

**THE OFFSHORE INSTITUTE'S
CARIBBEAN REGIONAL CONFERENCE
AND EXHIBITION
OFFSHORE CLIENT SERVICES IN 2000
5TH TO 7TH JUNE 2000
BRITISH COLONIAL HILTON
NASSAU**

**AN UPDATE ON THE FINANCIAL SERVICES OFFERED
BY ST. KITTS**

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INTRODUCTION

The Federation

St. Kitts is a part of the twin- island Federation known as St. Christopher & Nevis.

Since 1983, the Federation has been an independent state within the Commonwealth.

St. Kitts is also a part of the Organization of Eastern Caribbean States (OECS), and the wider area known as CARICOM (Caribbean Community).

The laws are based on English common law and statute. It is served by the OECS Supreme Court and retains Her Majesty's Privy Council as a final Court of Appeal.

It is a parliamentary democracy based on the Westminster model having a Federal Government responsible for governing the affairs of the Federation, but with a local Island Administration responsible for the administration of some of the affairs of Nevis.

The currency is the Eastern Caribbean Dollar.

Financial Services in the St. Kitts

The financial sector has been traditionally divided into two categories governed by separate bodies of legislation.

- 1 The domestic financial services sector, which is dominated by deposit taking, is regulated and supervised jointly by the Eastern Caribbean Central Bank (ECCB) and the Ministry of Finance.

2 International financial services sector is the exclusive responsibility of the Ministry of Finance. The ECCB is used in an advisory capacity.

This presentation deals with International Financial Services more commonly referred to as offshore financial services

ST. KITTS AND NEVIS ARE JURISDICTIONS OPERATING SEPARATE AND INDEPENDENT INTERNATIONAL FINANCIAL REGIMES.

These are conceptually different but intended to be complimentary.

Nevis provides formation and registration services for corporations and trusts primarily interested in protecting earnings and assets from seizure and/or excessive taxation.

St. Kitts focuses on foreign investments that will generate employment opportunities by upgrading and expanding the island's infrastructure through the building and maintenance of commercial offices and housing.

St. Kitts therefore places emphasis on both industrial development and financial services.

Like Nevis, confidentiality of information is guaranteed by the Confidential Relationships Act, 1985.

ST. KITTS

Infrastructure

- 98 % literacy rate
- fast tracking of legislation
- international airport
- a deep water port to accommodate large cruise ships and freighters, to be expanded.
- state of the art telecommunications system
- headquarters of the Regional Central Bank
- political stability
- good economic growth (amongst the highest regionally)
- excellent local expertise, (i.e. legal, accounting and trust skills)
- a diversified economy

Financial Services

In April of 1997, St. Kitts repealed its earlier attempt to engage in the offshore arena, i.e. the International Business Companies Act 1992 and passed the following pieces of legislation:

- The Companies Act 1996
- The Trusts Act 1996 and
- The Limited Partnerships Act 1996

In doing so St. Kitts distinguished itself in the region by introducing the concept of an ordinary company which qualifies for tax exempt status provided that it satisfied certain criteria. We feel that as much of the attraction attributed to IBC's are being steadily eroded by threats, (which have terrorized) to the industry in recent times, the exempt company, within the appropriate legal framework will be a flexible vehicle the demand for which will increase as fiscal and asset planning requirements become more sophisticated.

THE COMPANIES ACT 1996

- This repealed the International Business Companies Act 1992, which had been modeled on the BVI's.
- Under the 1996 Act both ordinary (domestic) and exempt (non-domestic) companies are formed and regulated.
- This was found to be administratively more efficient because there is one registry, one register of companies and those who conduct business with exempt companies enjoy the same benefits and protection as those who conduct business with domestic companies due to the same standard of supervision applied to both.

Exempt Companies Under the Companies Act 1996

- Exempt companies are exempt from taxation as long as business is not carried on with persons resident for tax purposes in the Federation
- May be either public (more than 50 members) or private
- Incorporation fees and annual continuation fees are US \$200.00
- Fees do not vary with the size of the authorized share capital nor is there a scaled charge for an increase in the authorized share capital
- Exempt companies do not lose their tax waivers because of activities within the Federation which are incidental to their normal business operations such as: signing contracts; employing residents; purchasing goods and services; holding director's and managers' meetings; transacting banking and reinsurance business and conducting securities transactions.

- No levies, charges or taxes are payable with regard to any property owned by, or securities issued or created by or in respect of, an exempt person.
- Securities issued by or created for exempt companies are not subject to any stamp duty on transactions involving such securities.
- Private companies may dispense with annual general meetings if members unanimously agree to do so in writing
- Must have a registered office in the Federation
- Must file an annual return which provides for limited disclosure as follows:
 - disclosure of the number of shares authorized and in issue,
 - whether bearer certificates have been issued,
 - confirmation that the company still qualifies for its tax exempt status,
 - confirmation of the registered office and confirmation of the company's activities.
- Must keep accounting records and prepare annual accounts
- Private exempt companies may issue bearer certificates for fully paid up shares
- Inspection of the statutory registers is limited to members and company officers.
- An exempt company may be limited by guarantee
- The use of certain words are restricted under the Financial Services (Business Names) Order 1997

Qualifying participating interest

An interesting feature of our Companies Act is Section 206 (3) which provides subject to certain conditions that:

“ all income earned from dividends, interest and royalties derived by an ordinary company out of its ownership of a participating interest in any other body corporate shall be excluded from the company’s taxable income for the financial period in which income is received”.

The effect of this section means where a ordinary company is established as a holding company in St. Kitts and

- It owns at least 5% of the issued shares of another body corporate at the beginning of the financial period; and
- The other body corporate was incorporated outside of the Federation and it carries on business from an office or place outside of the Federation and
- It actively takes part in the management of, and /or supplies goods produced or services performed within the Federation, to, that other body corporate.

Then all income earned from dividends, interest and royalties derived by that holding company from that other body corporate shall be excluded from the company’s taxable income in the financial period in which that income is received.

Recent amendments

In 1999, the Act was amended to include provisions for the re-domiciliation of foreign companies into St. Kitts.

TRUSTS ACT 1996

- This Act covers both exempt and non- exempt trust.
- The beneficiaries of a trust are exempt from taxes that may arise out of their interest in a trust as long as all transactions in respect of the trust are confined to non- residents
- A trust is an exempt trust if its beneficiaries qualify for the tax exemption mentioned above
- The Act permits for the formation of unit, spendthrift (protective), and charitable trusts
- Beneficiaries do not lose their exemptions if trustees are active in the Federation in a manner which is incidental to the administration of the trust.
- Unless a corporation is the trustee, at least two trustees must be appointed unless one trustee is a corporation.
- The Act provides for the appointment of a protector
- The Act also includes Asset Protection Features shielding the settlor against forced heirship, compulsory division of matrimonial property and creditors' suits

LIMITED PARTNERSHIP ACT 1996

- This vehicle is ideal for raising funds for projects and for asset protection.
- A limited partnership must comprise of at least one general partner and one limited partner.
- An exempt limited partnership is one in which the partners are exempt from taxes, which may arise out of their interest in the limited partnership as long as the general partners are effecting transactions exclusively with non-residents of the jurisdiction.

- Levies, charges, duties or other taxes are not payable in respect of any property owned by, or securities created in respect of, an exempt limited partnership.
- Stamp duties are not payable in respect of any transactions in securities issued or created in respect of an exempt limited partnership.
- An annual statement must be filed and registration and annual continuation fees are US \$ 200.00.

FINANCIAL SERVICES (REGULATIONS) ORDER 1997

This Order came into effect at the same time the three pieces of legislation above were passed so as to provide a proper regulatory framework. The Order provides for:

- The establishment of a Financial Services Department to monitor and supervise the industry
- The criteria to be satisfied for the granting of authorization to carry on **finance business** in the jurisdiction.
- The power to request information or documentation .
- The standards by which finance businesses are to be regulated and supervised. These accord with internationally acceptable standards promulgated by:
 - The Basle Committee for Banking Supervision

- The International Organisation of Securities Commissions (IOSCO)
- The International Association of Insurance Supervisors

Finance Business

Finance business under the Order includes:

- Deposit taking – bankers, financiers etc
- Investment – stockbrokers, operators of collective investment schemes/unit trusts
- Insurance – insurers
- Assurance – insurance agents, insurance brokers, insurance managers.
- Trust- professional trustees, protectors etc. and
- Corporate business – nominee shareholders, professional directors

These carry varying degrees of capital requirements and licence fees.

Disclosure of beneficial ownership is required and background checks are performed on all proposed shareholders, directors and key personnel, who must be named on the application.

In addition evidence of proper qualification and experience must be required.

The transfer of shares is controlled and cannot be executed without the application to and the permission of the Minister.

This is to ensure that shareholders/controllers are fit and proper, but also to protect the best interest of existing and potential clients.

Existing shareholders/controllers may also be removed on the grounds of not being fit and proper persons.

There are wide powers given under the Order to request additional information if what is specifically requested is deemed unsatisfactory as a result of a background check. This practice is strictly adhered to.

The Order therefore errs on the side of prudence with the resulting effect that to date, our reputation remains unblemished.

OTHER INCENTIVES

- Citizenship by Investment
- Hotel Aids Ordinance
Relief from customs and pier duties for items brought into the country for use in the construction, extension and equipment of a hotel of not less than 10 rooms. The Income Taxes Act provides special tax relief benefits for those licenced under the Ordinance
- Fiscal Incentives Act
Tax holidays of up to 15 years are granted to different types of enterprises. This also allows for exemption on import duties and the repatriation of profits, dividends and imported capital
- Caricom Double Taxation Treaty
- Income tax conventions to avoid double taxation with Denmark, New Zealand, Norway, Sweden, Switzerland and the United Kingdom.
- No exchange controls for corporations not doing business in St. Kitts
- Import licences not required
- No personal income tax

NEW DEVELOPMENTS

The Eastern Caribbean Securities Exchange

This project, which has been underway for the past two years, is nearing fruition.

Much of the initial work in relation to its development has been completed.

The Securities Act in draft form is being fine-tuned for passage in the parliaments of the participating territories.

Participating governments have committed to passing enabling legislation by July 1st 2000.

Arrangements are being made for the establishment of a Securities Regulatory Commission.

Trading will commence shortly thereafter.

The first phase is a purely domestic venture but in a short while there will be international access to and from it. This will provide interesting opportunities for further development in the international financial services sector.

OECS Institute of Accountants

The formation of an Eastern Caribbean Institute of Accountants is in formation. This together with the stock exchange will hasten the use of international standards of reporting and disclosure.

KPMG Review

KPMG was contracted to perform a two-phase review of the sector in St. Kitts.

The first phase, which is an assessment of the sector, has been completed. The second phase, which is the Implementation Strategy, will commence shortly after the formal acceptance of most of the recommendations outlined in Phase 1.

Several initiatives have emanated from this exercise.

It would be premature to go into too much detail at this stage but these initiatives will strengthen the sector's infrastructure, expand

the scope of products we have on offer and sharpen our competitive edge.

THREATS TO THE INDUSTRY

The pressure placed on financial centers in the last twelve months has intensified and St. Kitts along with others has had to contend with some or all of the following:

- The G7 backed OECD initiative against harmful tax competition
- The UN's offshore initiative
- The FATF initiative
- Various EU directives
- The Financial Stability Forum

St. Kitts is currently in dialogue with the above named institutions.

CONCLUSION

There are a number of reasons why financial centers are being used.

By their very nature these centers have evolved from countries whose economies have been dominated by agriculture and tourism and with little or no tangible natural resource. The decline in demand for traditional agricultural products and vulnerability to changing weather patterns has led to a drive for diversification. The need to develop the infrastructure and build skills has led many of these countries to seek something more sustainable, such as financial services.

St. Kitts remains committed to:

- its original vision which was to distinguish ourselves by establishing a financial services center which is responsive to changes occurring in the market place, allowing for smooth transitions so as to cause the least disruption to all the stakeholders.
- build expertise and to create employment,
- enhance the infrastructure by attracting reputable and sustainable business to the island.

Having sought at the very inception to create and establish an effective regulatory structure where there are stringent rules regarding the licensing of financial institutions as well as the supervision of operations. We are satisfied that we are doing what is for the industry. We recognize that times are changing. It is inevitable that all the jurisdictions will have to respond to change. We are prepared to dialogue with those who wish to have dialogue with us but our responses to change will be determined largely by what is good for the industry and ourselves.

We do recognize the risk posed by and the concerns over the laundering of the proceeds of crime however there are those who having earned, also wish to protect their fortunes, by legitimate means. We therefore do not subscribe to the **increasingly widening definition of money laundering** which seeks to renders traditionally acceptable tax avoidance planning, as now illegal.