

PRIVATE TRUST COMPANIES

Liza Harridyal-Sodha, September, 2010

In its latest effort to attract diverse and long term investments, Barbados is poised to enact legislation, which will bring into effect the establishment of Private Trust Companies (PTCs). This unique type of trust company will complement an already expansive financial services landscape and will provide asset management services within an existing international business framework.

After incorporation of the PTC under the Companies Act, Cap. 308 of the Laws of Barbados and obtaining the relevant license, PTCs will stand in a unique tax and domicile position, and will be able to offer the structuring of inheritance planning to high net worth individuals and their families.

The main attraction of PTCs is that the settlor and his or her family are in greater control over the administration and assets of the trust. Such flexibility is favored, as it creates the desired buffer of confidentiality while protecting the validity of the underlying trust. This flexibility is restricted when professional trustees are utilized. A professional trust company will often not be in a position to offer the settlor the degree of flexibility and the speed of response he/she is looking for and its employees cannot be expected to be familiar with the business of companies owned by the trust as well as the family members.

The proposed legislation will also allow the PTCs to possess managerial powers, as it relates to the transfer of the trust to other family members, through the use of Board Committees. The “*modus operandi*” of the PTC will allow the client to make administrative changes as necessary, without actually affecting the trustee position; allow family members to customize the trustee service to meet their evolving needs; as well as allow them to be actively involved in key investment strategies and decisions. The company itself will generally be administered by a fiduciary in the chosen offshore location and will be represented on the Board. Such intimate involvement does not exist within professional trustee services, and in fact if a change of trustee is required it is usually a lengthy and expensive process.

Good governance practices will be key to the proper administration of PTCs as there are key risks that have to be mitigated or removed outright. These range from the concentration of power of the chairperson of the Board, to the more practical considerations, such as income tax issues and generational representation that may arise if a trust is contested. Additionally, the directors will have to be prudent in their decision making to ensure that the beneficiaries’ interests are served as a whole and not in part. It is likely that PTCs will have to apply for a license, as is the norm in other major international financial services jurisdictions, which means that both owners and directors will have to qualify as such, and that any proposed changes have to be approved in advance. This also necessitates the need for compliance formalities on an ongoing basis.

While initial start up costs for PTCs will include the usual practitioner fees and general administrative costs, the client of PTCs will enjoy the flexibility and advantages of personal control. In addition, the client receives peace of mind, that they are actively involved in the management of family assets, which can include succession planning; being able to give greater assurances of consensus after death of the settlor and the tailoring of investment policies to meet family needs.

Trust management has been a considerable activity in Barbados for 30 years or more. Originally the trust was used primarily by wealthy individuals from the major common law countries, but it is now accepted as a major vehicle for asset protection in all parts of the world. The International Trusts Act Cap. 245 of the Laws of Barbados gave Barbados a modern, comprehensive, business-oriented trust regime which has proven attractive, particularly to corporate users. This new, wider market-place for trusts is not necessarily interested so much in effective tax planning, but also in the efficient management of wealth in a more general sense. As such Barbados remains committed to being a reputable, innovative and world class jurisdiction that will facilitate new and emerging products through progressive legislation.
