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Welcome to the 2018 Edition

Welcome to the 10th edition of Barbados International Finance & Business.

Barbados’ journey as an International Financial Centre began in the late 1960s, with the introduction of the International Business Company (Exemption from Income Tax) Act Cap. 77. This was soon followed by the International Business Companies Act Cap. 77, the Offshore Banking Act (since repealed and replaced by the International Financial Services Act Cap. 325), and the Exempt Insurance Act, Cap. 308 A. In the intervening period, successive Barbados Governments have introduced various pieces of new legislation and amended others, in response to industry demands, or to enhance international competitiveness.

It is encouraging to note that in this 21st century, Barbados still remains the domicile of choice for Canadian-parented companies and, more recently, for several LATAM-parented companies as well. International business entities now number in excess of 4,000 and Barbados continues to evolve, through the ongoing introduction of new legislation and adoption of standards in line with international best practices.

Barbados has achieved a global reputation as a well-regulated international business centre.

Some of the contributing factors to this include:
- An easily accessible geographical location
- An efficient infrastructure, including modern air and sea ports
- A wide selection of international banks
- Access to a steady pool of talented university graduates, and management and accounting professionals
- The Government’s ability to continuously negotiate new double taxation treaties (now numbering 39)
- A stable political environment
- A strong legal system based on British Common Law.

I invite you to consider the competitive advantage Barbados will deliver to your organisation and to become a part of the country’s success as it continues to expand in the world of international business.

With very best wishes
James Gardiner

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GLOBAL RE SCC
A Barbados Segregated Cell Insurance Company
“Creative Insurance Solutions for Your Business”
Enterprising, Resilient, Focused! Another enterprising year has passed, with Barbados’ international business and financial services (IB&FS) sector demonstrating resilience as our country remains focused on the ongoing expansion of this vital industry. Several successes have been recorded, despite the various challenges.

These challenges, not only common to Barbados and the wider Caribbean, but also to other countries across the globe, have in no way disheartened the Government of Barbados and stakeholders in the IB&FS sector from advancing in several respects. During 2017, for example, the sector continued to make strides in the attraction and expansion of international medical schools. Just recently, a third international medical school was established in Barbados and at least two others are expected to commence operations in the coming months.

Additionally, the international insurance industry recorded pleasing growth in 2017, with an increase in the number of captives registered in Barbados. Twelve new licenses were issued for Exempt Insurance Companies (EICs), bringing the total number of active EICs and Qualifying Insurance Companies, at December 2017, to 212 and 54, respectively.

Progress was also evident in the expansion of our treaty network. A double tax agreement (DTA) came into force with Cyprus, and the ratification process was effected for the DTA with the Slovak Republic. More recently, the Barbados/Italy DTA entered into force, bringing the total number of DTAs in force to 39.

In the latter half of 2017, Barbados became a part of the Organisation for Economic Co-operation and Development’s Inclusive Framework, which commits our jurisdiction to the consistent implementation of the Base Erosion and Profit Shifting (BEPS) initiative. Consequently, in January 2018, Barbados signed the Multilateral Instrument, one of the four minimum standards necessary to implement the tax treaty-related measures resulting from the BEPS Action Plan.

Small, open economies, such as Barbados, remain susceptible to the policies instituted by international financial institutions - de-risking being one such policy. While the issue of de-risking still remains a concern for us, efforts are in train through the Ministry of Finance and Central Bank of Barbados to address this matter. It is this collaborative and proactive approach that will enable Barbados, a leading international financial centre, to tackle de-risking and similar initiatives with clear and renewed vigour.

Based on current projections contained in the October 2017 International Monetary Fund’s World Economic Outlook, the global economic outlook appears to offer encouraging prospects. This optimism will also transcend to Barbados’ IB&FS sector, as our government continues, along with Invest Barbados and other industry stakeholders, to promote the country as the ideal jurisdiction of substance with which to do business.

I therefore invite you to examine the many business opportunities that Barbados has to offer and make this jurisdiction your ultimate choice for international business!

Senator the Hon. Darcy Boyce
Minister in the Office of the Prime Minister
Change can be a good thing.

A smooth transition is the key.

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Steady Progress

It is my pleasure to welcome you to the 10th edition of the Barbados International Finance and Business (BIF&B) magazine.

The first edition identified the magazine’s main purpose as providing an annual update on Barbados as an international business domicile, while focusing on opportunities in wealth management, captive insurance, intellectual property, as well as trade and business opportunities for investors.

Over the years, Barbados steadily registered an expanding roster of international entities successfully doing business in the country. Today, our domicile is home to activities including international trade, commerce, banking, insurance, wealth management, fintech, shipping, ICT, niche manufacturing, renewable energy, medical tourism, as well as international universities. Several high net worth individuals have also chosen to take advantage of our special entry reside permit regime.

Barbados’ progress in diversifying its economy is being achieved in spite of a challenging external environment. The growth and expansion of a vibrant international business sector is vital to the success of our national development. Mindful of this, government remains committed to nurturing a more attractive and competitive domicile. Testimony of this includes the introduction of new and enhanced products, enabling legislation, as well as the number of new and revised international agreements negotiated that facilitate international business. Over the last decade, Barbados negotiated revisions to its long-standing double taxation agreements (DTAs) with Canada, China, Finland, Malta, Mauritius, the Netherlands, Norway, Sweden and the United Kingdom. Additionally, DTAs have entered into force with at least twelve countries.

Barbados remains steadfast in its commitment to attracting businesses of substance as well as ensuring prudent regulation and transparency. In the case of the latter, within the last five years the island became signatory to the Organisation for Economic Co-operation and Development’s Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting and Multilateral Convention on Mutual Administrative Assistance in Tax Matters in 2018 and 2015, respectively. Barbados is also signatory to the USA’s Foreign Account Tax Compliance Act.

In recent years, transparency became one of the watchwords and a defining standard for international financial centres. Transparency continues to be integral to our way of doing business. Intent on continually strengthening its regulatory capacity, Barbados established the Financial Services Commission to regulate non-bank financial institutions in 2011, and three years later in 2014, the Barbados Revenue Authority, to improve the efficiency and transparency of tax administration. The Central Bank of Barbados, a key pillar of the regulatory environment, has been constantly upgrading and enhancing its regulatory capacity and remains foremost in maintaining a stable financial and monetary system.

It is within this context that Invest Barbados (IB), together with its stakeholders, continues to explore channels through which Barbados can more effectively extend its reach and win new business.

Market intelligence points to additional niche opportunities in areas such as arbitration, fintech, medical tourism, research and development, renewable energy, niche manufacturing, ICT and financial services; in both traditional and non-traditional markets. Collectively, team Barbados is focused on building a more vibrant, diverse and resilient international business sector. In doing so, the private–public sector collaboration which ensures the success of the BIF&B magazine will be increasingly important.

On behalf of the IB team, I thank members of the editorial teams for their commitment in ensuring the success of the magazine over the past decade. Equally, I express heartfelt appreciation to our editorial and financial contributors. Our partnership has contributed to mutually reinforcing and steady progress.

To our valued readers and clients, I invite you to explore the articles in this 10th edition. I also invite you to…come grow with us!

Sandra Payne
Chief Executive Officer (Ag.)
Following concerted efforts by the Organisation for Economic Co-operation and Development (OECD) and US regulators regarding the exchange of tax information, Barbados has enacted certain provisions in order to meet, and, in some cases, exceed the standard reporting requirements for the Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS).

The following is a summary of the requirements under the Income Tax (Automatic Exchange of Information) Regulations, 2017.

FATCA is a reporting regime aimed at the disclosure of US persons with offshore accounts and investments. The primary aim is to capture those US persons who obtain offshore accounts and investments with the sole purpose of evading taxes. This disclosure is accomplished by a withholding regime, which works in tandem with the current regime.

The CRS is designed to facilitate the exchange of information on account holders in a host of jurisdictions, known as participating jurisdictions. The Competent Authorities in these jurisdictions have been working hard to put in place reporting systems and platforms to facilitate the exchange of information.

The definition of a Reporting Financial Institution is the same for both FATCA and the CRS – “A Barbados Financial Institution that is not a Non-Reporting Financial Institution”.

### Institutions Not Required to Report

<table>
<thead>
<tr>
<th>FATCA</th>
<th>CRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial institution with a local client base</td>
<td>Central Bank of Barbados</td>
</tr>
<tr>
<td>Local bank (a bank or a credit union or similar cooperative credit organisation that is operated without profit)</td>
<td>Caribbean Development Bank</td>
</tr>
<tr>
<td>Financial institution with only low-value accounts</td>
<td>National Insurance Fund</td>
</tr>
<tr>
<td>Qualified credit card issuer</td>
<td>The Barbados Agency for Micro Enterprise Development Ltd. (Fund Access)</td>
</tr>
<tr>
<td>Investment entities that qualify as deemed-compliant foreign financial institutions and other special rules</td>
<td>Enterprise Growth Fund Ltd.</td>
</tr>
<tr>
<td>Collective investment vehicle</td>
<td>Barbados Co-operative &amp; Credit Union League Ltd.</td>
</tr>
</tbody>
</table>

This means that entities, other than those listed above, are required to comply with the requirements under the CRS and FATCA. However, the following reportable account types and reporting thresholds are also in place:

<table>
<thead>
<tr>
<th>Required to Report</th>
<th>FATCA</th>
<th>CRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-existing custodial account or depository account (more than US$50,000 as at June 30, 2014)</td>
<td>A reportable account is defined as an account held by one or more reportable persons or by a passive non-financial entity with one or more controlling persons that is a reportable person</td>
<td></td>
</tr>
<tr>
<td>New custodial account or depository account (more than US$50,000 on or after July 1, 2014)</td>
<td>More than US$250,000 on or after July 1, 2014</td>
<td></td>
</tr>
<tr>
<td>New cash value insurance contract or an annuity contract (more than US$250,000 on or after July 1, 2014)</td>
<td>Enhanced review procedures are required for account holders with an aggregate account balance of over US$1 million</td>
<td></td>
</tr>
</tbody>
</table>
Reporting Deadlines

Reporting deadlines are in place along with punitive measures for non-compliance and tardy reporting. For FATCA, mandatory information must be provided by July 31, following the calendar year to which the information relates. Under CRS, the effective implementation date for compliance and reporting was to be July 1, 2017. However, Barbados is expected to commence CRS filings in July 2018.

Confidentiality

As it relates to confidentiality, under both FATCA and CRS, the Competent Authority and Reporting Institutions are mandated to ensure that the information is treated as confidential and that it is only disclosed to an authority that is legally entitled to such information.

Participating Jurisdictions

Of note, many EU countries and international financial services centres, as well as most of the Caribbean region, have signed on as participating jurisdictions.

Barbados has completed all requirements and is working towards finalising its obligations to ensure that the country is fully compliant with OECD and US regulations, including:

- The Multilateral Competent Authority Agreement – signed on October 29, 2015
- The Foreign Account Tax Compliance Act (FATCA) - signed with the United States of America on November 17, 2014 and entered into force on September 25, 2015
- Base Erosion and Profit Shifting (BEPS) – Barbados has agreed in principle and, as of June 7, 2017, is listed as a signatory to the BEPS framework. Further negotiations are currently in place with the OECD, with review meetings expected to be held by January 2018
- Country by Country Reporting is an integral component of BEPS – this will generally be subject to the BEPS timelines as listed above.

The authorities continue to work in earnest to meet their obligations, with limited personnel resources and funding.
Neutralising the Effects of Branch Mismatch Arrangements: BEPS Action 2

by Gloria Eduardo

The 2017 Report, issued by the Organisation for Economic Co-operation and Development (OECD), on how to neutralise the effects of branch mismatch arrangements, is an extension of the 2015 Base Erosion and Profit Shifting (BEPS) Action 2 Report on hybrid mismatch arrangements. However, unlike the Action 2 Report, which considers mismatches that are the result of differences in the tax treatment or legal characterisation of instruments and entities, the 2017 Report considers mismatches that occur when the jurisdictions of the head office and the branch take different views as to the allocation of income and expenditure between the head office and the branch.

The 2017 Report identifies five basic types of branch mismatch arrangements:

- **Disregarded branch structures** – where the branch does not give rise to a permanent establishment (PE) or taxable presence in the branch jurisdiction

- **Diverted branch payments** – where the branch jurisdiction recognises the existence of the branch, but the payment made to the branch is treated by the branch jurisdiction as attributable to the head office, while the head office jurisdiction exempts the payment from taxation on the grounds that the payment was made to the branch

- **Deemed branch payments** – where the branch is treated as making a notional payment, which results in a mismatch in tax outcomes under the laws of the head office and the branch jurisdictions

- **Double deduction branch payments** – where the same item of expenditure gives rise to a deduction under the laws of both the head office and the branch jurisdictions

- **Imported branch mismatches** – where the payee offsets the income from a deductible payment against a deduction arising under a branch mismatch arrangement.

Branch mismatch arrangements can be used to produce identical tax outcomes to those targeted by the Action 2 Report. These being:

- Deduction/no inclusion (D/NI)
- Double deduction
- Indirect deduction/no inclusion.

The 2017 Report includes five specific recommendations for improvement to domestic law, intended to reduce the frequency of those mismatches and sets out examples illustrating the intended operation of the recommendation rules.

The example below illustrates a disregarded branch structure, its tax outcome, how the mismatch can arise, and the mechanism to neutralise its effect:

In this example, A Co lends money to C Co (a related company) through a branch located in Country B. Country C permits C Co to claim a deduction for the interest payment. Country A exempts the interest payment from taxation because it is attributable to a foreign branch, while the interest income is not taxed in Country B because A Co does not have a sufficient presence in Country B to be subject to tax in that jurisdiction.
... the 2017 Report considers mismatches that occur when the jurisdictions of the head office and the branch take different views as to the allocation of income and expenditure between the head office and the branch.

The payment of interest, therefore, gives rise to an intra-group mismatch, a D/NI outcome, which can arise in a number of ways and could be a product of the domestic rules operating in each jurisdiction, or due to a conflict between domestic law and treaty requirements. For example:

- The interest payment could be treated as income of a foreign branch (and therefore exempt from tax) under Country A’s domestic law, but may not be included in income under Country B’s domestic law because the branch has no PE.
- The branch could be treated as constituting a PE under the Country A-B tax treaty, so that Country A is required to exempt the interest payment from tax under a provision equivalent to Article 23A of the OECD model.

Pursuant to Recommendation 1 of the 2017 Report, Country A should limit the scope of the branch exemption and request A Co to make an adjustment to include the interest payment (exempted from tax under Country B’s domestic law) in its taxable income. If Country A is prevented from restricting the scope of the branch exemption, then Country C should apply Recommendation 2 and deny the deduction granted to C Co in respect to the interest payment.

Several countries have already begun adopting the recommendations included in the 2017 Report, and while each country is free to make its own policy choices, Barbados will eventually have to decide how best to approach the issues. Companies will also need to analyse the detailed content of the 2017 Report and assess the impact this may have on their current or planned structures.
Relevance of the Corporate Veil in the Era of KYC Rules

by Ikins Clarke

Under the Companies Act (CA) of Barbados, a company has the capacity, rights, powers and privileges of an individual. The concept of the “corporate veil” serves to distinguish a company as a legal individual separate from its shareholders. It is only under exceptional circumstances that a court will pierce the corporate veil and disregard the separate existence of a company and its shareholders, directors or officers. However, given the increase in know-your-customer (KYC) rules, requiring institutions and professionals to identify and verify their customers, the question arises – is the corporate veil principle still relevant?

Various pieces of legislation, enacted in Barbados over recent years, call for more personal information to be obtained from potential and existing customers, directors, shareholders and ultimate beneficial owners, requiring more than just minimum due diligence be undertaken to verify the identity of beneficial owners of companies.

The 2011 Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23 (ML Act), clarifies the duties of financial institutions, non-financial business entities and professionals. Professional service providers (lawyers, accountants, etc.) must undertake adequate due diligence to establish and verify the true identity of a client, by using reliable documents from an independent source. Where the client is not an individual, reasonable measures must be taken to establish the identity of the individual who is the actual beneficial owner of the company.

The Corporate (Miscellaneous Provisions) Act, 2015-1, amended the CA to require that records maintained at the registered office of a company incorporated or registered in Barbados, must include a record of the beneficial ownership of the company. For example, a copy of the most recent utility bill and certified copies of various forms of photo identification and bank references should be kept on record - fines are imposed for failure to comply. A plethora of information to check the KYC box, as required by international standards, coupled with mandatory risk management procedures, should provide a clear indication of who is who, and who owns what.

Barbados continues to be a highly recommended and preferred country of choice for international business, known for its high standard of living and quality of life. The robust and sound legislation that underpins efficient international tax planning (as well as the 39 double taxation agreements), strengthens the opinion that adequate KYC rules are necessary to reinforce the island’s reputation as a preferred international financial centre.

In some jurisdictions, companies are now required to disclose individuals who fall into certain categories, such as those directly or indirectly owning 25% or more of the shares of a company. There is some debate that Barbados could introduce a public registry of company owners. This registry, which would function in a manner similar to a company registry, would be set up for individuals, so that information on the individual owner of a private company would no longer remain private.

While client confidentiality will always be a major concern for investors and clients, the KYC rules are critical to a service provider’s ability to discern whether a particular client fits within the framework of legality and transparency. The absence of this knowledge could negatively affect the service provider and cast a negative shadow on the jurisdiction (e.g., the fallout from the high-profile Panama papers scandal). Service providers’ responsibility apart, if the public registry comes to fruition, the public will also be able to access and scrutinise data on individual shareholders.

The new norm of KYC transparency and accountability reinforces the view that the corporate veil and its legal significance, as a separation between a company and its shareholders, may not be as relevant as in the past. In essence, the concept of the corporate veil is rapidly becoming redundant as regards KYC requirements.
New startup fintech company, Carilend, has revolutionised borrowing and lending in the Caribbean with the introduction of a Peer-to-Peer lending service—the phenomenon that has swept the globe and is now a billion dollar industry in the UK, USA and Canada.

Peer-to-Peer lending connects people wanting to borrow, with those who have money to lend, through the use of a secure online marketplace. Carilend, headquartered in Barbados, is the first of its kind in the region, opening the door to a new way of borrowing and lending in the Caribbean.

Carilend’s state-of-the-art digital platform was built with skills from best-in-class operators around the globe, enabling it to deliver the highest standards available in technology, security and risk management techniques in Peer-to-Peer lending. Carilend integrated these solutions into the company to ensure it operates to the highest global standards, and its operational model is like no other in Barbados or the Caribbean, in that it conducts business entirely and exclusively online.

Its founders and owners decided to launch first in Barbados, not only because it was their home, but, more importantly, because Barbados possesses the key elements necessary for a Peer-to-Peer lending business to succeed, including:

- A fully functioning Automated Clearing House to facilitate the movement of funds to and from customers’ bank accounts
- High connectivity penetration for internet access via smartphones and other mobile devices
- Reasonably high penetration of banking services for the general population

For the first time, Barbados investors and borrowers can take advantage of the excellent rates, first-class customer service and all-round great experience that is Peer-to-Peer lending, 24 hours a day, without ever leaving the comfort of home or office.

With technology and systems designed and built to work anywhere, the company plans to expand into other Caribbean markets later this year, enhancing Barbados’ growing reputation as the Caribbean’s fintech hub.

Home to the First Peer-to-Peer Lending Fintech in the Caribbean

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Barbadian entities are increasingly under scrutiny by the Canadian revenue authorities, who have become more aggressive in their approach of late and are increasingly prepared to challenge Barbados-based structures set up by Canadian parent companies. While professional advisors and regulators in Barbados are confident that the tax treaty network and regulatory and legislative framework – the backbone of the international business and financial services sector in Barbados – can stand up to scrutiny, it was reassuring to see this recently demonstrated. The 2016 decision of CIT Group Securities (Canada) Inc. (Appellant) and Her Majesty the Queen (Respondent) is the case in point.

This matter involved an appeal to the Tax Court of Canada, by a Canadian taxpayer, arising from the tax treatment of the income of one of its Barbadian subsidiaries licensed by the Central Bank of Barbados to carry on business as a trust and finance company, initially under the Financial Intermediaries Regulatory Act, and then under the Financial Institutions Act (FIA).

In particular, the Court had to determine if the income earned by the Appellant’s “controlled foreign affiliates” in Barbados was taxable in the hands of its Canadian parent, as “foreign accrual property income”. This included determining whether the income earned by the Barbados entity from its business was to be considered as part of its income from property, or, as commonly described, as passive income. A further factor that the Court had to consider was whether the foreign affiliate’s income should be excluded, because of an exception in the Canadian income tax rules for business carried on by the affiliate as a foreign bank or a trust company, the activities of which are regulated under the laws of the country in which the business is carried on.

The Barbados entity in question carried on the business of lending to third-party corporations and making long term investments, which was funded by loans from Barbados international business company affiliates. It had six full-time employees as well as a managing director – this is important from a Canadian perspective, to qualify for the exemptions being claimed.

What is also noteworthy from the decision is that the Court examined, in some detail, the nature of the business activities. This emphasises the importance of Barbados-based financial service businesses having substance in Barbados and being able to withstand a detailed examination of their operations. Ultimately, the court determined that the business the Barbados entity was engaged in was that of a foreign bank. This was so held, although the entity was licensed as a Part III licensee under the FIA and did not carry on any trust activities, although it was termed a trust company.

A further requirement that the taxpayer had to satisfy, in order to meet the exclusion clause in the Canadian tax legislation on which it sought to rely, was that its activities as a foreign bank were regulated under the laws of Barbados. It was found that the activities of the Barbados entity were appropriately regulated by the Central Bank, pursuant to the relevant legislation under Barbadian law. The learned Judge consequently allowed the taxpayer’s appeal and referred the assessments back for reconsideration.

This decision is very important in a Barbados context, as it demonstrates that proper tax planning can, and will, be upheld by foreign courts who are satisfied with the regulatory regime that has been established in Barbados. It should also give confidence to foreign investors who might be concerned about setting up entities in Barbados, given the recent attacks on offshore structures, particularly those in the Caribbean.

Meeting the Challenges – Canadian Tax Appeal Upholds Barbados by Mary Mahabir
The Realistic Challenges of PEP Determination – Is It Time for a Change?

by Gienna Smith

While it is clear that there are valid reasons for completing Politically Exposed Person (PEP) determinations, the process could use the application of a common sense approach on a case-by-case basis.

At the moment, people in perceived positions of power are regarded as potentially vulnerable to corruption, and must be flagged as PEPs, as well as their spouses, close associates and family members. That makes some sense, because one can have a public figure that abuses their power and co-opts friends and family members to help them channel funds siphoned from the public purse.

But the problem is that, since the release of international guidelines on PEP determination, service providers have come to realise that its application and ongoing maintenance is starting to raise challenges in certain cases. The PEP list just keeps getting bigger and longer, with people being added as PEPs, but no one is ever deleted. For example, a PEP may leave public office, but they must remain on the PEP list and be treated as a high risk customer – for life!

Many others have followed Mr. Abacha’s example, so one might well ask why service providers think there is a need for some flexibility in the application of the PEP determination process.

Now that we have had several years’ experience in trying to deter and detect corruption, to make our world a more transparent and legitimate economy, service providers are seeing the need for a revision of the guidelines. Many have come across cases where there is clear justification for the removal of an individual from the PEP list. For example, it may be that someone has retired from the PEP position many years ago, or is ageing and in poor health, or is no longer politically connected or active.

Let’s revisit why we have to determine who is a PEP. Some say it started with the activities of Sani Abacha, the former military dictator of Nigeria, who, in just five short years (1993 to 1998), is alleged to have diverted a reputed £5 billion from the public purse into personal foreign bank accounts.

The answer relates to the associated parties captured in the process, and also to the fact that relationships and people change over time. Take the more obvious case of a divorced spouse, married many years ago to a PEP and, therefore, also tagged as a PEP by association. Is it fair, or realistic, where it can be shown that separation from the PEP is absolute and the individual has not benefitted from the corruption in question, for that person to remain on the PEP list?

It is in cases like this, where the original circumstances resulting in PEP determination have changed dramatically, that service providers feel a more flexible, common sense approach is appropriate. It is time for a change.
Barbados Goes Global: Introducing the International Securities Market

by Marlon Yarde

The Barbados Stock Exchange (BSE) now offers a new and emerging trading platform to the regional and international business community. Aptly called the International Securities Market (ISM), this platform has expanded the operational footprint of the Exchange and places Barbados firmly within global capital markets. The island’s unique combination of strong international standards, cost-effective pricing and a comprehensive treaty network, position the ISM as the global Exchange of the future in the Western hemisphere.

The Barbados Advantage

The ISM is based in Barbados, a high-calibre jurisdiction with a trusted international financial centre. The island’s strategic focus on servicing legitimate companies of substance is a differentiating feature that lends appreciable credibility to the ISM, particularly in contrast to the modus operandi of some competing jurisdictions. The ISM will further enhance Barbados’ reputation as a quality place to do business.

‘Buy-in’ from key stakeholders – at all levels in Barbados – has been paramount. The continued support of the private sector, in concert with that of the Government and the Central Bank of Barbados, has been instrumental to the market’s development and, ultimately, towards its successful integration into Barbados’ international business & financial services (IB&FS) sector. With a growing network of international alliances, the ISM leverages a multi-tiered support framework that bodes well for the market’s enduring success.

Market Roles: the ISM Ecosystem

The ISM is a completely separate market from the domestic markets of the BSE. The market offers global ‘hard’ currency trading and is wholly exempt from the exchange control regime in Barbados. This exemption, the primary catalyst for the market’s growth and development, is a key component of the ISM’s appeal to market participants. By smartly pairing the operational prowess of the BSE with the talent, credibility and professional expertise of Barbados’ IB&FS sector, the ISM offers a confluence of opportunities in a trusted ecosystem of repute. This is a comprehensive value proposition that profoundly exceeds the frameworks on offer in competing jurisdictions.

There are three unique roles that facilitate interactions between buyers, sellers and listed companies on the market. ISM Trading Members conduct trades on the board of the market and may execute orders for both individual and institutional investors. Additionally, provided they are so licenced, they may also execute trades for their own account. ISM Clearing Agents provide support to Trading Members by ensuring the timely settlement of trading between counterparties to a transaction. Those based outside Barbados are further tasked with informing the Exchange of all internationally executed trades. Lastly, ISM Listing Sponsors play a more advisory role. Their primary task is to ensure prospective Issuers are made continuously aware of the ISM listing requirements.

Their role thereafter includes conducting due diligence on Issuers, managing Exchange communication and filings for Issuers, and providing ongoing support and advice throughout the life of listings. The ISM
has identified and approved a small consortium of Barbados’ premiere service providers for this pivotal role – no security can list on the market without the appointment of a Listing Sponsor.

The Road Ahead: A Bright Future

The ISM provides a cost-effective platform, both for international companies and global investors. With the goal of offering dynamic opportunities and tax-efficient trading, the ISM is well positioned to become a leading platform for international corporate structures.

The BSE continues to support the continued development of Barbados’ IBFS sector and, with the advent of its newest market, contribute to the national economy as a whole. The ISM marries a value proposition of structure and substance with a strong positive market outlook – certainly valuable prerequisites for attracting an internationally discerning clientele.
Manufacturing Sails for the World

Doyle Offshore Sails Ltd. manufactures sailboat sails and marine-related products for export all over the world. We started in Barbados in 1988 with eight employees and today have a staff of 45. We use the most current technology in our production techniques and have developed an excellent reputation for high quality and long-life products.

Barbados was chosen as the best location to start the business because of a few important factors:

• The Barbados Investment & Development Corporation (BIDC) supplied the buildings that were necessary for the type of manufacturing we do, at a globally competitive price. The BIDC readily facilitated us in customising the buildings so that we were able to get production up and running quickly
• There was already an educated and competent labour force available. This was also key to the timing of our growth
• Proximity to the North American and Caribbean markets was ideal, as time zones were very manageable. Our competitors in China, Europe, Indonesia and Sri Lanka do not have this advantage
• Export costs are in line with our competitors
• Barbados has a very strong infrastructure. The communications network, transportation, services, healthcare, and even lifestyle, are among the best in the Caribbean.

Our goal is to continue to grow our market share throughout the world and to grow the company. We hope the Barbados Government continues to work with us as we seek to remain competitive in a very tough global market. Given that support, I believe we will achieve this goal.
For over 50 years of Barbados’ political independence, its international business sector has been transforming from an early start of single-focused corporate and trust structures, to one which, today, is part of the multi-layered and complex world of international financial and tax planning. The evolved changes have mirrored the growing development and marketing of the sector by private sector professionals, as well as government representatives. The negotiation of a set of wide-ranging double taxation treaties, combined with a steadily warmed-up international and domestic regulatory ethos, have created an ongoing need for practitioners to continually revise and provide sets of structures which are novel, creative and complex, while still being clear.

The sector has been faced, therefore, with the challenging and potentially satisfying task of finding legal structures, to accommodate the new business deals and dealings which are now presented. For example, the question of when time begins to run, for limitation purposes, in cases where a lender, facility agent or security trustee makes a claim under, or in connection with, a syndicated loan, is a matter which is taking on increased prominence. Hence, the local advisor is now required to display knowledge in regard to the operation of limitation periods, under ordinary non-syndicated loan contracts, both secured and non-secured. Such knowledge allows for the kind of defensive advice which facilitates the drafting of a safe agreement.

Similarly, debt restructuring transactions have changed significantly over the last 50 years. Capital structures in the early days were simple, operating loosely under corporate principles, requiring banks to remain supportive and be patient in the appointment of receivers; and also requiring them to make decisions in conjunction with all creditors, grounded on reliable information - and furthermore, to work collaboratively in the hope of reaching a collective view.

Fifty years of political independence is now easily matched with an international business milieu which remains au courant, knowledgeable and, when required, creative

While this ethos prevailed merrily and satisfactorily during the era of the last decade of the 20th century, and even as far as the 2008 financial crisis, the climate thereafter has changed in terms of complexity. For today, restructuring transactions often involve publicly traded, high-yield bonds, and the granting of information on the issuer, during such a restructuring negotiation, has become a more detailed matter. The present-day advisor is therefore expected to display greater mastery in the area of confidentiality agreements.

As regards bonds, the present-day practitioner is also well served if familiarity is established with non-dilutive convertible bonds - a relatively new structure in the debt capital markets. Essentially, they allow an issuer to capture the pricing benefits of equity-linked securities, but without the share dilution which is regularly associated with convertible bonds. Within the structure, convertible bonds are issued but are cash settled on conversion, while the purchase of call options is made by the issuer – they, in turn, hedge the upside exposure under the bonds. This new method differs from the conventional structure, since the bonds and options must closely align to create a hedged structure. The present-day advisor is likely to encounter such a new modality in the now commonplace financing structures associated with international business companies operating in the Barbados environment.

The practitioner in Barbados today, therefore, is being called upon to match constantly emerging and merging corporate structures, financial vehicles, lending configurations, shareholder arrangements, custody structures and the accompanying legal documentation. The swaps and derivatives transactions of the end of the last century are now institutionalised within an association with rules and procedures, and Barbados has played a key and continuing role.

Fifty years of political independence is now easily matched with an international business milieu which remains au courant, knowledgeable and, when required, creative.
Structured Assignments, Inc. (SAI), formerly TFSS International Inc., is an international business company, incorporated in Barbados in 2010 and is currently under the management of Centurion Assurance Services Ltd.

SAI is a special purpose company which enters into periodic payment assignment contracts for structured settlements. The tax management programmes developed initially catered solely to contingency fee attorneys. Through research and development, a similar programme has been recently developed and offered to claimants utilising SAI.

Whilst there are many independent experts with whom clients may consult, such as certified public accountants, tax attorneys and financial advisors, prior to making financial decisions, the correct choice of jurisdiction for SAI was instrumental in establishing the core foundation of the programmes being offered.

Barbados provides the ideal conduit for structured settlement payment deferrals, due to its double taxation agreement with the USA. Conducting business in Barbados also offers greater credibility to our clients, supported by its track record as a well-regulated and transparent jurisdiction with a long history of economic, political and social stability.

The reputation and business climate of the island, therefore, were fundamental in making our choice. What is equally, or even more important, is the high level of service provided on a day-to-day basis by local business partners.

We anticipate that SAI will continue to experience excellent growth in this business environment, and based on our marketing efforts, SAI has seen increased confidence by our clients. This jurisdiction has obviously benefited us and, we in turn, will be seeking ways in the future to further contribute to the development of Barbados’ international business sector.
Barbados Remains the Preferred Conduit for Inward Investment to Cuba

by Dustin Delany

The Donald Trump administration has certainly taken the world by storm on many fronts, including the purported shift on the Obama presidency’s détente with respect to US-Cuba policy. Though an attention-grabbing headline, this directive involves only a partial rollback of the Obama 2014 breakthrough with the former Cold War foe. In fact, President Trump has left in place many of the Obama changes, including the maintaining of diplomatic relations with Cuba and recently resumed US-Cuba commercial flights and cruise ship travel. It also appears there is no intention of disrupting existing business ventures, such as the one struck under the Obama presidency for one of the major US hotel chains to manage an historic Havana hotel, or of reinstating limits on goods purchased in Cuba. In summary, these changes appear to be less sweeping than was feared, following President Trump’s statement on the issue, in the latter stages of the 2016 US presidential election.

Cuba continues to celebrate CARICOM-Cuba Day annually, which marks the 1972 establishment of diplomatic relations with a number of CARICOM jurisdictions, including that of Barbados with Cuba. Since this landmark, Barbados-Cuba relations have flourished, with the establishment of diplomatic missions in each country, giving rise to the:

- 1996 Barbados-Cuba DTA
- 1999 Barbados-Cuba bilateral investment treaty (BIT).

Many other agreements have been put in place between these Caribbean counterparts in the areas of sports, culture, education, health and other economic areas that are mutually beneficial.

The Barbados-Cuba DTA includes both personal income tax and tax on profits in Cuba, whereas most of the other Cuba DTAs are limited to tax on personal income only. The Barbados-Cuba DTA affords the opportunity to minimise taxes in Cuba, in relation to certain returns on investment. Barbados and Venezuela are the only Cuba tax treaty partners in the hemisphere, with Cuba having a total of 10 DTAs in place. Barbados offers a wide array of investment vehicles appropriate for inward Cuban investment, including the regular business company, international business company, international society with restricted liability, exempt insurance company, qualified insurance company and international banks.

Correspondingly, the Barbados-Cuba BIT also recognises the complete range of these investment vehicles provided under Barbados law and caters to an expansive scope of investments. This BIT contains a provision for ‘most favoured nation’ treatment and standard dispute resolution clauses involving the referral of disputes to international arbitration, including the International Court of Arbitration, a division of the International Chamber of Commerce. This is above and beyond the 2014 investment protection framework in Cuba, Ley No. 118 de Inversion Extranjera, which, upon government approval, authorises investment in many sectors. This new framework has alleviated many concerns for

Meanwhile, aside from a 2017 hurricane season, which left a few of Barbados’ fellow Caribbean islands devastated, and the relief efforts of both Barbados and Cuba, it has been business as usual for Barbados-Cuba relations, as these nations celebrated their 45th anniversary of diplomatic ties. The year 2017 saw a strengthening of diplomatic relations, including an update to the CARICOM-Cuba Trade and Economic Co-operation Agreement, which expanded the level of preferential access to each other’s markets and contemplates expansion towards a full trade agreement, a CARICOM-Cuba double taxation agreement (DTA) and the adoption of an agreement on intellectual property rights. The year also saw arrangements in place for the export of approximately one million cases of Barbadian beer to Cuba.

Barbados offers a wide array of investment vehicles appropriate for inward Cuban investment …
investors in Cuba, giving continuity with international law in its “full protection and security” provision, which precludes expropriation, except if in the interest of the public, although compensation is still mandated. Another user-friendly component of Ley No. 118 de Inversion Extranjera is the comprehensive portfolio of investment opportunities.

Although the Trump administration has cast a cloud of doubt over the immediate future of US-Cuba relations, diplomatic relations between the countries remain open and there is no doubt that Barbados-Cuba relations are stronger than ever. Barbados, like most of the rest of the world, remains steadfast in its support for the elimination of the US embargo on Cuba. Not all is lost in this regard, as President Trump has explained that the maintaining of diplomatic relations is “in the hope that our countries can forge a much stronger and better path.” In the meantime, Barbados remains the preferred conduit for inward Cuban investment for US and other investors alike.*
Automatic Information Exchange
by Maria Robinson

Individuals and entities holding bank and investment accounts in Barbados will find their financial and business affairs subject to a degree of scrutiny they haven’t experienced before. This is because Barbados, along with several other countries, has signed the Multilateral Competent Authority Agreement (CAA) on Automatic Exchange of Financial Account Information. Barbados signed the CAA on October 29, 2015, and then, in May 2017, passed the necessary regulations to the Barbados Income Tax Act.

The CAA is a part of the Common Reporting Standard (CRS), which is an information exchange standard that requires countries to collect information from financial institutions and automatically exchange this information with other countries annually. The CAA is an initiative of the Organisation for Economic Co-operation and Development (OECD) and the G20 countries. Its aim is to achieve total transparency regarding funds held in bank and investment accounts overseas, particularly those located in so-called “offshore” jurisdictions, like Barbados.

The OECD wants to ensure that taxpayers, regardless of where they live and work, pay the right amount of tax to the right jurisdiction. Moreover, it wants to deter individuals from using accounts and shell companies to hide assets and income.

But in the long run, the investment in compliance will be worth it for Barbados. A further commitment to transparency can only enhance the country’s longstanding reputation as a compliant jurisdiction.

The CAA, together with the current anti-money laundering requirements in Barbados, ensures that the ultimate beneficial owner - the person sitting at the very top - will no longer be able to remain anonymous.

The automatic information exchange process begins with banks and other financial institutions collecting information from the taxpayer and reviewing deposit and investment accounts. (Such institutions in Barbados should already have a base of experience to build on, having had to comply with the Foreign Account Tax Compliance Act of 2010. This US federal law requires all foreign financial institutions to report on financial accounts held by US taxpayers.)

In essence, secrecy is out

Where the account is deemed to be reportable under the CAA, the institution then reports the information to the local tax authority, the Barbados Revenue Authority (BRA). The BRA consolidates this information by country of residence, encrypts it and transmits it in bundles to the tax authority of the relevant country of residence. The initial deadline for the BRA to report the required information is September 2018.

On receipt of the information, the tax authority in the country of residence analyses and compares it with domestic records. If there is a mismatch, the authority can take appropriate compliance action against the taxpayer.

To fulfil its responsibilities under the CAA, the BRA will no doubt need additional resources in the form of people and information technology. Investment in data encryption software to ensure confidentiality of the information being transmitted is paramount. The multilateral agreement also means the island’s tax treaties might need to be updated, because until now this type of information has been exchanged among treaty partners on request.

But in the long run, the investment in compliance will be worth it for Barbados. A further commitment to transparency can only enhance the country’s long-standing reputation as a compliant jurisdiction.
The Financial Services Commission: Regulator of Barbados’ Insurance Industry

by Kester Guy

Over time, varying financial crises have occurred around the world, primarily driven by instability in one of the financial sub-sectors. Such occurrences have always brought a regulatory response, based on an understanding of the issues and adoption of appropriate measures aimed at mitigating the probability of recurrence. Two instances where such developments held true were the Wall Street crash of the 1920s and the recent global economic crisis, fuelled by the spread of harmful business practices.

The Barbados Financial Services Commission (FSC) was established in recognition of the need for an integrated approach to the supervision and regulation of non-bank financial institutions. As an expanding financial centre, it became necessary to ensure that a robust regulator for the non-bank financial sector was in place. Consequently, in 2011, the regulatory functions of three bodies were combined, with one of the main objectives being to maintain stability in Barbados’ financial services sector, while strengthening the business environment to ensure continued growth.

From a regulatory perspective, the FSC Act, 2010-21 was proclaimed and this Act now governs the insurance industry. Additionally, the Insurance Act, Cap. 310 and the Exempt Insurance Act, Cap. 308A, remain in use as a guide, with all legislation contained therein enforceable by the FSC for domestic insurance companies and companies registered with exempt status, respectively. The FSC has built a risk-based regulatory system utilising its resources in the most efficient manner, to manage and mitigate excessive risk taking. Integrated into its operations are the recommended practices of the Organisation for Economic Co-operation and Development on Exchange of Information, and the Financial Action Task Force’s recommendations on Anti-Money Laundering practices. The FSC framework, while

Interactive Mobile Solutions (IMS) operates from the English-speaking island of Barbados, providing business-to-business and business-to-consumer call centre services to small and medium sized businesses in Canada, the Caribbean and the USA.

Barbados is the ideal location for our business due to its close proximity to Canada and the USA. In addition, Barbados possesses a skilled labour force. As part of the Caribbean market, we pride ourselves on being a cost-effective solution, with proven flexibility across multiple time zones.

Our services include inbound call centre and customer care, as well as order taking. Other services provided are outbound surveys and data entry. Our clients typically reap the following benefits:

- Savings in operational cost
- Immediate customer support
- Reduced employee stress, allowing their staff to focus on the day-to-day operations
- Specialised after-sales service.

IMS has been in existence for over 10 years, originally offering outsourced marketing consultancy services to Barbados and the region. Within the last seven years, our services have diversified to include digital marketing and, more recently, our focus has been on the provision of outsourced call centre services and data entry.

The management team and staff are predominantly Barbadian. Our senior management team has over 25 years’ experience, specialising in marketing, sales and customer service, while our leadership team has more than 35 years’ experience within the pharmaceutical industry.
extremely sound, is not onerous and considers the international core principles for insurance regulation. All regulation is actively reviewed on a periodic basis, to ensure that the framework being used is in line with global best practices for the insurance industry.

As regulator, the FSC also sees its role as providing protection to consumers of financial products in the market. In addition, the FSC plays a critical role in business facilitation, by creating an environment where best practices are the norm for insurance company operations. The intent of the FSC is to create confidence in the industry, for both the consumer and the companies operating in the market, with the hope that such confidence translates into efficiency and growth.

The specific role of the FSC in the insurance industry in Barbados is to:

- Be the supervisory and regulatory authority for the industry
- Ensure the protection of policyholders’ interests
- Ensure the solvency of insurers licenced under the relevant legislation as a going concern
- Facilitate the orderly functioning of insurers and intermediaries.

Good regulation is grounded in the protection of policyholders’ interests, supervision of market players, and insistence on compliance with the requirements. The FSC is cognisant of the need to be facilitative and to ensure that the marketplace is one where there is orderly functioning of insurers and intermediaries. Operating in line with these best practices will aid in creating trust in the insurance industry for both buyers and sellers of insurance. Good regulation does not deter innovation, but ensures that it is managed for the benefit of the customer in such a manner that is not detrimental to the industry. As such, the FSC is committed to regulating the insurance sector in line with international best practices which suit the Barbados environment and will hold steadfast in this approach - trusting that, in so doing, the insurance market will continue to operate in an efficient manner for the benefit of all.

The FSC’s goal is not to be adversarial, rather, we have embraced transparency, dialogue with industry stakeholders, collaboration with other regulators and the improvement of processes - all aimed at creating an environment conducive to well-managed growth. The primary objectives are to improve the robustness of regulation in the financial services sector, instill confidence, enhance regulatory oversight and promote financial stability, thus ensuring a sustainable financial services industry that is more resistant to economic shock, with the capacity to smoothly fulfill its basic functions, even when unexpected shocks occur.
The Segregated Cell Company – Rewards and Rating

by Kyle Rudder

Through the introduction of the Segregated Cell Company (SCC), Barbados enhanced its legislative framework, in respect of insurance services, to provide a corporate body with the ability to both establish and maintain separate accounts, as well as to establish protected cells.

A legislative model has been developed in keeping with the well-established principles of Barbados corporate law, combined with insurance sector specific safeguards, in accordance with prescribed and accepted international prudential standards of regulation.

Hence, there are regulations for the protection of investors, the protection of policyholders, protection for persons to whom a fiduciary duty is owed by the insurance supplier, as well as assurances in relation to the integrity and stability of the insurance system. One specific purpose and intention, in respect of the development of SCCs, was the “rent-a-captive”. Barbados legislative amendments were intended, therefore, to allow and encourage the establishment of offshore “rent-a-captive” insurance vehicles, without the need for the creation of detailed creditor/insulated series shares.

Another positive development in relation to the introduction of measures to protect investors and policyholders, is the ability to obtain a rating for a newly established insurance entity. In this regard, today’s Barbados-based insurance manager may also be uniquely placed to interface with ratings agencies, in respect of the application made by one of its newly managed entities. Generally, the manager will be required to obtain certain basic information before the relevant ratings agency is able to proceed with an initial rating assignment. Such information will often include a five-year business plan with which all parties agree, and which includes, but may not be limited to the following:

- Policy statements on underwriting criteria, investment guidelines and risk management
- A description of the products offered, pricing standards and the company’s distribution and market strategy
- Financial projections, along with the underlying quantitative and qualitative assumptions and the anticipated utilisation of capital
- Stress-tested capitalisation which conservatively supports the assigned rating throughout the business plan
- Demonstration of a successful track record of operating performance relevant to the new venture’s core business. Experience with organising new insurance ventures may also be factored into the process
- Experienced management and the appropriate staff and operational infrastructure to support initial activities and meet regulatory and ratings agency scrutiny
- Management, board members, strategic investors, investment bankers, actuaries and other advisers available for discussions with the ratings agency, to provide comprehensive disclosure of requested information
- An established follow-up process to measure the effectiveness of the initial business plan and to monitor the company’s strategic and financial development.

The rating process for insurance entities generally involves many quantitative and qualitative factors, which are placed into essentially three categories: balance sheet strength, operating performance and business profile. The methodology for rating new company formations will often use the same assessment of balance, strength and business profile, as is the case with established companies, which receive the usual rating assignments. In the case of start-up ventures, there is, however, a natural lack of certainty and an established track record. Hence, in assessing the long-term sustainability of earnings and cash flow, greater rigour in the rating process is required.

The Barbados insurance environment benefits significantly from local entities which are internationally rated, for the rating adds value and credibility both to the entity and the jurisdiction.*
Segregated Cells and Incorporated Cells: A Barbados Perspective

by Liza Harridyal-Sodha

Barbados amended its Companies Act to introduce Segregated Cell (SC) legislation in 2001 and, more recently, Incorporated Cell (IC) legislation in 2016. Interestingly, both SC and IC legislation were enacted in response to the demands of our thriving insurance industry. However, SC and IC structures can also be used for companies carrying on financial services activities, including banking and mutual funds activity.

A Segregated Cell Company (SCC) is a single legal entity, which is owned or ‘sponsored’ by a person or other legal entity. The SCC is comprised of a general, or core, business, which is owned by the sponsor, and a specified number of cells. The purpose of a SCC is to allow individuals or entities (participants), not necessarily related or affiliated, to conduct certain defined business activities using a cell. Each SC must have its own distinct designation, and there is no limitation on the number of participants in a single cell. The rights and obligations of a participant in a SCC are similar to those of a shareholder in any other Barbados company. Each cell can issue shares, declare dividends, redeem or reduce its capital, or wind-up its affairs.

The cellular and the non-cellular assets of the SCC must be kept separate. The records, income, expenses, assets and liabilities attributable to each cell are accounted for separately by the SCC in respect of each cell. The most appealing feature of the SCC is that liability is attached to the cellular assets attributable to a particular cell. However, where the cellular assets are insufficient to satisfy a claim, the claimant may have recourse to the non-cellular assets of the SCC. The claimant does not have recourse to the assets of the other cells, and therefore, each cell is protected from the others, so that only the core cell capital is at risk.

The main advantages of a SCC are that it provides:

- A more efficient and flexible method of managing risk and diverse business interests
- Protection from creditors
- Cost effectiveness. Since the SCC is a single legal entity, the administrative costs incurred would be for one company (although a statutory audit may be required for each cell)
- The sponsor can share in the profits of the SCC (based on the terms of a participation agreement)
- The ability for participants to share in various cells without having control over the core business of the SCC.

Despite the numerous advantages, there could be concerns relating to the SCC being treated as a single legal entity; the exposure of the core cell to liability; its inability to transact business with another cell, and the fact that central control lies only within the core cell. In recent times, those who may not be able to utilise a SCC can now explore the establishment of an Incorporated Cell Company (ICC).

The structural framework of an ICC is the same as a SCC, in that there is a single core together with any number of cells. The critical distinction is that each IC, unlike a SC, is a separate legal person, with all the legal attributes of a company incorporated under the laws of Barbados. Each IC bears its own risk and no other IC is liable. An ICC has the benefit of affording a stronger corporate protection for each IC - taxation, governance and regulatory matters are more clearly defined, there is no limitation regarding the ICs’ ability to contract with one another, and each IC can have its own Board of Directors and Officers. However, since each IC is treated as a separate company, administrative costs are notably higher than for a SCC.

However, SC and IC structures can also be used for companies carrying on financial services activities, including banking and mutual funds activity.

Both SCC and ICC structures have their specific uses and it should not be intimated that an ICC replaces a SCC. Indeed, a vast number of SCCs have operated very successfully in Barbados for over 15 years. However, in considering the aforementioned factors and, when comparing the familiarity of the corporate form of the ICC with the less known SCC form, all indications lead to an exponential future use of the ICC in Barbados.
The total number of captives worldwide was 6,618 at December 31, 2016, of which 3,192 (48%) are registered in the United States, 2,417 (37%) in Bermuda and the Caribbean, 841 (13%) in Europe and 148 (2%) in Asia Pacific, according to the May 2017 edition of ‘Captive Review’ magazine in their annual publication on domiciles and captive statistics.

A captive, like every insurer, benefits from diversification of its portfolio, but operates more efficiently than the insurance market for primary risk layers. These are the low severity, medium-to-high frequency losses, with typical savings as much as 25%, depending on the type of risk. It is now commonplace for captives to participate in varied global programmes and lines, including property, damage and non-damage business interruption; recall, products and general liability; environmental impairment; marine cargo and inland transit; automobile and personal damage; trade credit; and employee benefits - including life, disability and medical.

Brand Damage and Reputation
Responsibility for protection of brand reputation rests with the corporate board, including mitigation through insurance. The role of insurance in the process will depend on how management views reputational risk. The task is designing a programme that closely fits the identified risks, but it may be possible to transfer separate aspects of the risk across different insurance products - including cyber, property damage, business interruption, errors and omissions, etc. The key to development in this area is the extent to which this risk is integrated into existing risk management arrangements or business lines.

Captive Domicile
The recommendation from the industry will always be to establish the captive in an international financial centre (IFC), such as Barbados, that allows maximum flexibility for business development, while minimising ongoing costs.

In recent years, there has been consideration of US “onshore” domiciles and those in the EU such as Ireland, Luxembourg and Malta. Outside of the USA, captive growth has been evidenced in Bermuda and the Caribbean, while business activity in Guernsey for non-EU domiciles has continued at a steady pace. The main advantage of EU jurisdictions has been the ability to directly underwrite risk into other EU/EEA member countries.

Other factors to be considered when choosing a domicile, using Barbados as an example, include:

• **International Accreditation** – Renowned as one of the premier holiday destinations in the Caribbean, Barbados is recognised by the United Nations as one of the top developing nations in the world, with a reputation for its integrity as an IFC.
**Longevity and Track Record** – The domicile has its genesis since 1983 with 266 captives on record (at December 2017), and a stated objective of providing a high quality and right-sized jurisdiction through its extensive treaty network. This comprises 39 double taxation agreements (10 with CARICOM) and nine bilateral investment treaties in force, as well as, five tax information exchange agreements.

**Flexibility of Insurance Regulation** – In Barbados, direct writing is allowed when a group may want to use a captive to incubate emerging or difficult-to-insure risks. This may not be the case with every domicile - in Luxembourg, for example, requests to form direct captive insurance companies without a reinsurance affiliate are typically declined by the authorities.

**Solvency II** – Though Barbados is not presently seeking Solvency II equivalency, other domiciles are. Captive owners need to understand that Solvency II equivalent domiciles bring with them more stringent capital, governance and regulatory reporting requirements.

**Base Erosion and Profit Shifting (BEPS)** – Barbados has officially joined the “Inclusive Framework on BEPS”, pledging to implement measures aimed at preventing tax avoidance by multinationals and improving tax dispute resolution. The likelihood exists that captives which are regulated under a Solvency II regime could have an advantage in tackling the action items set out by the OECD/G20 BEPS Project.

**Summary**

Barbados remains one of the largest global captive insurance domiciles, with a well-regulated business environment, excellent infrastructure, modern legislation and an expanding treaty network. As the captive insurance industry continues to expand, it is anticipated that IFCs such as Barbados must develop a niche strategy within the limitations of a new world order requiring more onerous governance and regulation. Barbados, as always, remains open for business, recognising its commitment as a world class domicile for the niche captive insurance market. ✯
BEPS and Barbados Captives

by Chris Evans

In 2001, the Organisation for Economic Co-operation and Development (OECD) launched an offensive against ‘tax havens’ with the publication of a “blacklist” of jurisdictions.

The former Prime Minister of Barbados, Mr. Owen Arthur, led the defence on behalf of the targeted jurisdictions and was successful, primarily on the grounds of the considerable hypocrisy and double standards inherent in the composition of the blacklist – i.e., many of the leading OECD countries were ‘tax havens’ by their own definition.

At the time, it was correctly anticipated that similar exercises would be undertaken ... enter the Base Erosion and Profit Shifting (BEPS) initiative, in which certain OECD members expressed concern over the tax practices of some jurisdictions considered to be unfairly harmful to the tax bases of the same member countries, e.g., allegedly inappropriate transfer pricing tax practices under which, say, artificial transactions create tax deductions in a member country and simultaneously constitute low or zero-tax income in the receiving jurisdiction. Add to this the concern of real or perceived absence of transparency in some jurisdictions. Thus, the BEPS initiative appears to be focused on the aspect of harmful effects on EU countries.

A number of international financial centres (IFCs) were selected for scrutiny, with an apparent focus on the smaller ones, including Barbados. As with previous initiatives, it is interesting that significantly larger IFCs are not subject to the same scrutiny.

Consider the captive insurance industry. Insurance premiums paid by an insured in an EU country to a Barbados captive insurer or reinsurer, are presumably a tax-deductible expense in the paying country. The premium income to the Barbados captive generates, essentially, tax-free profits in Barbados. Following the “harmful effects” argument, might this transaction be considered artificial, lacking substance, and therefore harmful? Is the Barbados captive sector under threat from BEPS?

- Note that “captive” covers the true, self-insurance (pure captives) entities, as well as international reinsurers assuming third-party risks. In Barbados, the vast majority of pure captives are owned by Americans or Canadians. The US taxes its citizens on worldwide income, meaning that the profits of US-owned Barbadian captives are subject to full US tax, even if zero taxed in Barbados
- The assumption of Canadian risk for Canadian-owned captives incurs a similar Canadian cost
- The EU isn’t a market for Barbadian pure captives, one reason being that it is well served by jurisdictions such as Ireland, Isle of Man, Jersey and Luxembourg, to name but a few, which have been established for decades.

Generally, the pure captive concept is extremely well understood by tax authorities and is almost always focused on risk management issues, not tax advantages.

Of course there are the international reinsurers who access the EU on the more efficient business-to-business basis provided by the captive structure. These may, or may not, have tax efficiencies, but at a minimum cannot be described as artificial or without substance. Several have their own staff, leased office, etc. A few outsource their work to Barbadian management companies, who undertake their clients’ substantive reinsurance activities in the same manner as if they were client staff.

Barbados’ approach as an IFC has always been to attract business of substance in a transparent manner through the use of tax treaties. The well-regulated captive insurance business is a natural fit and directly employs around 300 persons, added to which are the considerable investment management, banking, audit, lease and other support services provided in Barbados.

One conclusion of the 2001 initiative was that Barbados was the only jurisdiction taken off the blacklist without having to do anything. The captive insurance sector in Barbados is well positioned to pass the very significant BEPS substance and transparency tests, with possibly only changes required to remove the ring-fencing position in the legislation.
Investment Strategies for Captives

When managing investments for captives, there are a number of critical decisions to consider:

• What is the most appropriate asset mix?
• Do we employ passive or active asset management?
• How do we select an appropriate benchmark?

This article attempts to provide some insight into each of these key concerns.

Captives, by their very nature, are conservative. As a result, downside protection tends to be much more important than the next hot sector or stock. Safety and liquidity, especially early in their lifecycle, are paramount. Just as important, however, is the need to understand your client and their appetite for risk, as this will be integral in defining lower and upper limits of asset allocation ranges. A vital part of the role the investment manager will play is to determine, in consultation with the client, that delicate balance between risk and return.

Historically, fixed income instruments have been the most favoured asset class for captives. This has largely been as a result of the more predictable income stream and relative safety they provide, with the smaller equity allocation enhancing returns. Determining the most appropriate asset mix between cash, fixed income and equities is, arguably, one of the most important investment decisions for the captive. The investment manager has significant flexibility to tactically shift between equity and fixed income, based on the market outlook.

In considering the selection of fixed income instruments, credit quality, geographic location, interest rate and maturity have been the key points to consider. If there is some predictability in the timing of potential future claims, matching the timing of liquidity events could “immunise” the portfolio against negative movements in interest rates. For example, for longer tail risks, the captive can undertake a longer maturity fixed income portfolio. In the case of shorter potential claims, it would make sense to have shorter maturity bonds.

The decision to employ “active” or “passive” funds is also a key consideration in portfolio construction. Exchange Traded Funds (ETFs), as a passive solution, are increasingly utilised as a vehicle for engaging top investment managers at a very low cost. Another very powerful advantage is the ability to select whatever market cap or geographical location, sector or sub-sector you wish. The ETF spectrum is, increasingly, so esoteric and diverse, that finding a fund investing only in beef and pork, for example, is no longer unusual.

The decision to employ active managers tends to centre on whether their performance justifies the high fees, the failure of which can result in underperformance relative to the benchmark. A number of “smart” beta index strategies have also emerged. These attempt to outperform benchmarks, over the medium and long term, by using fundamentals such as dividend yield or quality, rather than market cap or asset price weighting to select constituents.

Benchmarks are useful, primarily, as a gauge for comparing portfolio returns. The goal of most portfolios is to outperform the benchmark after fees. As a result, it is important to select the most appropriate benchmarks, considering criteria such as investment “styles,” value vs. growth or market capitalisation, while criteria such as maturity or credit quality are more specific to fixed income. Fixed income benchmarks weighted by company, or even countries, paradoxically, are skewed towards weaker companies and/or countries, as they have more debt outstanding.

Given the myriad of variables and strategies which need to be established, monitored and dynamically adjusted to effectively manage the investment portfolios, it is important that service providers maintain strong relationships with their captive clients, to fully understand their needs and deliver the most appropriate solutions.
WORLD-CLASS
POLO

NATURE
TRAILS

CULTURAL
SHOWCASES

FRIENDLY
PEOPLE

CHATTEL
HOUSES

NATURAL
WONDERS

GOLFING

... and so much more
ACTIVITIES:
- Exciting Cruises
- Exhilarating Hash Events
- Surfing
- Horseback Riding

PLACES TO VISIT:
- Farmers’ Markets
- Traditional Rum Shops
- Art Galleries and Museums

ENTERTAINMENT:
- Local Theatre Productions
- Music Festivals
- Thrilling Sailing Races

the list goes on...
Barbados: the Global Choice for Banking and Wealth Management

by Paul Jenkins

When selecting a domicile specialising in banking and wealth management, significant global competition requires that jurisdictions to be considered must have global credibility and maximum flexibility, and Barbados ranks high in both areas.

Barbados has become the 101st jurisdiction to join the Base Erosion and Profit Shifting (BEPS) inclusive framework. This framework was established in January 2016, when G20 leaders urgently requested the implementation of structures and policies to address tax avoidance strategies that exploit gaps and mismatches in tax rules, in order to artificially shift profits to low or tax-free jurisdictions. Under this framework, over 100 jurisdictions are now collaborating to implement measures to address BEPS.

Barbados has long held a highly respected reputation in international tax matters. The jurisdiction joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in September 2009, and received a compliance rating in 2016. Further, Barbados ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in late 2016 and, in the previous year, signed the Multilateral Competent Authority Agreement that enables full commitment and compliance to the automatic exchange of financial account information.

Consequently, Barbados, an independent nation, continues to be globally recognised as a compliant and well-regulated jurisdiction in which to establish banking and wealth management structures and operations.

Barbados is truly an international banking centre, where individuals have access to personal and non-personal accounts, as well as personal and non-personal term deposits, in Canadian, US and other major currencies. Online banking and credit cards are available for select clients and access to facilities such as wire transfers, drafts and foreign exchange can be accommodated.

Many clients make further enquiries about money market instruments, such as treasury bills and commercial paper. Barbados can offer these securities via regulated financial companies.

Credit and access to capital has been an increasingly popular request, as savvy investors look to strategies that utilise the intelligent use of debt - specifically, the ability to leverage assets in terms of accessing credit, without diluting or selling current portfolio holdings.

London Interbank Offered Rate (LIBOR) and fixed-rate based loans can be accessed through many Canadian and regional banks. The availability of real estate financing in US dollars or GB pounds attracts international citizens looking to relocate or purchase a second home. Credit solutions for trusts have been an increasingly frequent request to service providers, evidencing a mature and respected banking and trust sector.

International investment solutions can be accessed from Barbados and a plethora of firms offer wealth management solutions.

Institutional and individual investors have access to discretionary investment management or wealth management services offered on an advisory basis. The full service model includes the following
more trusts. Such trusts, be they complex or simple, discretionary or non-discretionary, can be customised to meet client objectives in the distribution of assets, succession planning or in protecting assets for future generations.

To summarise, Barbados has taken steps towards meeting the requirements of international tax transparency and global standards, working with several other regulated nations and jurisdictions. In addition and in concert, Barbados has also highlighted its capabilities in wealth management and banking, enabling it to offer a globally competitive suite of services.

Financiably speaking ... what you can do in New York, London, Singapore and Toronto ... you can complete right here in Barbados ... why would you want to be anywhere else? *
The Future of the Barbados Offshore Industry in the Age of Transparency

by Roland Jones

Base Erosion and Profit Shifting, the Common Reporting Standard, the Panama Papers, the Tax Justice Network ... as the transparency argument gets louder, it appears that opponents of the basic human right for confidentiality continue to increase. So how does Barbados’ international business industry continue to evolve in this new world?

Looking back at the development of the industry over the years, it is evident that Barbados is not, and never has been, a ‘zero-tax’ jurisdiction. Barbados has a complex and comprehensive system of tax for its citizens and high-skilled expatriates and most of our entities pay tax. In addition, there has been heavy investment in a network of double taxation (DTAs) and bilateral investment treaties (BITs).

One of Barbados’ finest achievements is its investment in educating its workforce. The country is home to experienced, highly-skilled and educated professionals, most of whom have achieved postgraduate certification in their various fields.

But what does all this mean for the future, and how will Barbados continue to advance?

With the level of transparency now demanded in this new world, tax will not be the determining factor in a corporation’s or family’s decision to move their business interests offshore. For corporates, the decision to move to an international jurisdiction will be less influenced by tax, and more so by other efficiencies, including legislation, ease of doing business, flexibility and overall costs. There will also be more emphasis on substance and mind and management. Directors, administrators, local corporate staff, professionals and other stakeholders will need to understand the business of the offshore entity and where it fits in the value chain – and this has long been the norm in Barbados. Gone are the days when an administrator might sign off resolutions at the instruction of a foreign originating email, a common practice in some other jurisdictions.

For families, similar factors will influence their decision, with the added need for quality of life - especially stability and safety, certainty of law and the ability to find skilled and experienced professionals who can provide a range of services. Whilst there is a need for sensitivity in regard to confidentiality, there is also still the need for asset protection and family estate planning, which Barbados’ considerable and competent support services are well able to supply.

Barbados will continue to evolve in the future by:

• ongoing negotiation and conclusion of DTAs, perhaps with the focus on creating benefits that allow businesses to thrive in a global market
• expanding the BIT network. The world is a scary place - investors need assurances that their funds and operations will be safe
• improving the ease of doing business. Consider technology to improve the process. Corporates and families alike want flexibility and convenience (can we remember what we did before online banking?) Incorporation and dissolution of companies, director and address registers, certificates of good standing and other straightforward tasks should be achievable with the touch of a button
• improving our laws and the speed at which legislation comes into practice. We all have clients knocking at our doors for foundations and private trust companies, among other solutions
• continuing to improve Barbados’ infrastructure
• providing more funding and support for the international business sector. The sector provides many opportunities, both in promoting career paths and enabling our entrepreneurs to access global markets and networks
• continuing to invest in and expand Barbados’ tourist industry. Whilst pristine beaches and clear turquoise waters are also available in other parts of the world, sometimes at a lower cost, these factors enhance the overall value of the Barbados product for both families and corporates.

Barbados has built its international business on a strong foundation and is well positioned for the new era. There are undoubtedly some challenges with increasing transparency requirements internationally, but there are also many opportunities.
CEO and founder of Total Asset Management Services Ltd. (Total Asset), Eveliny Arnal-Forde, is a Latin American lawyer with a solid understanding of civil law jurisdictions, combined with experience in the international business sector acquired in Barbados, her second home for almost two decades.

Eveliny held senior positions in sales and management with both large and small service providers, and it was during this period that she became convinced that there was a market niche for a tailored boutique service provider in Barbados. As a direct result, Total Asset was conceptualised, with a focus on Latin American clients.

The team at Total Asset are bilingual (English and Spanish) and are all extensively trained and experienced in the offshore business.

Total Asset selected Barbados because it offers:
- A valuable treaty network
- A range of tax-efficient vehicles, duly regulated
- Substance to offshore investments
- A strong reputation as a well-regulated international financial centre
- Provisions for asset protection
- Competitive corporate and personal planning vehicles
- Qualified professionals in all areas of international planning
- Commitment to complying with international standards set by the OECD, G20, etc.
- A combination of competitive tax rates with the benefits and protections afforded by international treaties
- A long history of political and economic stability.

As a small boutique firm, Total Asset provides a wide range of legal, administrative, corporative, secretarial and support services to individuals and corporations from Latin America and beyond.

Cidel

THINK OF US AS A PAIR OF BINOCULARS.

Before you can develop a vision you need to see things clearly. For more than five decades, Cidel has been helping high net worth individuals and their advisors look and think ahead. With broad-based expertise and multi-jurisdictional experience, we are adept at focusing on the needs and identifying the opportunities. You may not be able to see the future, but Cidel can definitely help you plan for it.

Let’s Talk.

Ryle Weekes
rweekes@cidel.com
+1 (246) 430-5350 ext: 4230
For some time, the use of an Investment Policy Statement has been a staple for planners and investment managers when dealing with family office wealth. The detailed analysis of investment goals and objectives results in a complex plan, addressing matters such as risk tolerance, time horizon for investment, currency needs, income needs and more.

Increasingly, however, the need for planning for high net worth (HNW) families and family offices also requires an in-depth and candid review of charitable intents, both in the short and long term. Philanthropic planning requires a similar intense and detailed review of personal and family goals and objectives in regard to charitable wishes.

Considerations include:

• The percentage of family wealth earmarked for charity
• What named charities, or types of charities, are to be supported?
• Is the philanthropic giving to be done inter vivos or testamentary?
• Is the giving to be anonymous?

**Why do we need a detailed Philanthropic Policy Statement (PPS)?**

As with investments, family office wealth requires a roadmap for future advisors and family generations to follow. Without this, the patriarch/matriarch runs the very real risk that either insufficient charitable giving will be done, or their goals and wishes will not be carried out. In addition to the considerations listed above, a key facet of a PPS should be to what extent current and future generations of the family can be involved in the charitable giving, and if so, how, over time. Many family offices are utilising this aspect of their future planning to bring in various family members to learn about wealth management, estate planning and charitable giving.

Furthermore, charitable giving can be done “all at once” or over time, via endowments or bespoke foundations. Increasingly, family offices and HNW families are choosing the latter approach – effectively treating charitable giving almost like a formal business.

**Dynastic Charitable Planning – Family Foundations**

A bespoke foundation may be created with proper governance and attention to personal preferences and biases as discovered in the process of creating the PPS. It is in this way that we see charitable giving most treated like an ongoing business. The governance aspect requires the family to consider:

• Initial appointment of trustee(s)/foundation members (referred to collectively as “Trustees”)
• How will future trustees be appointed and removed?
• What advisory firms will be retained to assist with legal, tax, estate, investment and other matters that may arise over the lifetime of the foundation? Is there a group to act effectively, and independently, as a “board of directors” might in a company in relation to governance?
• Should some advisory functions be in-house or all outsourced, or a combination?
• Is the foundation to be registered in one or more countries (i.e., geographically specific)?
• Is the foundation multi-generational or has it a finite life (i.e., rule against perpetuities that may apply)?
• How are suitable charitable purposes and charities identified, vetted and monitored over time?

**Regulation of Foundations**

Like virtually all other entities and areas of financial asset transfer, charities have become increasingly more sophisticated in order to address the many changing regulatory hurdles. For example, Common Reporting Standards, the US Foreign Account Tax Compliance Act, and many anti-money laundering regulations, globally, have resulted in the need for charities to be every bit as compliance-aware as more traditional business entities. It is no longer the case that charities (registered or unregistered) can receive a “pass” from the various regulations. Internal and/or external advice may be required initially, and on an ongoing basis, to ensure compliance.

Ensuring that family wealth is properly managed, not only for investments, but for charitable giving, will maximise the ultimate donations to family-selected worthy recipients, in a formal, organised, compliant and bespoke manner.*
**Withholding Tax Card**

A significant part of Barbados’ international business is facilitated through its expansive treaty network, which highlights the country’s commitment to preventing fiscal evasion and avoiding double taxation. The following table details the withholding tax rates applicable to payments of dividends, interest, royalties and management fees from Barbados as at November 24, 2017.

<table>
<thead>
<tr>
<th>Country</th>
<th>Dividends %</th>
<th>Interest %</th>
<th>Royalties %</th>
<th>Management Fees %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-treaty countries</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>15/5 (2)</td>
<td>0 (3)</td>
<td>0 (3)</td>
<td></td>
</tr>
<tr>
<td>Bahrain</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
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<tr>
<td>Botswana*</td>
<td>12/5 (4)</td>
<td>10</td>
<td>10</td>
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<tr>
<td>Canada</td>
<td>15</td>
<td>15 (5)</td>
<td>10 (6)</td>
<td>5</td>
</tr>
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<td>15</td>
<td>15</td>
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<td>China P.R.C.</td>
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<td>10</td>
<td></td>
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<tr>
<td>Cuba</td>
<td>15/5 (8)</td>
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<td>5</td>
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<td>Cyprus*</td>
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<td></td>
<td></td>
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<tr>
<td>Czech Republic</td>
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<td>5/10 (9)</td>
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<tr>
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<td>5</td>
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<tr>
<td>Ghana*</td>
<td>7.5/5 (10)</td>
<td>7.5/5 (11)</td>
<td>7.5</td>
<td></td>
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<tr>
<td>Italy</td>
<td>15/5 (2)</td>
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<tr>
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<td>15/5 (2)</td>
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<td>5</td>
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<tr>
<td>Luxembourg</td>
<td>15/0 (12)</td>
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<td>0 (3)</td>
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<tr>
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<td>7.5/5 (11)</td>
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<td>0 (3)</td>
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<td>8</td>
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<tr>
<td>Slovakia*</td>
<td>5/0 (19)</td>
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<td>5/0 (20)</td>
<td></td>
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<td>Spain</td>
<td>5/0 (21)</td>
<td>0 (3)</td>
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<td>Sweden</td>
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<td>Switzerland</td>
<td>0 (22)</td>
<td>0 (22)</td>
<td>0 (22)</td>
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<td>United Arab Emirates</td>
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<td>0 (3)</td>
<td></td>
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<tr>
<td>United Kingdom</td>
<td>15/0 (23)</td>
<td>0 (3)</td>
<td>0 (3)</td>
<td></td>
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<tr>
<td>United States</td>
<td>15/5 (24)</td>
<td>5</td>
<td>5</td>
<td></td>
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<tr>
<td>Venezuela</td>
<td>10/5 (25)</td>
<td>155/5 (26)</td>
<td>10</td>
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<tr>
<td>IBCs, ISRLs, QICs &amp; EICs</td>
<td>(27)</td>
<td>(27)</td>
<td>(27)</td>
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</tr>
</tbody>
</table>

*Notes*

1. The rate is 0% if dividends are paid out of income earned from sources outside of Barbados.
2. The rate is 5% for portfolio dividends; 0% if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends.
3. The rate is 15% generally; 5% if the receipt is a bank.

For further information on any of our services, or to join our email list, please contact either of the following: Gloria Eduardo, (Tax) (246) 626 6753 | Ronaele Dathorne-Bayrd, (Corporate Services) (246) 626 6652
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