

Barbados

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The benefits of setting up an exempt insurance company in Barbados under the Exempt Insurance Act

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Exempt Insurance Act

A company can be incorporated or registered in Barbados, and licensed to carry on exempt insurance business, under the provisions of the Exempt Insurance Act (the Act). The Act defines *exempt insurance business* as the business of insuring risks located outside Barbados in respect of which premiums originate outside Barbados, and includes the business of an underwriter, broker, agent, dealer or salesman in respect of that business.

The Act permits an exempt insurance company (EIC) to conduct all types of insurance business, including general insurance business (including property insurance, product liability, professional liability, financial insurance), ordinary and industrial life insurance, bond investment, variable annuity and variable life insurance business.

As outlined below, the Act provides a number of tax, regulatory, structural and cost advantages which make the Barbados EIC a very attractive insurance/reinsurance vehicle in the context of cross-border insurance business.

Setting up an EIC

A new company can be incorporated in Barbados to carry on exempt insurance business provided the beneficial shareholders are not persons resident within the Caribbean Community (as established by the Revised Treaty of Chaguarams signed in the Bahamas on July 5 2001, which includes members of the Caricom Single Market and Economy within the meaning of section 5 of the Caribbean Community Act 2003). A foreign insurance company can also set up a branch in Barbados to be licensed as an EIC provided it is lawfully constituted in accordance with the laws of the place of incorporation, duly authorized and licensed to undertake insurance business in its place of incorporation and has undertaken insurance business in that country for a period satisfactory to the Barbados Supervisor of Insurance.

Tax benefits

The profits and gains of an EIC in Barbados are not subject to

income tax on income earned during for the first 15 calendar years from the date it was licensed in Barbados. After the initial 15-year period, income tax is only payable on the first \$125,000 of taxable income at the rate of 2%. There is also no withholding tax on dividends, interest or other returns payable to the shareholders or security holders of an EIC. The EIC is also exempt from tax on the transfer of all or any of its assets and securities, subject to certain conditions.

If the EIC requires the services of a specially qualified person to carry on its business effectively from Barbados, and it is unable to acquire those services in the Caribbean Community and without special tax concessions being available in respect of the income tax payable for that person, then it can retain or hire a person from outside the Caribbean Community and apply to the government to allow a prescribed percentage of that person's salary or fees to be exempt from income tax in Barbados, or to be paid in such a manner as not to be liable to income tax in Barbados.

An EIC is also exempt from exchange control restrictions, and is further entitled to apply to the government to be given assurances or guarantees that the benefits and exemptions under the Act will apply to the company for a period of 30 years (irrespective of any changes in the legislation which might otherwise apply).

Separate account structure

The Barbados Companies Act allows a company to make provision in its articles for the establishment of one or more separate accounts in respect of a contract liability of the company in respect of insurance. An EIC can therefore allocate and credit specific assets owned by it to a separate account. The assets include all income, interest, gains, expenses and losses incurred or earned, in respect of the company's dealings with the assets that are allocated to the separate account. The separate account is segregated from the general assets of the EIC and the assets of the separate account cannot be charged with any liability arising from any other business involving any other assets of the EIC.

An EIC's articles can specify, among other things, its investment powers in respect of assets held in a separate account, the allocation and appointment of gains and losses in respect of any dealing with assets held in a separate account, the auditing of and method for settlement of accounts, and the liquidation of the separate account and any disposition of the assets allocated to the separate account.

Low capital requirements and government/regulatory fees

To be licensed, an EIC is required to satisfy a minimum paid-up capital requirement of \$125,000, in the form of cash or a valid and irrevocable letter of credit drawn on or confirmed by a bank licensed under Barbados banking legislation. The regulators have the discretion to issue a licence to an EIC that has less than \$125,000 of paid-up capital if the EIC certifies that it does not propose to begin engaging in exempt insurance business immediately after the issue of the licence. Thereafter, when the EIC is ready to begin engaging in exempt insurance business it must then top up its capital so as to meet the \$125,000 requirement.

The government incorporation fee for an EIC is \$390, and the annual licence fee for the first 15 years is \$2,500. Thereafter, no annual licence fee is payable.

Corporate and commercial

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

Chancery Chambers

Chancery Chambers continues to be highly regarded by the market. Dr Trevor Carmichael is “well-known in the area” and retains the ability to bring in the big deals, while Andrew Ferreira has carved out a reputation as “the person for technical expertise”.

At time of going to press the firm was advising all parties on the transfer of Barclays Bank’s interest in FirstCaribbean International Bank to Canadian Imperial Bank of Commerce. US firm Mayer Brown Rowe & Maw and Trinidadian practice Fitzwilliam Stone Furness Smith & Morgan were also involved in this deal.

Carmichael and Andrew Ferreira acted for Fortress Caribbean Property Fund, FirstCaribbean International Bank and Fortress Mutual Fund Limited among others in a Bds\$35.4 (\$17.8 million) securitization deal that closed in October 2005. The firm is also representing Banco Federal on the securitization of a portfolio of Venezuelan assets.

In addition to this financial expertise, Chancery Chambers advises on general corporate law and guided Caribbean airline Liat (1974) through insolvency proceedings and a subsequent reorganization.

Leading lawyers

Trevor Carmichael
Andrew Ferreira

Key contact partner

Trevor Carmichael

Clarke Gittens & Farmer

18-lawyer firm Clarke Gittens & Farmer showed its ability to cope with the big deals this year when it was instructed by the London office of Mayer Brown Rowe & Maw in relation to its role working for HypoVereinsbank on a project financing that involved Bema Gold corporation’s interest in the Kupol gold project in eastern Russia. The firm looked after the Barbados-related aspects of this \$750 million deal.

Other clients of the firm include the Royal Bank of Canada, First Caribbean Bank, Bank Butterfield, Barbados National Bank and Sagicor Life Insurance. It also regularly acts for Barbados Light and Power Company and Telebarbados. From among the team, Rosalind Bynoe does a lot of domestic work and was described by a rival lawyer as “good and reliable”.

Clarke Gittens & Farmer is the Barbados member of the Lex Mundi international network of law firms.

Leading lawyers

Rosalind Bynoe
Gillian Clarke

Key contact partners

Rosalind Bynoe
Gillian Clarke
David Gittens

Lex Caribbean

Rounding out the top tier, Lex Caribbean comprises 15 partners and 12 associates working out of offices in Barbados, Jamaica and Trinidad & Tobago. Leading lawyer Mary Mahabir is managing partner of the Barbados office, which handles a wide range of domestic and international work.

Mahabir, Garth Patterson and Melanie Jones acted as transaction counsel to the \$60 million financing by Citigroup of the operations of Digicel, a rapidly growing mobile phone company. In another notable deal worth \$17.5 million the firm advised Barbados National Bank and BNB Finance & Trust on the forward contract assignment of the Barbados Agricultural and Marketing Corporation.

In the corporate sphere, meanwhile, Mahabir, Traci Geisler and Dave Waithe acted for the Sol Group on its \$90 million acquisition of Shell assets in the southern Caribbean, which closed in February 2005. At the time of going to press, Waithe was advising Matrix Oil on its \$20 million restructuring.

Other noteworthy transactions that have benefited from Lex Caribbean’s advice included advising Textron Financial Corporation on the financing of a major extension of a time share resort for an initial amount of \$20 million. Mahabir and Patterson – “two of the best lawyers on the island” according to a rival lawyer – worked on this deal.

Lex Caribbean also does mortgage work for a number of local banks, including BNB Finance & Trust Corporation, RBTT Bank Barbados, Citicorp Merchant Bank, FirstCaribbean International Bank and Butterfield Bank.

Leading lawyers

Mary Mahabir
Garth Patterson

Key contact partners

Mary Mahabir
Melanie Parnell
Garth Patterson

Other notable firms

Founded in 1872 Carrington & Sealy is based away from the capital in St Michael, has five partners and maintains a solid reputation for domestic work. Partner Adrian Cummings is highly rated for his work on the domestic market. The firm has advised

on bond issues for First Caribbean as well as a number of corporate and residential mortgages.

Cottle Catford & Co is also located in St Michael and is led by respected lawyer Philip Nicholls. It has acted for many of the leading banks in the Caribbean and, although known primarily for real estate work, it is looking to broaden its focus.

Fitzwilliam Stone & Alcazar keeps its place in the rankings this year after more consistent praise in the market. Clients include FirstCaribbean International Bank, Mobil Oil and Bank of Nova Scotia. The firm has another office in Trinidad & Tobago.

Founded in 1978, **George Walton Payne & Co** has particular expertise in the area of securities but maintains a full corporate and commercial practice too. Managing partner Andrew Thornhill is in charge of the corporate and commercial section, and is a member of the government's advisory committee on international business and financial services.

John and Carol Hanschell head the corporate and commercial practice at family-run firm **Hanschell & Company**, which has a history running back almost 100 years. And finally, **Yearwood & Boyce** is another firm with a distinguished heritage. From the firm's team, Andrew Brewster and Peter Symmonds remain respected by the market for their expertise.