

Liza Harridyal Sodha
Attorney-at-Law
The Grove, 21 Pine Road
Belleville, St. Michael BB11113
Barbados
Tel: 246-228-9888
Email: liza@lizalaw.com

SIMPLIFYING TRUSTS IN BARBADOS: Highlights of the New Regime

For nearly three (3) decades Barbados has been active in the establishment of trust structures and provision of trust services. Barbados has remained committed to updating its regulatory environment based on current trends in the industry. The International Trusts Act, Cap. 245 (ITA) when introduced in 1995 provided Barbados with a unique opportunity to be marketed as a stable, modern and comprehensive trust formation jurisdiction, with the added offering of asset protection, free of capital gains and estate duties.

There were three (3) generally accepted types of trusts in Barbados, namely; the domestic trusts created under the Trustee Act, Cap. 250, international trusts created pursuant to ITA, and the offshore trusts facilitated by the International Financial Services Act, Cap. 325 (now repealed). Effective as of January 1, 2019, the ITA has been repealed and replaced by the Trusts (Miscellaneous Provisions) Act, 2018 (TMPA). Consequently, all international trusts created under ITA shall be deemed to be created under TMPA. Trusts are no longer classified as domestic, international or offshore. The Trustee Act remains in existence and is also applicable to trusts set up under TMPA. Therefore, of importance the amendment to the Trustee Act introduced in 2012 to include reserved powers to settlors remains unchanged. Further TMPA recognises that the outdated provision dealing with the Investment by Trustees in the Trustees Act does not apply to trusts set up under TMPA.

There are certain provisions of ITA which were preserved in TMPA. TMPA allows for a maximum perpetuity period of one hundred (100) years. TMPA retains the creation of purpose trusts for non-charitable purposes with no ascertainable beneficiaries, and the appointment of a protector thereof. This form of trust tends to be widely and effectively used in complex business transactions. The trust is required to be registered with the Ministry of International Business, and provides for the confidentiality of the registered details of the trust, with disclosure in certain instances set out in TMPA. More importantly, the new regime also preserves the asset protection element, and stipulates that no proceedings can be commenced later than three (3) years from the date of disposition of assets. TMPA preserves the provision in determining the proper law of the trust, the effect of foreign law vis a vis Barbados laws on the trust.

Some notable differences are that TMPA stipulates that the trustee(s) of a Barbados trust must hold a valid license under the Financial Institutions Act Cap. 324A or the Corporate and Trust Service Providers Act 2015-12. A beneficiary includes a bank licensed under

the Financial Institutions Act and a charity registered under the Charities Act Cap. 243. There are no restrictions on the residence of the settlor or the beneficiaries, or the types of assets (movable or immovable) which can be held by the trust in Barbados.

While TMPA does not specifically provide for taxation of trusts, a beneficiary resident in Barbados will pay taxes on distributions made by the trust. Only income derived from Barbados will be taxable when distributions are being made to non-resident beneficiaries. Trusts created under TMPA that are both resident and domiciled in Barbados is subject to tax on its worldwide income. Trusts that are resident but not domiciled in Barbados is taxed on its worldwide income to the extent that it is remitted to Barbados. The trust income will be taxed at current taxation rate in Barbados. It is the case that taxation may be alleviated by exploring the benefits of Barbados' extensive network of double taxation treaties.

Interestingly the Foreign Currency Permit Act, 2018 does not specifically include trusts to qualify for the benefits of a Foreign Currency Permit (FCP). However, it may be the case that a trustee can apply for the FCP as the trust itself is not considered as a legal person. Further any underlying company can apply for the FCP on the basis that it earns 100% of its income in foreign currency.

The new regime seeks to set a superior standard for the creation and administration of trust by trustees in Barbados. It promotes certainty and broaden the opportunities for succession planning and asset protection. Trustees should be mindful of the provisions of the Business Companies (Economic Substance) Act, 2018 and the established principles of central management and control of the trust.
