

Barbados

Chamber of commerce:

Barbados Chamber of Commerce and Industry
1st Floor Nemwill House
Collymore Rock
St Michael
Bridgetown
Barbados
Tel: +1 246 426 2056
Fax: +1 246 429 2907
Email: bdscham@caribsurf.com
Web: www.bdscham.com

The Society with Restricted Liability as an international business vehicle in Barbados

Melanie Jones
Lex Caribbean
Worthing

A Society with Restricted Liability (SRL) is an entity organized under the SRL Act of Barbados. Under Barbados law it is a body corporate, taxable as such. However, for US tax purposes it is an entity with similar (not identical) characteristics to a US organized limited liability company. As such the SRL is an entity which allows its members (quota-holders) to elect pursuant to US tax rules to treat the SRL as a partnership or branch for all US tax purposes.*

To qualify an SRL as a partnership or branch for US tax purposes its members must file a prescribed form with the US Internal Revenue Service to elect the appropriate treatment desired. If an election is not made, or not made in a timely manner, the SRL will be deemed a corporation for US tax purposes.

An SRL qualifies as a partnership for US tax purposes by failing to meet the free transferability of interest and continuity of life test. The SRL Act provides for the automatic dissolution of an international SRL (ISRL) on the death, retirement, bankruptcy or insolvency of a member or by order of a court, among other events. The Act also provides that a member cannot transfer all of the attributes of ownership of the SRL without the consent of the other members. In particular, a member cannot transfer the right to participate in the management of the SRL without the unanimous consent of the other members.

Advantages of using an SRL

The benefits of using SRLs are numerous. They include: maximizing foreign tax credit

utilization by US individual taxpayers; utilizing foreign tax credits from lower-tier entities by US corporations; avoiding subpart F classification in respect of certain distributions, such as those from one lower-tier non-US resident entity to another affiliated non-resident US entity; enabling US residents to obtain a deduction for tax depreciation; and other allowances connected with certain transactions overseas.

Because of its civil law origins, an SRL established in Barbados for international tax planning purposes is likely also to be an attractive vehicle, from a legal and commercial perspective, for structuring investments in certain civil law jurisdictions in Europe and Latin America.

An SRL can be formed either as an exempt or a non-exempt society, and can be established and owned beneficially by residents of Barbados. An exempt society is typically referred to as an ISRL. In this article the term "SRL" designates both types of societies with restricted liability while reference to ISRLs are to exempt societies. Non-exempt SRLs are referred to as NESRLs.

The ISRL is designed to be used mainly for international transactions and as such is generally prohibited from acquiring or holding land in Barbados other than leasehold land required for the purposes of its business. It is also prevented from doing business with residents of countries in the Caribbean Community (Caricom). NESRLs can be used to transact business with residents of Caricom, including residents of Barbados.

Establishment and concessions

Formation procedures are simple for both types of SRLs. Upon organization an ISRL must obtain and then annually renew a licence from the Ministry of International Business.

The SRL Act allow SRLs established in Barbados complete freedom of mobility. It also

provides for entities organized in other jurisdictions to be continued in Barbados as SRLs provided they fulfil certain requirements.

Several attractive concessions and exemptions under local law are extended to Barbados SRLs:

Tax concessions

NESRLs are taxed at domestic corporation tax rates. As a result, they should be eligible for benefits under those of Barbados's double taxation treaties that require the use of domestic (as opposed to international) business vehicles. Barbados has tax treaties with 15 counterparties, namely: the US, the UK, Canada, Venezuela, Cuba, Malta, Mauritius, Botswana, Russia, Finland, Norway, Sweden, Switzerland, the Caricom nations and China. Both NESRLs and ISRLs may utilize benefits under the treaty with China.

ISRLs are taxed in Barbados at the same reduced rates applicable to international business companies and offshore banks. These rates operate on a sliding scale according to annual income. Income of \$15 million or more attracts the 1% rate. Income between \$10 million and \$15 million attracts the 1.5% rate. Income between \$5 million and \$10 million attracts the 2% rate and income up to \$5 million attracts the 2.5% rate.

ISRLs are exempt from withholding taxes on dividends, interest, royalties or other income which are paid to non-residents, to exempt ISRLs or any other offshore entity.

Exchange controls

ISRLs are automatically excluded from exchange control restrictions.

Confidentiality

For ISRLs and NESRLs disclosure of information is restricted to that which is filed with the Registrar of Companies. Information about the members of any SRL is not filed with the Registrar.

Guarantees

The SRL Act provides for an ISRL to apply to the government for a written guarantee that the benefits and exemptions outlined above will apply to it for a period of up to 30 years.

Essential features of SRLs

To organize an SRL, Articles of Organisation and prescribed information about managers, the local address and the registered office or agent must be filed with the Registrar. By-laws with the internal regulation of the SRL may be adopted but are not mandatory. The SRL's intended name must be approved by the Registrar and must end with the words "Society with Restricted Liability" or with the abbreviation "ISRL". A Certificate of Organisation is issued by the Registrar. For ISRLs the licence application is filed with the Ministry of International Business once the organization process is complete.

An SRL may have a single member. There is no requirement that a member of an SRL be a manager or vice versa.

The quotas of an SRL are personal property and are transferable subject to the restrictions described above. An SRL may issue as many classes of quotas with such rights, privileges, restrictions and conditions as its Articles may provide. It may issue redeemable quotas. Quotas are of no par value and may not be issued until the full amount of consideration for them has been paid in cash or "property" (the fair equivalent of the money the company would have received if the quotas were issued for cash). Promissory notes do not constitute "property" for this purpose. SRLs are not subject to any minimum capitalization requirements.

An SRL must have at least one manager. The managers must exercise the powers of the SRL and direct its management and business, subject to restrictions which may be imposed in the by-laws. A manager of an SRL is a fiduciary and has a duty to act honestly and in good faith in the best interests of the SRL. In addition a manager must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A manager may be indemnified by an SRL in respect of liability arising from the conduct of his duties as manager (but not where he is guilty of fraud or wilful default).

Meetings of an SRL may be held anywhere, subject to the Articles and by-laws. Sometimes, however, the tax planning for a transaction involving an SRL requires that the ISRL's meetings be held in Barbados. This is not a requirement of law, rather a feature of tax structuring in the particular case. Participation in meetings may be by telephone with the consent of all the managers. Unanimous resolutions in writing of the man-

agers (or the members) are as valid as a resolution passed at a meeting. The managers must call an annual meeting of members to at least approve the financial statements, elect managers and appoint auditors. Meetings may be held outside Barbados if all members agree to this. Members may submit notice of any matter they propose to raise at the annual meeting.

Unless provided otherwise by unanimous resolution of the members or by provision in the Articles, an SRL will be automatically dissolved if all the members resolve unanimously to do so; or if statutorily prescribed events trigger dissolution.

* Please note Lex Caribbean is qualified to advise on the laws of various Caribbean jurisdictions. However, it is not qualified to advise on matters of US tax law. Comments made on the ability of an SRL to qualify as a partnership or branch for US tax purposes, and on other tax benefits available to US persons, are made from a Barbados law perspective, and persons interested in utilizing an SRL for the purposes of favourable US tax treatment should take separate advice from US counsel.

Financial and corporate

Recommended firms

Tier 1

Chancery Chambers
Clarke Gittens & Farmer
Lex Caribbean

Tier 2

Carrington & Sealy
Cottle Catford & Co
Fitzwilliam Stone & Alcazar
George Walton Payne & Co
Hanschell & Company
Yearwood & Boyce

A seemingly unlikely alliance between Barbados and China is yielding fruit. While the Barbadian prime minister visited Beijing in June 2007, global investment banks were financing projects in China – using Barbados as their base.

The double tax treaty between the two countries is attracting a lot of interest. In the first four months of 2007 alone, three international banks structured their Chinese investments through Barbados to take advantage of the favourable tax regime.

And the commodity that is attracting investors to China? Real estate. But real estate is also booming in Barbados, with luxury developments expected to return twice the initial investment. A lot of previously unavail-

able agricultural land has been released, planning permission has been granted and property investors are snapping the plots up.

The domestic market continues to do well, with a steady stream of loans, bonds and acquisitions. The wealth created by the property market should help fuel further development and lead to more sophistication.

Chancery Chambers

Although market commentators have noticed less of Andrew Ferreira this year, he is still well regarded by both competitors and clients. One peer said: "He has an excellent reputation and I wish he was on the other side in some of our deals due to his speed of response." A client recommended him because "he knows his stuff, supports us and seems to know the right people".

Ferreira and managing partner Trevor Carmichael helped Barclays Bank transfer its \$1 billion stake in FirstCaribbean International Bank to Canadian Imperial Bank of Commerce in December 2006. And in September 2006, Ferreira and Carmichael also advised Banco Federal on the \$342 million securitization of a portfolio of Venezuelan assets.

Other work includes advising on the takeover and amalgamation of a large public company, acting in the reorganization of a real-estate deal involving share reorganization for three companies, and counselling on the reorganization of mutual funds.

Leading lawyers

Trevor Carmichael
Andrew Ferreira

Clarke Gittens & Farmer

Gillian Clarke was praised by the market for her work in Barbados. "She is deserving of her reputation for being very efficient, and is very experienced and seasoned here," one competitor said. "She is definitely notable."

In December 2006 the firm acted for the majority shareholder of Courts – a furniture and home appliances shop – during Regal Forest's \$16.5 million acquisition of Courts Barbados.

Other clients include Barbados National Bank, FirstCaribbean International Bank and Royal Bank of Canada.

Leading lawyers

Gillian Clarke

Lex Caribbean

Lex Caribbean has had an excellent year, acting on a number of standout deals. One client

has been “very satisfied with the service, certainly on larger transactions, as they are very responsive and very efficient with good global reach”.

New partner Diana Wilson Patrick joined the firm from Caribbean Development Bank in June 2006, bringing with her a wealth of experience in project finance. In February 2007 she advised her ex-employers as part of a consortium of banks financing a \$32.5 million cogeneration plant for Belcogen in Belize. In July 2007 she helped Marubeni acquire the Caribbean business of Mirant Corp. The transaction was worth \$1.08 billion and included a 39% stake in PowerGen, which owns and operates three power plants in Trinidad.

The firm has also been very active in the real-estate sector. In the first four months of 2007 Melanie Jones advised two international investment banks on three loans to finance real-estate developments in China. And in April 2007, the firm acted for Aareal Bank on extending a \$42.5 million loan to the Carlyle Group to fund another Chinese property development.

Domestically, Jones and Garth Patterson represented a private investment group buying 80 villas and land at the luxurious Banyan Tree development for \$277 million, while Patterson advised Apes Hill Development on a \$400 million real-estate project. Managing partner Mary Mahabir was singled out by clients as a “very knowledgeable person, particularly of domestic law”.

And Islamic finance has arrived in Barbados. Jones advised Citibank as security agent on a \$470 million financing deal between Citi Islamic Investment Bank and Dana Gas in May 2007. Lex Caribbean is now advising Citibank and Barclays on a *sukuk* (Islamic bond) for Dana.

In other debt capital markets work, the firm advised RBTT Merchant Bank, as arrangers of three bonds: an \$11 million issue by Barbados Investment and Development Corporation, a \$19 million issue by the Transport Board and a \$25 million issue by Agricultural Management Co.

Leading lawyers

Mary Mahabir
Garth Patterson

Other notable firms

Adrian Cummins of **Carrington & Sealy** has an excellent reputation with clients. One client who used his services said: “He is extremely knowledgeable with a broad knowledge of all legal aspects.” The firm’s clients include FirstCaribbean International Bank.

In 2006 **Cottle Catford & Co** acted as Barbadian counsel for Labopharm, a pharma-

ceuticals company. Leading lawyer Philip Nicholls manages the firm, which is primarily known for its work in real estate and banking.

Fitzwilliam Stone & Alcazar has a reputation in Barbados and Trinidad for its banking work and experience on projects. The firm’s clients include Esso Standard Oil, the Bank of Nova Scotia and FirstCaribbean International Bank.

George Walton Payne & Co was a strong candidate for a space in tier one this year, with competitors noting an ambition to participate in more international work. In 2007, the firm acted as Barbadian counsel for the borrowers on the financing of a real-estate development in China. Andrew Thornhill is the star of the firm: “I like him a lot,” one peer said. “He’s extremely genial and relaxed.”

Founded almost a century ago, **Hanschell & Company** is a small family-run firm with considerable experience in real estate. **Yearwood & Boyce** has a number of banking clients including National Bank of Barbados, Bank of Nova Scotia and several Norwegian banks. The firm has also recently represented the Barbados Public Workers Co-operative Credit Union.