

# PRIMA FACIE — AT FIRST GLANCE...

## FOREWARD

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The Partners of THOMAS, JOHN & CO. are pleased that we have been able to release the very first issue of the firm's Newsletter called 'PRIMA FACIE' a legal expression meaning 'at first glance'.

It is our intention to have this Newsletter produced on a quarterly basis for the primary purpose of disseminating information on important developments in the law not only to our clients but also to the wider community.

As the largest and certainly the most dynamic firm in Antigua and Barbuda we see ourselves as having the responsibility to educate and inform the public on legal issues which affect their very lives and are committed to seeing this newsletter evolve as an important public relations tool for the firm, lawyers and the public. It will compliment our web presence ([www.thomasjohn.com](http://www.thomasjohn.com); [www.caribcats.com](http://www.caribcats.com)) and will also be made available on both websites.

We welcome your feedback. Let us know what issues are of interest to you and how best we can meet your needs through this medium.

Our international outlook also demands that our international clients be constantly updated on any changes/developments in the law which may likely impact upon their business interest within and without Antigua.

Once again welcome to the face of THOMAS, JOHN & CO. Enjoy your reading.

ARTHUR G.B. THOMAS and KELVIN JOHN

The Partners

### SPECIAL POINT OF INTEREST:

" Lawyers never get

old...they just lose their

appeal!"



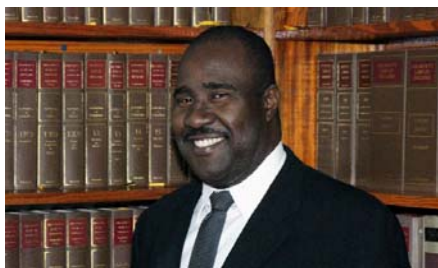
THOMAS, JOHN & CO.

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**ABOUT US...**



**ARTHUR G.B. THOMAS, LL.B (Hons) (U.W.I.) L.E.C. LL.M (Int'l Tax'n) J.P. Partner**

Arthur read law at the University of the West Indies, Cavehill Campus, Bridgetown, Barbados graduating with a Bachelor of Laws Degree, Upper Second Class Honours; Norman Manley Law School, Jamaica (Legal Education Certificate, 1991), Member, Notary Public of Antigua and Barbuda.

**Member:** Antigua and Barbuda Bar Association, St. Lucia Bar, and Commonwealth of Dominica Bar and the Rotary Club of Antigua.

He is a past Vice President of the Antigua Bar Association, a Notary Public of Antigua and Barbuda and Justice of the Peace in Antigua and Barbuda.

**Practice Areas:** Corporate Commercial Law, Civil Litigation; Land Law, Intellectual Property; Banking Law; Insurance, Industrial Law, Probate, International Taxation.

**THOMAS, JOHN & CO.** was established in January 1997 with Arthur G. B. Thomas being the founding partner. Prior to January 1997 he practiced as a sole practitioner under the style of Thomas & Co. He was joined from the 2nd day of January, 1997 by Kelvin John who, prior to then, practiced privately in the Commonwealth of Dominica.

Today, we are a full service law firm and have developed a strong international outlook as Antigua and Barbuda continues to assume the role of an important offshore center; hence its specialization in the areas of Company incorporation and administration, establishing and licensing of banks, trust and insurance companies, inbound foreign investment, real estate development and conveyancing, while continuing to meet the needs of local clients with the provision of a wide range of other legal services.

Corporate secretarial, administrative, management and trust services are provided to International Business Corporations and other international corporate vehicles through **Corporate and Trust Services (Caribbean) Limited** while ship management services are handled through **Maritime General management Company Limited**, both companies wholly owned by the firm.

The firm is well appointed in the main commercial area of the capital city, immediately adjacent to the High Court of Justice which forms a part of the Government Office Complex in St. John's, the capital city of Antigua.



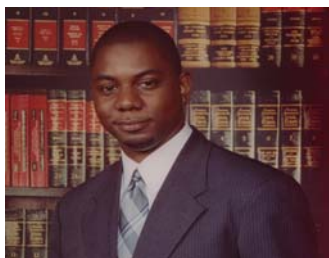
**KELVIN JOHN, LL.B (Hons) (U.W.I.) LL.M L.E.C, E.M.B.A. Partner**

Kelvin was called to the bar of the Commonwealth of Dominica in 1993 having read law at the University of the West Indies, Cavehill Campus, Bridgetown, Barbados and obtaining the Legal Education Certificate from Norman Manley Law School, Jamaica (1993). He joined the firm as a Partner in 1997.

**Member:** Bar Associations of Antigua and Barbuda and the Commonwealth of Dominica and the Rotary Club of Antigua.

He is a Notary Public of Antigua and Barbuda and a Certified Court Mediator and conducts mediation under the existing rules of the Eastern Caribbean Supreme Court.

**Practice Areas:** Criminal law, Maritime, Constitutional/Administrative litigation, Civil litigation and Real Property matters. .



**Kayode O. O'Marde, LL.B (Hons) (U.W.I.) L.E.C.**

Kayode read law at the University of the West Indies, Cave Hill Campus, Bridgetown, Barbados graduating with a Bachelor

of Laws degree, Second-Class Honours. He completed the Legal Education Certificate at the Hugh Wooding Law School, St. Augustine, Trinidad.

**Member:** He has been admitted to the Antigua and Barbuda Bar.

**Practice Areas:** Civil Litigation, Land Law, Industrial Law, and Probate for the most part.

**ASSOCIATES**

**Lisa M. John LL.B (1<sup>st</sup> Cl. Hons) (UWI) L.E.C.**

Lisa read law at the University of the West Indies, Cave Hill Campus, Bridgetown, Barbados from 2002-2005, graduating with a Bachelor of Laws Degree, First-Class Honours. From 2005-2007

she attended the Norman Manley Law School, Kingston, Jamaica where she completed the Legal Education Certificate, thereby allowing her to practice in all areas of the English-speaking Caribbean.

**Member:** Lisa has been admitted to the Antigua and Barbuda Bar.

**Practice Areas:** Conveyancing, Mortgages, Company, Commercial, Wills and Probates, Family and Personal Injury, both litigious and non-litigious as an Associate in the firm.

Lisa is currently reading for a Master in Corporate and Commercial Law with University of London, England.





**Loy L.A. Weste LLB (Hons) (UWI) L.E.C.**

Loy read law at the University of the West Indies, Cave Hill Campus, Bridgetown, Barbados from 2001-2004, graduating with a Bachelor of Laws Degree, Second-Class Honours. From 2005-2007 he attended the Norman Manley Law School, Kingston, Jamaica where he completed the Legal Education Certificate, thereby allowing him to practice in all areas of the English-speaking Caribbean.

**Member:** Loy is a member of the Antigua and Barbuda Bar.

**Practice Areas:** Civil work, Industrial Law, both litigious and non-litigious.

### General Staff

The general staff comprises of highly trained individuals who bring not only academics but also years of experience. Most of the staff possess first degrees in business or related fields while others possess as much as 25 years experience in paralegal work.

## WHAT YOU SHOULD KNOW ABOUT THE PROPERTY TAX AND VALUATION ACT, 2006

The Property Tax and Valuation Act, 2006 came into force on 17<sup>th</sup> November, 2006. Some of the provisions of the Act are highlighted below to assist you in familiarizing yourself with the Act.

Property is classified as agricultural, residential or other property. The Chief Valuation Officer may sub classify other property into commercial, cultural, historical, hotel, industrial, institutional and recreational. [See Sections 7(1) & (2)] If you are aggrieved by the classification or sub-classification of your property you may appeal to the Property Valuation Appeal Board for reclassification. [See Section 7(3)] Where a developer undertakes a programme of development that requires installation and maintenance of special services such as potable water, electricity, roads, sanitation and such other services, the property will be classified as a special development location. [See Section 8]

The previous Property Tax Act, 2000 provided a list of properties that were exempted from property tax. Under the 2006 Act property vested in a prescribed statutory non profit body, property owned by a prescribed charitable organization or institution, property used wholly in the packaging and processing of agricultural produce of a CARICOM country and plant and machinery used in a business are now added to the list of properties that are exempted from property tax. Environmental and ecological sites designated by Order of Cabinet have been removed from the list of properties exempted from property tax. [See Section 14]

A dwelling house constructed after this Act came into force will be exempted from property tax for a period of two years. However it is important to note that property tax is payable on the land that the dwelling house is constructed. [See Section 15] A dwelling house deduction of \$150,000.00 will be allowed when determining the taxable value of a dwelling house. [See Section 16]

- **Our Vision is to be the # 1 provider of Quality and Efficient Corporate and Legal Services to our diversified clientele globally.**

- **Our Mission is being committed to providing a broad array of corporate and legal services specialized to meet the needs of our local, regional, and international clients; through premium teamwork, know-how, customer care, and the utilization of technological advances.**

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The Act provides for property tax rebates in the following instances:

1. A rebate of 5% where the property tax due and payable for a tax year is paid on or before the due date. *[See Section 17(1)]*
2. If the property tax is paid in installments no rebate will be given on the first installment but a 5% rebate of the total amount of the property tax payable will be given on the second installment if it is paid by the due date. *[See Section 17(2)]*
3. A local pensioner, upon written application to the Commissioner, will be allowed a rebate on the property tax payable on his or her dwelling house provided no part of the dwelling house is leased to another person. The pensioner's total income will affect the total rebate allowed. A pensioner with a total income exceeding \$75,000.00 will not be allowed a rebate on property tax. *[See Section 18]*
4. Where a part of a property is used in the interest of national development as agricultural land, upon providing the Commissioner with a certificate by the Director of Agriculture of the satisfactory use of the land, a 90% rebate will be allowed. Where a part of a property is used in the interest of national development as industrial property a 25% rebate will be allowed. Where a part of a property is used in the interest of national development as a hotel a 25% rebate will be allowed. Property situated in a special development location will be allowed a 25% rebate. You will note that the term "used in the interest of national development" is the common theme in relation to these rebates. The Act states that this term means that the property is used in a manner consistent with a national programme approved by government. *[See Section 19]*
5. Institutional, cultural, historical or recreational properties used mainly for local community purposes that are not used for residential or commercial purposes will be allowed a 100% rebate. *[See Section 20]*

Your property tax is due 90 days from the date of issue which is outlined on the demand note issued by the Commissioner. *[See Section 27(1)]* If you pay your property tax in installments, the first installment which cannot be less than 50% of the total tax due must be paid during the period of 60 days before the due date and the balance must be paid on or before the due date. *[See Section 27(2)]*

Failing to pay your property taxes may result in any one of the following:

1. Property tax will be a first charge on the property that tax is due and payable and this charge will be prior to all other liens and demands affecting the property. *[See Section 28]*
2. If property tax is not paid by the due date a penalty of 10% on the total tax due shall accrue and if the property tax and 10% penalty is not paid one calendar month after the due date then a penalty of 2% per month on the unpaid tax shall accrue. *[See Section 29]*
3. The Commissioner may pursue outstanding property taxes in a manner similar to a civil debt. *[See Sections 30 & 31]*
4. If property tax is not paid within 90 days of the due date the Commissioner has the power to issue a warrant of distress to levy by distress any goods or chattel building that is located on the property in which property tax is outstanding. *[See Sections 32-37]*

The Commissioner may exercise his power to sell the property in respect of which property tax is due and payable where the property tax has been in arrears and unpaid for more than 5 years after the due date. *[See Sections 38-48]*

It is always worth examining the legislation being passed in Parliament as this is how you get to know your rights and the extent of the authority of the various government agencies within your society.

**Contributor: Stacey-Ann Saunders-Osborne LL.B (Hons) (WOLV) L.E.C., Attorney-at-Law.**

## CHANGING CONDITIONS OF EMPLOYMENT IN ANTIGUA

Employment relationships have an evolutionary character, and adapt when faced with changes in economic relations and political imperatives. This is a worldwide phenomenon, and is especially applicable in Antigua. Traditionally, work relationships were a trade-off between economic dependence and social protection. Presently, economic pressures on Antigua are stronger than ever, and there is no reciprocal compensation granting security of existence. This has caused the emergence of new non-standard employment relationships, and flexible working patterns and arrangements, in order to efficiently utilize labour and other resources.

The drivers for this transformation are globalisation, foreign competition, growth in the labour force, and technological advances increasing the use of machinery as opposed to humans. This has caused businesses in Antigua to disintegrate, and externalisation has reappeared in the form of outsourcing, granting of concessions, franchising and subcontracting of labour. Antiguan businesses now pay other firms to provide cost effective labour services. This is contrasted with the traditional vertical integration of production by which services are provided by full-time employees.

In Antigua, the use of non-standard employment relationships, such as short-term and part-time workers, fixed-term workers, home workers, freelance workers, seasonal workers, agency workers, trainees, temporary government funded workers, independent contractors, zero-hours contract workers and casual workers, has become more widespread. Questions arise as to what rights these workers have; who is responsible for providing them; and who is their employer under the law. The present state of the Antiguan Labour Law does not adequately address these issues.

From a Caribbean perspective, the oncoming CSME necessitates that all businesses be at their highest levels of efficiency in order to survive in the regional and global market. Increasingly, this has translated into the utilization of new methods of production which minimize the use of traditional labour patterns. This has meant so far that the ordinary Antiguan worker, not already in full-time employment, and possessing little bargaining power, will most likely find himself in a non-standard relationship.

From an Antiguan perspective, the changing nature of the employment relationship necessitates vigilant legal response with respect to recommendations made by CARICOM and the International Labour Organization, so that efficiency in the country's labour market is not threatened by the lack of protection for the new groups of workers. Therefore, it is submitted that for Antigua and Barbuda to be truly successful in modern enterprise, there needs to be a framework that enables businesses to innovate and adopt new practices, while at the same time, an appropriate balance must be struck to protect the interests of all parties in the market, especially those who have less bargaining power.

**Contributor: Lisa M. John LL.B (1st Cl Hons) (UWI) L.E.C., Attorney-at-Law.**

## REGISTERED LAND (AMENDMENT) ACT, 2007

In October 2007 the government of Antigua and Barbuda passed the Registered Land (Amendment) Act (RLAA) which made notable changes to the Registered Land Act (RLA) CAP 374. This article will seek to highlight some of these changes.

### The Land Register

In the new section 13A, where a leaf of the Land Register is lost or misplaced, the Registrar now expressly has discretion to create a new register, on his own initiative or on application by an interested person. However the interested person must submit with the application a statutory declaration of the evidence and the matters which he asserts subsisted on the lost or misplaced register. It is at the Registrar's discretion to accept or refuse such evidence.

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In any event, notice of the replacement of the lost or misplaced register, which shall contain details of the time within which objections may be submitted to the Registrar, must be published in the Official Gazette and in no

less than two (2) issues of a daily newspaper published and circulating in Antigua and Barbuda. The notice must also be served on the owners of any parcels of land adjoining that in respect of which the register has been lost or misplaced. The Government through the Consolidation Fund will bear the cost and expenses of the publication and service of the notice.

Once the Registrar is satisfied that the register has been irrevocably lost or misplaced, after having made all reasonable searches and inquiries and having given all interested parties an opportunity to be heard, he will order a new register to be created. The said order may include whether and to what extent an interested party shall be required to give an indemnity in respect of any matter entered on the register.

### **Maps, Parcels and Boundaries**

Although a large portion of section 21 (which deals with the combination and division of parcels of land) has been repealed, the Registrar still has a discretion to combine contiguous parcels of land on application by the proprietor. However, approval of the combination must now be given by an order of the Registrar, notice of which must be forwarded to the Chief Land Surveyor on a mutation form for an amendment to the Survey Map. Once the Survey Map has been amended the Registrar shall then proceed to effect his order by closing the registers relating to the contiguous parcels and opening new registers for the parcels resulting from the combination. This is also the position in respect of the division of a parcel of land.

### **Certificate and Searches**

Where a land certificate or a certificate of lease has been lost or destroyed and the proprietor applies for a new certificate, section 34 requires that a statutory declaration to the effect that the certificate has been lost or destroyed be submitted.

### **Dispositions - General**

It must also be noted that failure to register any instrument registrable under the RLA will result in the commission of an offence under section 40. The offender will be liable on summary conviction to a stiffer penalty of a fine not exceeding one thousand dollars (previously there was a \$300 fine).

Further once a person has applied for an official search where he is proposing to deal with registered land and he has stated in his application the particulars of the proposed dealing, registration of any instrument affecting the land shall now be stayed/ suspended for thirty days (as opposed to fourteen days pre-amendment) (section 42).

### **Dispositions - Charges**

Section 73 now requires the receiver of income of charged property to make an application to the Registrar within one month of his appointment for the appointment to be noted on the register.

A chargee exercising his power of sale may now pursuant to section 75(1a) with the approval of the court, sell the charged land by private treaty subject to such terms and conditions of sale as the court may order.

### **Co-Proprietorship and Partition**

It has been made clear under section 100(3) that Proprietors in common and Joint Proprietors have the same rights, liabilities and responsibilities in relation to each other as Tenants in common and Joint tenants respectively.

Where land is sold by the Registrar, the new section 104(3) states that the proceeds of such sale shall be applied –

- (a) firstly in discharge of any encumbrances to which the land is subject in order of priority;
- (b) secondly in satisfaction of all costs and expenses properly incurred and incidental to the sale or any attempted sale; and
- (c) lastly to the tenants in common in accordance with their respective shares or interests.

### **Instruments and Agents**

It is important to note that under section 106 the Registrar may now

- (a) require an instrument of transfer to be accompanied by a survey plan authenticated by the Chief Land Surveyor indicating that the boundary in respect of the land to which the instrument relates has been authenticated; and
- (b) require a resurvey of the land to which the instrument relates where the authentication of the boundary was effected more than ten years prior to the date of the instrument.

Also, the Registrar will not register an instrument relating to land unless it is signed by: -

- (a) the transferee who shall sign his name under his hand on the instrument and shall inscribe on the back of the instrument his name; or
- (b) an attorney at law who shall sign his name under his hand on the instrument and shall inscribe on the back of the instrument his name or the name and the address of the firm, if any, in which he is employed.

In addition to affixing the common seal of the corporation, an instrument will be deemed to have been executed under section 107 if it is also attested in accordance with the corporation's incorporation documents. It is no longer necessary to have the instrument attested by the corporation's clerk, secretary or other permanent office and by a member of the board of directors, council or other governing body of the corporation.

Further, there is no longer a need for a person executing an instrument to appear before the Registrar accompanied by a credible witness to establish his identity. It will now be sufficient for the person executing the instrument to present the Registrar or a public officer on the Registrar's staff a credible form of photographic identification (section 108).

The ambit of section 109 has been extended in that an instrument of transfer, lease or charge submitted for registration shall not be accepted unless the instrument contains or has attached to it a declaration from the parties to the transaction regarding their citizenship status (that is, whether they are a citizen of Antigua and Barbuda; national of a Caricom territory; or a non-citizen).

Moreover, registration particulars of a Non-citizens Land Holding Licence shall be noted on the Register in relation to the land to which the licence refers. Notwithstanding this, where the holder of a non-citizen's land holding licence transfers land and wishes to register such transfer of land, the Registrar will ensure that the holder of the Licence files along with the transfer, a certificate issued by the Attorney-General pursuant to the instructions of Cabinet, certifying that –

- (a) he has fulfilled the conditions under which the licence was granted;
- (b) the requirement to satisfy the conditions under which the licence was granted have been waived; or
- (c) the transferee has accepted and agreed to be bound by the conditions under which the licence was granted.

It should be noted that all instruments accepted by the Registrar shall be retained in the registry for as long they support a current entry in the register and now for twelve years thereafter. Additionally, an entry in the register which has

been superseded or has ceased to have any effect may now be destroyed by the Registrar after twelve years or more (section 110).

### **Transmissions and Trusts**

Section 121A has been inserted into the RLA which covers registration of a proprietor entitled to Crown land. A person who is eligible to apply for registration as proprietor of a parcel of land may apply to the Registrar once he can support his application with evidence supported by affidavit. Further, the Crown must be registered as the proprietor of the parcel of land because a person eligible to be registered as proprietor in respect of that parcel of land did not make an application for registration.

The applicant will bear the cost of advertising the application and notice of the said application will be given to any affected person in the opinion of the Registrar. Once the Registrar is satisfied that the applicant is eligible for registration he will make a recommendation to the Cabinet for the application to be approved. If Cabinet approves the application the applicant will be registered as the proprietor of the parcel of land that was the subject of the application.

With regards to trusts, section 122 has been extended to the effect that where a personal representative or trustee of land applies to register any dealing in respect of the land, the Registrar may require the applicant to lodge with the Registrar evidence that

- (a) the proprietor of the land is entitled to file any dealing and
- (b) the beneficiaries of the will, estate or trust have been made aware of the dealing.

In the absence of such evidence the Registrar will not register the dealing.

Further, survivors of trustees registered as joint proprietors who are not entitled to exercise alone the powers vested in them, must give notice of such provision to the Registrar who will then enter a restriction to that effect on the register (section 123).

### **Restraints on Dispositions - Cautions**

It is important to note that according to section 127 a bank or financial institution which has advanced money to the proprietor of land, lease or a charge must now first obtain written consent of that proprietor before it can lodge a caution with the Registrar forbidding the registration of dispositions and the making of entries affecting the land, lease or charge concerned.

Further a chargee of lands will not be entitled to lodge or maintain a caution on the land in addition to a charge and when lodging a caution will be required to execute a statutory declaration. The execution of a statutory declaration is no longer at the discretion of the Registrar.

The Registrar not only has the power to reject an unnecessary caution, in his opinion, but now upon receipt of any caution he may forbid the registration of dispositions or the making of entries on the register for as long as he considers appropriate in the circumstances notwithstanding the application by the cautioner.

### **Prescription**

It is very important to note that land can no longer be acquired by prescription after 12 years, but now after 20 years (section 135).

Upon an application for the acquisition of land by prescription the Registrar will make a notation of the application on the register. Once three months have elapsed and the Registrar is satisfied that the applicant has acquired ownership of

the land claimed the applicant may be registered as the proprietor, subject to any interests on the register which have not been extinguished by the possession.

Further, the applicant will need to pay a registration fee of 2.5% of the value of the land and the valuation fee of the valuer appointed by the Registrar to undertake the valuation before the Registrar will complete the registration (section 137).

### **Rectification and Compensation**

Where upon application by an interested person, the Registrar decides that there is a right to compensation he will have to seek the opinion of the court with two (2) months of his decision as to the amount of compensation that should be awarded (section 143).

### **Decisions of the Registrar and Appeals**

It should be noted that section 146 now requires that where a question arises with regard to the exercise of powers conferred or imposed upon the Registrar, the Registrar must state a case for the opinion of the court within two (2) months of the date he receives an application from an aggrieved party; or in any other case, within a reasonable time of the question arising.

### **Miscellaneous**

A notice will now be deemed to have been served if served on or given to any person by facsimile or by electronic mail at a number or address supplied by that person in the records of the Land Registry and provided that proof of the receipt of such facsimile or mail is provided by a transmission report or an electronic receipt showing the delivery of the same (section 151).



It should be noted that the Magistrates' Court will now have jurisdiction where the value of the subject matter in dispute does not exceed \$15,000 (as opposed to \$1,500 pre-amendment) (section 157).

**Contributor: Kathleen A. Bennett LL.B (1st Cl Hons) (WOLV), BVDip (NLS), Paralegal**

## **THE CORPORATION**

The Companies Act 1995 establishes the legal framework for the incorporation of a company, thereby creating an artificial legal person. The company is a figment of men's imagination. Consistent with the assertion that man was created in God's image with creative propensity, man has conceptualized and provided in law for the creation of an artificial person – the corporation.

The corporation has three dimensions or compartments. The **first** is the shareholders' compartment; the **second** is the directors' compartment; the **third** is the officers', executives' or managers' compartment. The functions, objectives, duties and rights exercisable within each compartment are separate and distinct.

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However persons acting as shareholders, directors and officers of a corporation are all wearing three distinct and separate “hats” whether or not the same person is acting within these various compartments.

At the foundation of good corporate governance is a critical need to understand the legal rules which regulate and govern the three compartments.

These three compartments can be conceptualized as being in a hierarchical structure with the shareholder compartment being at the top, the directors compartment second, and the officers/ employees in the lowest or third compartment.

Also, a person is legally defined as both a natural person (an individual) and an artificial person (the corporation). Therefore a person holding the position of shareholder, director or officer within a corporation can be either a natural person (individual) or another artificial person - a corporation.

### **Compartment 1: Role of Shareholders**

The investment or purchase of a share of stock in a corporation makes a person an owner and shareholder in a corporation. Shareholders thus own the corporation. Although they have no legal title to corporate property such as buildings and equipment, they do have an equitable (ownership) interest in the corporation.

As a general rule, shareholders in that capacity have no responsibility for the daily management of the corporation unless they have been appointed as director; and it is the shareholders who are responsible for appointing the directors. Members of the Board of Directors are elected and removed by a vote of shareholders.

Of utmost importance is that shareholders are responsible for approving and appointing the external auditors for the corporation. Shareholders must approve fundamental changes affecting the corporation before the changes can be implemented. Hence, shareholders are empowered to amend the Articles of Incorporation and By-Laws, approve mergers, effect the dissolution of the corporation, and approve the sale of all or substantially all of the corporation’s assets. Some of these powers are subject to prior board approval.

Shareholders meetings must occur at least annually. In addition, special meetings can be called to deal with urgent matters affecting shareholders’ rights and powers. A shareholder is entitled to receive a share certificate as evidence of ownership of a specified number of shares in the corporation.

### **Compartment 2: Role of Directors**

The management, control and policy-making powers in a corporation reside in the directors and directors alone. The Board of Directors must conduct its business by holding formal meetings with recorded minutes, and with the requisite quorum of directors present.

All the directors have the right of participation, inspection, indemnification and compensation (even if at a minimal fee). The right to participation means that directors are entitled to participate in all Board of Directors’ meetings, and have the

right to be duly notified of these meetings. A director must have access to all corporate books and records to make decisions and to exercise the necessary supervision over corporate officers and employees. This right of inspection is virtually absolute and cannot be restricted. The general areas of responsibility of the Board of Directors include the following:

1. Declaration and payment of corporate dividends to shareholders;
2. Authorization for major corporate policy decisions;
3. Appointment, supervision, and removal of corporate officers and other managerial employees (in compartment three) and the determination of their compensation; and
4. Financial decisions, such as the decision to issue authorized shares and bonds.

The Board of Directors can delegate some of its functions to an executive committee or to corporate officers. But in so doing the Board is not relieved of its overall responsibility for directing the affairs of the corporation.

### **Compartment 3: Role of Corporate Officers and Executives**

Corporate officers and other executive employees are hired by the Board of Directors. These officers are bound by their contractual terms of employment and their employment services are governed by the Antigua and Barbuda Labour Code.

### **Duties and Liabilities of Directors (Compartment 2) and Officers (Compartment 3)**

Directors and officers are deemed fiduciaries of the corporation, because their relationship with the corporation as an entity and its shareholders is one of trust and confidence. As fiduciaries, directors and officers owe ethical and legal duties to the corporation and shareholder as a whole. These fiduciary duties include the duty of care and duty of loyalty to the corporation.

The directors and officers must exercise due care in performing their duties. They are expected to make informed and reasonable decisions on behalf of the corporation. Directors and officers are also expected to exercise a reasonable amount of supervision when they delegate work to other directors and officers, and to employees. The duty of loyalty can be described as faithfulness to one's obligations and duties. In the corporate context, the duty of loyalty requires directors and officers to subordinate their personal interests to the welfare of the corporation. Among other things, this means that directors may not use corporate funds or confidential corporate information for personal advantage. They must also refrain from self dealing. The duty of loyalty also requires directors and officers to fully disclose to the Board of Directors any potential conflict of interest that might arise in any corporate transaction.

This, in a nutshell, is a description of the three compartments within a corporation.

**Contributor: Kelvin John LLB (Hons), LLM, EMBA (Dist.), Attorney-at-Law, Partner, Notary Public, Mediator**

## WHO WE ARE

Thomas John & Co. has fast become the leading law firm in Antigua and Barbuda offering a full range of domestic and offshore legal services. It prides itself on its high professional output and high quality of legal services. It has earned an international reputation for the quality of its legal advice and delivers a professional, responsive and cost-effective service tailored to the needs of its clients. The firm is retained by international and offshore banks, international accounting firms, multinational companies and high net worth individuals from around the world as well as persons with need for legal services domestically.

The lawyers of Thomas John & Co are highly qualified. The depth and breath of experience of the firm's lawyers enable them to understand clients' business and to anticipate their needs.

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