



IBN INFORMS

The Hybrid Company Under the Law of Gibraltar

by

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The “Hybrid Company” has very definite benefits of being more at arms length than for example the more popular type of a so called “International Business” or “Exempt Company” structure. Where the assets of the company are envisaged to be high, coupled with the need for distance between the client and the structure, the hybrid company is the more appropriate and complete structure. This type of company operates on the following basis:

The term “hybrid company” is used to describe a company which is limited both by shares and by guarantee so has two classes of members: - Shareholders and Guarantee Members. The former are familiar and well understood, the latter is less so although many sporting clubs or societies are structured as companies limited by guarantee and joining members become Guarantee Members.

A Guarantee Member is elected into membership of the company by the directors on condition that the member undertakes to contribute to the debts of the company up to a certain specified maximum amount – typically US\$100 or less. As such a Guarantee Member holds a contingent liability, which is an obligation, and this contrasts with **the position of the shareholder** who holds an asset – the shares. The rights and obligations which attach to each class of membership can be laid down in the Articles of Association of the company or by the directors in board meetings thereby keeping the terms and conditions of the membership confidential. The arrangements which can be made are infinite and flexible as the different rights and obligations which attach to each class of membership can be arranged to suit and with skilful drafting can be used to create structures which are precisely tailored to the different needs of the client.

Hybrid companies are often used as quasi trusts particularly by persons resident in Civil Law countries which do not recognise trusts.

Typically the company will be structured so that the **shares** are issued on terms that each carries one vote but no rights to dividends or to participate in the capital or income of the company in any other way. **The Guarantee Memberships** would be issued on terms that they carry no rights to vote but all the rights to participate in the income and capital of the company. Thus all control rests with the shareholder but all benefits flow to the Guarantee Members. The shares can be issued to professional managers, who therefore act as quasi trustees, but unlike normal shareholders they cannot receive financial benefit from holding the shares. All financial benefits flow to the Guarantee Members who are therefore in a position not unlike the beneficiaries of a classical trust structure. Also a Guarantee Members

interest is extinguished on death so there are no succession problems, no need to obtain probate and therefore there will normally be no inheritance tax implications/estate duty.

The anti-avoidance legislation enacted by many onshore countries aims to tax the undistributed or untaxed profits of low tax paying companies as though those profits have been received by the shareholders. The different legislations achieve this different ways but normally focus on the percentage of shares held or the control of the company if the control is achieved otherwise than through the ownership of shares. Under the arrangements outlined above **the Guarantee Members** would not own shares or have control – as professional managers act as shareholders – so it may be that this type of anti avoidance legislation is ineffective in taxing profits rolled up within a hybrid structure. Additionally, it will normally be the case that such a structure does not bring about any reporting requirement for the Guarantee Members so, on a practical level, unwanted attention from onshore revenue authorities is avoided.

We have an opinion to the effect that the structure would probably not be reportable in Germany or in South Africa, creating a very definite advantage.

In order to set up a hybrid company as depicted below, IBN would require the following documentation:

Please check:

- Completed Application Form
- Bank certified copy of passport on all beneficial owners with the following text:
"Having seen the individual and the identification document at the same time I certify this is a true copy and that the photograph is a reasonable likeness".
- Original bank reference letter on all beneficial owners, which should also confirm their residential address.
- Original reference letters from an attorney or accountant on all beneficial owners, which should also confirm their residential address.
- CV's on all beneficial owners.

- Two original utility bills confirming the residential address, on all beneficial owners.
- A detailed description of the business activities (nature of business, estimated annual turnover, where the company will be conducting business, currency, source of funds)
- Source of funds letter. The bank will need to know the estimated amount of funds coming into and out of the company account on a monthly basis, and the explanation of these transfers. If large amounts are involved, supporting documentation would also be required.

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If you have any questions, please do not hesitate to contact the author under:
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