

EXECUTIVE ENTITIES

4 More London Riverside
London SE1 2AU

T/ +44 20 7379 0000
F/ +44 20 7379 6854

info@lg-legal.com
www.lg-legal.com



LG designs an Executive Entity for the Bahamas for use in offshore trust structures

23 January 2012

What is an Executive Entity?

The **Executive Entity Bill** has been successfully making its way through parliamentary channels in the Bahamas and is expected to become law imminently. It will create a new type of structure for use in offshore wealth preservation structures. Our Private Capital team proposed the concept to the Bahamas Financial Services Board as a solution to our clients' concerns regarding who should be the decision makers within their wealth structures.

This pioneering legislation creates a perpetual entity (the "BEE"), designed specifically and solely to carry out executive functions. **It is therefore ideal to act as shareholder of a Private Trustee Company ("PTC") or as a Protector, Enforcer, Advisory Board or corporate director.** Individuals, companies or purpose trusts are not best suited for these roles, with the result that when they are used in a structure, they are the weak link from a succession, control and governance perspective.

The officers of the BEE, like the directors of a PTC, can be the founder's chosen family members or trusted advisers who benefit from limited liability as if they were directors of an International Business Company. These people may have been reluctant to act as an Enforcer or Protector of a trust in their personal capacity due to the potential risk that they could personally be liable for a loss to the trust if in breach of their fiduciary duty. Furthermore, officers' details are not

publically available in the Bahamas and there is no requirement for a Bahamian resident officer to sit on the board. **A BEE is therefore very attractive for those families for whom confidentiality is key and for whom decisions must be made by the right people.**

A BEE does not have any shareholders, beneficiaries or enforcers. It cannot hold any value, other than such sums as are necessary to carry out its executive functions and meet any capital adequacy requirements, nor can it own shares in another entity unless such entity also carries out executive functions (e.g. a PTC, protector/enforcer company or an investment advisory company). To ensure that the BEE remains compliant, it is a requirement for it to have a Bahamian licensed financial and corporate services provider to act as its agent.

The attractiveness of the BEE lies in its ability to remove unnecessary layers of ownership at the top level of wealth structures, to concentrate control in the right people who have the assurance of limited liability and to generally facilitate proper governance within the structure to avoid the risk of family conflict damaging the family wealth. **The BEE is a welcome new addition to wealth preservation structures, whether in the Bahamas or elsewhere.**

Background to the concept Potential uses for a BEE

Our Private Capital team devised the concept of an executive style entity while reviewing a client's trust structure. The trustee of the client's trust structure was a PTC which held his businesses, personal assets and homes. The PTC was owned by a purpose trust, the trustee of which was a professional trustee, with one of the client's sons as the Enforcer. The PTC board comprised a mixture of family members and trusted advisers, including the client's son who was also the Enforcer.

The PTC had a contract with a professional trustee company for the provision of the trustee administration functions, the duties of which were overseen by the board of the PTC.

The client liked the PTC acting as trustee of his trust, but was very concerned that the purpose trust, with its professional trustee and his son as the Enforcer, owning its shares gave too much power to his son who could, in effect, appoint and remove the directors of the PTC. It also exposed his son to personal liability as a fiduciary and the structure to unwelcome scrutiny through the professional trustee.

The client considered alternative existing PTC ownership options: the use of a company limited by shares was unwelcome as this company would ultimately need to be owned raising succession and control concerns; a company limited by guarantee could be dissolved at the action of its members which would frustrate the client's dynastic objectives of ensuring the survival of the trust structure for several generations; and, although a foundation was attractive, no existing foundation law was considered ideally suited to the limited purpose of carrying out executive functions, having been designed to hold "wealth" for persons in succession or purposes.

The BEE not only solves all the concerns of our client, but it has, in so doing, created a most versatile and useful tool for offshore trust structures; wherever they may be.

The BEE will be law any day now, and will be welcomed by the founders of many wealth preservation structures, eager to make their structures more robust against attack whether from outside or from within.

Potential uses for a BEE include acting as an:

- Office holder within a trust, e.g. as:
 - a Protector
 - an Enforcer
 - a Person to whom Powers are Reserved
 - an Investment Adviser
- Office holder within a corporate or quasi corporate entity within a wealth preservation structure, e.g. as:
 - a Corporate Director of a PTC or Protector/Enforcer company
 - an Officer of a foundation
- Ownership vehicle for a:
 - PTC
 - Company owning a PTC
 - Protector, Enforcer or Investment Advisory company

It can also be used to carry out Family Office style administrative functions.

For more information please contact:

Rose Chamberlayne Senior Associate



E/ rose.chamberlayne@lg-legal.com
T/ +44 20 7759 6413

These notes are for general information only and are not intended to provide legal advice.

Lawrence Graham LLP.
All rights reserved.