**

We require details of the proposed activities of the Company and specific confirmation whether the Company will be engaged in the business of (a) banking, (b) insurance, (c) fund management, (d) financing and leasing, (e) headquartering, (f) distribution and service centres, (g) shipping, (h) commercial use of intellectual property or (i) as a holding company engaged or where one or more of its subsidiaries is engaged in an activity listed in (a) – (h) (each a “**Relevant Activity**” and together the “**Relevant Activities**”).

All Bahamian incorporated companies must comply with the substance requirements prescribed by the *Commercial Entities (Substance Requirements) Act, 2018* (the “**Substance Act**”). If the Company will be wholly or partially owned by non-residents of The Bahamas and will be carrying on a Relevant Activity, its core income generating activities and management and control must be conducted from within The Bahamas; specifically, (i) an adequate number of meetings of the Board of Directors must be held in The Bahamas, (ii) a quorum of the Board of Directors must be physically present in The Bahamas during the meetings referred to in item (i), (iii) strategic decisions made at such Board meetings must be recorded in the minutes of those minutes, (iv) all records and minutes must be kept in The Bahamas and (v) the Board of Directors as a whole must have the necessary knowledge and expertise to discharge its functions. Core income generating activities presuppose adequate (i) amounts of annual operating expenditure, (ii) levels of qualified full time employees, (iii) physical offices and (iv) levels of board management and control, in The Bahamas. These requirements would not apply if the Company (i) (a) will be 100% beneficially owned by natural persons who are ordinarily resident and domiciled

in The Bahamas or have been issued a certificate of annual or permanent residence and who physically reside in The Bahamas for a cumulative period of at least 3 months in every calendar year and (b) will conduct its core income generating activities within The Bahamas or (ii) is centrally managed and controlled outside of The Bahamas and is tax resident in a jurisdiction other than The Bahamas.

If the Company will be a pure equity holding company<sup>1</sup> whose sole purpose will be to hold the shares of any other entity that engages in a Relevant Activity, the Company must have adequate resources and adequate premises in The Bahamas for holding and managing equity participation in other entities.

The Company must be registered with the Exchange Control Department of the Central Bank of The Bahamas if it has one or more shareholders who are non-Bahamians. If the Company is to trade outside The Bahamas or will conduct business only with persons who are "non-residents" of The Bahamas for Exchange Control purposes (subject to compliance with the substance requirements outlined above), it is entitled to be granted "non-resident" status. This status permits it to operate United States and other foreign currency accounts without further reference to the Exchange Control Department. If the Company is to trade within The Bahamas, it will be designated as "resident", for Exchange Control purposes and will be allowed to maintain foreign currency accounts only for specifically approved purposes. A non-Bahamian shareholder in such a Company can apply for approved status for his investment in the Company.

1.3 **Names, Addresses and Occupations of the proposed Shareholders**

Bahamian law requires a minimum of two shareholders. The Company will be incorporated with nominee shareholders from our office, but the Exchange Control Department will require the names and addresses of the ultimate beneficial owners of the shares.

1.4 **Names, addresses and occupations of the proposed Officers and Directors**

We require the names, addresses and occupations of the proposed Officers and Directors. None of the Officers need to be resident in The Bahamas.

1.5 **Capital**

The desired authorised capital of the Company and the number of shares into which the capital is to be divided is required.

1.6 **Fiscal Year**

We require confirmation of the proposed financial year end of the Company.

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<sup>1</sup> i.e., will only hold equity participations and earn dividends and capital gains or income.

1.7 **Further details re Corporate Structure**

Any further details regarding the proposed corporate structure of the Company which is felt would be of benefit to this office should be supplied. We may also require additional information in order to comply with Bahamian legal and regulatory requirements.

2. **TIME REQUIRED TO INCORPORATE**

Upon receipt of the required compliance documentation and fees, we can incorporate within 48 hours. Should you require, we can incorporate within 2 hours, subject to payment of the expedited incorporation fee outlined below.

3. **COST OF INCORPORATION**

Our minimum incorporation fee is \$1,500.00. Our charges are \$750.00 for applying for the necessary Exchange Control approval in the case of a non-Bahamian owner. In addition to these fees, there are out-of-pocket expenses of approximately \$776.25 to cover such items as the provision of the corporate seal and share certificates etc. Included in these miscellaneous incorporation expenses is the sum of \$510.00 which is charged by the Bahamas Companies Registry for payment of Stamp Duty and the filing of the Company's Memorandum and Articles of Association.

4. **GOVERNMENT STAMP DUTY**

Stamp Duty is payable based on the authorised capital of the Company. Stamp Duty scale is as follows:-

Every Memorandum of Association of a Company where the capital is B\$100,000.00 or under	B\$	100.00
Where the capital is over \$100,000, for every additional \$50,000 or fraction thereof	B\$	10.00

5. **ANNUAL GOVERNMENT BUSINESS LICENCE FEE**

The *Business Licence Act, 2010* requires that companies carrying on business in The Bahamas must apply for a Licence under the provisions of the Act. Details of the fees charged will be supplied upon request. The annual Business Licence fee for Resident Companies will depend on the turnover and the annual fee for Non-Resident Companies is currently B\$300.00.

6. **ANNUAL MAINTENANCE EXPENSES**

The minimum maintenance expenses in connection with each calendar year amount to the following:-

1. Annual Fee payable to the Registrar General of

The Bahamas on 1st January each year:		
(Bahamian owned )	B\$	350.00
(Non-Bahamian owned)	B\$	1,000.00

2. Our professional fee for maintaining the Registered Office and the Company's statutory registers; for drafting or perusing the Minutes of the Shareholders' Meetings; for preparing and filing the Annual Statement and Annual Return	B\$	650.00
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**7. RETAINER**

We require a retainer of **B\$3,690.25** on account (or US\$3,708.79 in the case of a non-Bahamian owner).

The retainer is intended to meet the incorporation fee, expected disbursements and the first year annual maintenance fee together aggregating \$2,926.25, and a retainer of \$500 for future services. After incorporation, a statement will be provided showing funds (if any) held on account.

**PLEASE NOTE: The incorporation of a company customarily takes 2 working days. In cases of urgency we will make every effort to accommodate our clients; however there is an additional fee of \$500.00 per incorporation within 2 hours and \$50.00 for all other services.**

To expedite formation we recommend you send the retainer by way of bank wire transfer to our bankers addressed as follows:

**Chas US 33**  
**JP Morgan Chase Bank, New York**  
**ABA No. 021-0000-21**  
**Roy CBSNS**  
**Account No. 001-1-188448**  
**For Further Credit to: RBC Royal Bank (Bahamas) Limited,**  
**Nassau, Bahamas**  
**Transit No. 05625**  
**Account No. 409-367-0**  
**Account Name: H & J Corporate Services Ltd.**  
**Ref: Client/Matter and Invoice No.**

**8. COMPLIANCE OBLIGATIONS AND REGISTER OF BENEFICIAL OWNERSHIP**

We are required by our regulatory authorities to be supplied with certain information and documentation in respect of the owner(s) and ultimate beneficial owner(s). All material will be kept in confidence unless disclosure is required under our laws. Attached is our client profile form. Please complete it and return it to us together with the documents required. Each beneficial owner of the Company will have to complete one form. Where the Company will form a part of a group, we require a certified copy of the group structure chart and a client

profile form is required in respect of each person or entity in the ownership structure all the way up to the individual beneficial owners.

Each director and officer of the Company will have to provide us with a notarized copy of a government issued identification and evidence of his or her street address (eg. a utility bill).

**PLEASE NOTE: We will be unable to commence the incorporation process until our compliance requirements have been fully satisfied.**

We are required by the *Register of Beneficial Ownership Act, 2018* (the “**RBOA**”) to enter information regarding the beneficial ownership of the Company into a database. All information maintained on the database is confidential and is only accessible by (i) a person within the Office of the Attorney General designated by the Attorney General in writing, through a secured search system maintained by the Attorney General in his capacity as the Competent Authority and (ii) H & J Corporate Services Ltd. as Registered Agent.

You are required to notify us within 15 days of identifying any person as a beneficial owner or registrable legal entity of the Company. Failure to do so is an offence under the RBOA. For this purpose, a beneficial owner is a natural person who ultimately owns or controls the Company and includes, but is not restricted to: (a) where the Company is not listed on a securities exchange, a natural person who ultimately owns or controls, whether directly or indirectly, 10% or more of the shares or voting rights of the Company, (b) a natural person who otherwise exercises control over the management of the Company other than solely in the capacity of a director, advisor or professional manager, (c) if the Company goes into liquidation, administration or receivership proceedings, the natural person or entity who is appointed as a liquidator, administrator or receiver of the legal entity, (d) in the case of a receiver being appointed over 25% or more of the shares or voting rights in the Company, the creditor who appoints the receiver or (e) in the case of a shareholder in the Company who would otherwise be a beneficial owner but is deceased, the natural person acting as an executor or a personal representative of the deceased's estate.

A registrable legal entity is a legal person, its affiliates or wholly owned subsidiaries which (a) would be a beneficial owner of the legal entity if it were a natural person and (b) which is either (i) a legal entity which is an exempt person<sup>2</sup>, (ii) a legal entity the securities of which are listed on a regulated securities exchange, (iii) a licensee or a foreign regulated person or (iv) a foreign state or a wholly owned subsidiary of a foreign state.

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<sup>2</sup> An exempt person is a person who meets one or more of the following conditions: (a) the securities of a legal entity which are listed on a regulated securities exchange, (b) a licensee or registrant under (i) the Banks and Trust Companies Regulations Act (Ch. 316), (ii) the Investment Funds Act (Ch. 369A); (iii) the Securities Industry Act (No.10 of 2011); (iv) the Insurance Act (Ch. 347); (v) the External Insurance Act (Ch. 348); and (vii) the Financial and Corporate Services Providers Act (Ch. 363) and also includes its affiliates and wholly owned subsidiaries, (c) a legal entity which is a wholly owned subsidiary of a legal entity that falls within paragraph (b) above or (d) any other legal entity that the Minister of Legal Affairs may exempt by regulations.

9. **FILINGS**

The Company is required to make certain filings on an annual basis with the Companies Registry and the Minister of Finance as Competent Authority respectively, in order to comply with the provisions of the *Companies Act, 1992* and the Substance Act. These include (i) an Annual Statement with information regarding the shareholders, issued shares, share capital, directors and officers, which must be filed with the Companies Registry within 14 days of its Annual General Meeting, (ii) an Annual Return confirming whether or not 60% of the shares of the Company are owned by Bahamians, which must be filed with the Companies Registry before 1<sup>st</sup> January in each year and (iii) a form regarding the Company's compliance with the requirements of the Substance Act, signed by a Director of the Company, which must be filed with the Minister of Finance as Competent Authority within 9 months of the Company's financial year end. We will prepare the Annual Statements and Annual Returns for the Company as a part of our Registered Office services. The reporting portal under the Substance Act has not yet been established. We will notify you when it is operational.

## COMPANIES ACT COMPANY Instruction Form

I, the undersigned client, hereby instruct H & J Corporate Services Ltd. to incorporate a company under the provisions of the Companies Act, 1992 in accordance with the information set out herein, declare that such information is correct and true and agree to immediately notify H & J Corporate Services Ltd. in writing of any change in the information set out herein:

**GENERAL INFORMATION:**

DATE: \_\_\_\_\_ LAWYER: \_\_\_\_\_ REFERRED BY: \_\_\_\_\_

NAME OF CLIENT: \_\_\_\_\_

\_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OCCUPATION: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

TEL. NO: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

PROPOSED NAMES: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

REGISTERED OFFICE:  H & J Corporate Services Ltd. \_\_\_\_\_

**BUSINESS ACTIVITIES:**

PRINCIPAL PLACE OF BUSINESS: \_\_\_\_\_

PROPOSED FINANCIAL YEAR END: \_\_\_\_\_

INTENDED ACTIVITY OF THE COMPANY: \_\_\_\_\_

\_\_\_\_\_

**WILL ANY SUBSIDIARIES OF THE COMPANY ENGAGE IN ANY OF THE FOLLOWING ACTIVITIES?:**

Banking Business  Yes  No Insurance Business  Yes  No

Fund Management Business  Yes  No Shipping Business  Yes  No

Financing and Leasing  Yes  No Headquarters Business  Yes  No

Distribution and Service

Centre Business  Yes  No Commercial use of intellectual property  Yes  No

*If the answer to any of these questions is yes, a consultation with an Attorney at Higgs & Johnson will be required to discuss the substance requirements prescribed by law.*

**AUTHORIZED CAPITAL:**

SHARE CAPITAL: \_\_\_\_\_

CURRENCY: \_\_\_\_\_

PAR VALUE OF SHARES: \_\_\_\_\_

**OWNERSHIP STRUCTURE:**

SHARES:  REGISTERED IS A NOMINEE SHAREHOLDER REQUIRED:  Yes  No

NAME(S) OF SHAREHOLDERS:	ADDRESS:	AMOUNT OF SHARES TO BE ISSUED:

NAME(S) OF PERSONS OWNING OR CONTROLLING (DIRECTLY OR INDIRECTLY) 10% OR MORE OF THE VOTING RIGHTS OF THE COMPANY:

NAME(S)	ADDRESS:

DESCRIPTION OF THE PROPOSED OWNERSHIP STRUCTURE OF THE COMPANY ALL THE WAY UP TO THE INDIVIDUAL ULTIMATE BENEFICIAL OWNERS (Please attach ownership chart, if applicable):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ARE ANY OF THE ENTITIES IN THE PROPOSED OWNERSHIP STRUCTURE OF THE COMPANY:

- Listed on a regulated securities exchange<sup>3</sup>  Yes  No  
*(If yes, please provide details):* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- A licensee or registrant under the Banks and Trust Companies Regulations Act, the Investment Funds Act, 2003, the Securities Industry Act, 2011, the Insurance Act, 2009, the External Insurance Act, 2009 or the Financial and Corporate Services Providers Act, 2001 or a wholly owned subsidiary or affiliate of a licensee or registrant?  Yes  No  
*If yes, please provide details):* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

<sup>3</sup> A regulated securities exchange is the Bahamas International Securities Exchange or any other securities exchange in a country that is a member in good standing with the International Organization of Securities Commissions.



3. A foreign regulated person<sup>4</sup>  Yes  No

*If yes, please provide details and documentary evidence of status ):* \_\_\_\_\_

4. A foreign state or a wholly owned subsidiary of a foreign state.  Yes  No

*(If yes, please provide details):* \_\_\_\_\_

<sup>4</sup> A foreign regulated person is a person (a) that is incorporated, registered, licensed or formed, or if it is not a body corporate, has its principal place of business in a jurisdiction outside The Bahamas, (b) that carries on business outside The Bahamas that, if carried on within The Bahamas, would be a financial institution or a designated non-financial business or profession for the purposes of any laws governing reporting of financial transactions and (c) in respect of a business referred to in (b) above, (i) is subject to legal requirements in its jurisdiction for the detection and prevention of money laundering that are consistent with the requirements of the Caribbean Action Task Force Recommendations or Financial Actions Task Force Recommendations in relation to that business and (ii) is properly and adequately supervised for compliance with those legal requirements by a foreign regulatory authority. For this purpose, a “*financial institution*” includes (a) a bank or trust company licensed under the Banks and Trust Companies Regulation Act; (b) a company carrying on (i) long term insurance business, as defined in section 2 of the Insurance Act; (ii) insurance business as defined in section 2 of the External Insurance Act; or (iii) such other insurance business as the Minister of Finance may designate by notice published in the Gazette; (c) a co-operative credit union registered under The Bahamas Co-operative Credit Unions Act; (d) the holder of a gaming licence, proxy gaming licence, mobile gaming licence, restricted interactive gaming licence and gaming house operator licence under the Gaming Act; (e) a broker-dealer within the meaning of section 2 of the Securities Industry Act, 2011; (f) a trustee, administration manager or investment manager of a superannuation scheme; (g) an investment fund administrator of an investment fund within the meaning of the Investment Funds Act, 2003; (h) a person whose business or a principal part of whose business consists of (i) borrowing or lending or investing money; (ii) administering or managing funds on behalf of other persons; (iii) acting as trustee in respect of funds of other persons; (iv) dealing in life insurance, and insurance business, which is investment related; (v) providing financial services that involve the transfer or exchange of cash, including (without limitation) services relating to financial leasing, money transmissions, credit cards, debit cards, treasury certificates, bankers draft and other means of payment, financial guarantees, trading for account of others (in money market instruments, foreign exchange, interest and index instruments, transferable securities and futures), participation in securities issues, portfolio management, safekeeping of cash and liquid securities, investment related insurance and money changing; but not including the provision of financial services that consist solely of the provision of financial advice; (i) a financial and corporate service provider licensed under the Financial and Corporate Service Providers Act, 2001; (j) a designated non-financial business and profession (defined below); (k) a non-bank entity licensed and regulated by the Central Bank under the Payment Systems Act, 2012; and (l) any other category of institutions that the Minister of Finance may by order designate. A “*designated non-financial business and profession*” includes the business or profession of (a) real estate agents and brokers, when they are involved as real estate broker in financial transactions for their client concerning the buying or selling of real estate, and with respect to both the vendors and purchasers; (b) land developer engaging in the sale or partition or condominiumizing of any part, parcel, lot or condominium unit of any larger tract or lot of land or any development of land involving the building of units sharing walls, common areas and utilities; (c) a person whose business or any part of whose business consists of (i) buying for the purpose of trade, sale, exchange, or otherwise dealing in any previously owned precious metals or precious stones, whether altering the same after acquisition or not; or (ii) lending of cash on the security of previously owned precious metals or precious stones of which the person takes possession, but not ownership, in expectation of profit, gain or reward; (d) a pay day advance provider, hire purchase lender or any lender whose loans are secured by salary deductions; (e) a counsel and attorney or accountant when they engage in, or carry out transactions for a client concerning (i) the buying or selling of real estate; (ii) a deposit or investment of cash; (iii) the management of client funds or securities; (iv) the management of bank, savings or securities accounts; (v) the organisation of contributions for the creation, operation of management of a legal person; (vi) the creation, incorporation, operation or management of a legal person or legal arrangement, and buying and selling of a business entity; (vii) the provision of a registered office or acting as a registered agent; or (viii) the acting as or arranging for another person to act as, a nominee shareholder for another person; (f) an accountant, but only to the extent that the accountant receives cash in the course of that person’s business for the purposes of deposit or investment otherwise than as part of services rendered pursuant to a financial and corporate service provider’s license; and (g) a trust and company services providers not otherwise covered by the this definition which, as a business, prepare for and carry out or otherwise provide the following services or transactions to third parties (i) acting as a formation, registration or management agent of legal persons; (ii) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons; (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal arrangement; (iv) acting as, or arranging for another person to act as, a trustee of an express trust or performing the equivalent function for another, similar for of legal arrangement; (v) acting as, or arranging for another person to act as, a nominee shareholder for another person; (h) the Savings Bank as constituted under the Savings Bank Act; (i) a friendly society enrolled under the Friendly Societies Act; (j) the Bahamas Mortgage Corporation established under The Bahamas Mortgage Corporation Act; (k) the Bahamas Development Bank established under the Bahamas Development Bank Act; and (l) such other businesses and professions as the Minister of Finance may designate by Order.

**MANAGEMENT STRUCTURE:**

NAME(S) OF DIRECTORS: ADDRESS: OCCUPATION:

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NAME(S) OF OFFICER(S): ADDRESS: OCCUPATION: OFFICE:

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NAME(S) OF AUTHORIZED SIGNATORIES/REPRESENTATIVES OF THE COMPANY:

NAME(S) ADDRESS: TITLE:

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NAME(S) OF PERSONS (OTHER THAN THOSE NAMED ABOVE) WHO WILL HAVE PRINCIPAL CONTROL OVER THE COMPANY'S ASSETS OR WILL EXERCISE CONTROL OVER THE MANAGEMENT OF THE COMPANY:

NAME(S) ADDRESS: NATURE OF RELATIONSHIP

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**POLITICALLY EXPOSED PERSONS:**

ARE ANY OF THE PROPOSED SHAREHOLDERS, BENEFICIAL OWNERS (DIRECT OR INDIRECT) OF 10% OR MORE IN THE COMPANY, DIRECTORS, OFFICERS, AUTHORIZED SIGNATORIES, PERSONS HAVING PRINCIPAL CONTROL OVER THE ASSETS OF THE COMPANY OR PERSONS WHO WILL EXERCISE CONTROL OVER THE MANAGEMENT OF THE COMPANY, A POLITICALLY EXPOSED PERSON?<sup>5</sup>

Yes  No

*If yes, please provide the following details:*

NAME(S) TITLE:

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<sup>5</sup> A politically exposed person (1) is an individual who holds or has held within the last 12 months, (a) a position in the executive, legislative, administrative, military or judicial branches of government, whether elected or not, including the position of (i) head of state or head of government, (ii) senior official, (iii) senior official in a major political party and (iv) senior executive in a major statutory or government owned corporation or (b) a senior position at an international organization or branch thereof, (2) includes any parent, sibling, spouse, or child or other family member or close associate of an individual referred to in paragraph (1) above and (3) any corporation, business or other entity formed by or for the benefit of any person referred to in paragraph (1)(a)(i) above.



**CLIENT SIGNATURE:**

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Name:

Title:

Date:

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**FOR OFFICIAL USE ONLY**

Accepted and agreed on behalf of  
H & J Corporate Services Ltd.

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Date: