

TRUST PLANNING CONSIDERATIONS FOR PRESERVING WEALTH

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When affluent individuals and families ponder on their estate planning needs; asset management and protection; the preservation of wealth; tax planning and business continuation and all other such ideas that enter the mind of the wealthy, the usual structure recommended by wealth management professionals is, and continues to be, the *Trust*.

A Trust is administered by a trustee who has title to all of the assets and usually owns the shares of a privately held underlying Company. The Company can own a variety of assets ranging from bank accounts to real property to chattels, or may have the right to receive income from a third party. Recently, many jurisdictions which offer financial services have amended their laws to encourage the development of alternative trust structures, as a means of increasing their ability to attract a multiplicity of new wealth management based business.

Barbados is determined to attract diverse and spontaneous investment through the enactment of legislation which will allow for the formation of *Private Trust Companies* (PTCs) and more recently *Foundations*.

PTC's were borne out of the necessity for greater control by families over their trust and has become a very attractive option for clients. The settlor and his/her family can legally exercise greater control over the administration of the assets of the trust. Such flexibility is favored over the traditional trust structures, where the trustee is the legal owner and custodian of assets, and the beneficiaries are subject to the total and complete discretion of the trustee, who must approve all actions. PTCs will offer 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 needed, without actually affecting the trustee position.

The Barbados wealth management landscape will soon feature "*Foundations*". A *Foundation* can best be described as a fund which has been endowed by its founder (known as the settlor in the Trust scenario) to be utilized for persons or purposes, as detailed in its statutes. Unlike a traditional Trust, a Foundation is a legal entity that has no owners, but instead, is a legal person that can bring and defend legal action and has unlimited capacity to contract on its own behalf. Foundations come into existence after being registered in a public register. A Management Board or Council is appointed to make administrative decisions consistent with the by-laws. The fiduciary duty of the Council is to the Foundation itself, whereas the trustees of a Trust owe a duty of care to the beneficiaries only. Assets placed or transferred to a Foundation become the property of the Foundation and therefore are independent of the settlor. The term of the Foundation is stipulated in the Foundation's charter and thus the Foundation can exist in

perpetuity or have a life-span as defined in its statutes. As with a Trust, the Foundation cannot engage in commercial trading, but the Foundation's ability to own a trading company is ideal when holding interests in a private company is contemplated by the founder. The settlors of a trust and the founders of a Foundation, have in common the ability to direct the investment activities of the trusts, as well as, the ability to veto management decisions.

It is significant that Barbados has recently concluded various tax treaties with several Central and Latin American countries, in which there is no practice of utilizing trust structures under civil law regimes. It is anticipated Barbados will attract more international business using Foundations as the answer for affluent individuals, from civil law jurisdictions, who want to manage wealth in an offshore location. The Foundation will afford these individuals the ability to transfer ownership to a separate legal entity while still retaining control on how the assets are managed and distributed.

In a world where flexibility and innovation are key to economic survival and success, Barbados continues to seek to advance its position as a leading international financial centre, through the exercise of modern legislative prowess. The enactment of legislation to govern PTC and Foundations as alternatives to asset protection structures have enhanced the products available to wealth management practitioners who need to be prepared for the changing needs and fortunes of clients and civil law regimes worldwide.
