

# St. Vincent launches new Company Laws

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**T**he year 2006 is the year for revitalisation of international company law in St. Vincent and the Grenadines (SVG).

The SVG international business company (IBC) has long been the growth engine of its offshore industry, with well over 6,000 active IBCs on the Register. In order to give further impetus to this high growth sector, the authorities are investing resources into making the relevant governing laws even more attractive to financial planners by reforming the IBC Act and introducing a new LLC Act.

A new IBC Act has been commissioned and drafted and is due to go to Parliament for passage in June 2006. I shall highlight below some useful asset protection points in the new consolidated IBC Act.

## New IBC Act

### 1. Types of Companies: the Hybrid

The new act provides for the formation of several types of company, they are as follows:

a company limited by shares;  
a company limited by guarantee (so called mutual companies);

a company limited by guarantee but also having shares (so-called hybrids); and  
an unlimited company.

The hybrid company is the hallmark of this new legislation. The term "Hybrid Company" describes a company that is limited both by shares and by guarantee. Therefore a hybrid has at least two classes of members – shareholders and beneficiary members; some also have preference shareholders. The term "Shareholder" is familiar and well understood. The term "Beneficiary Member" is less common, although sporting clubs or societies may be structured as companies limited by guarantee and thus have beneficiary members.

When used as a quasi trust, the hybrid company is typically structured with the

shares each carrying one vote but having no rights to dividends and no participation in the capital or income of the company in any way. The beneficiary members have no voting rights but participate fully in the income and capital of the company. Thus control of the company legally rests with the ordinary shareholders, but all benefits flow to the beneficiary members, or as set out in the constitution. The shares are then issued to professional managers, who act rather like quasi trustees - having legal ownership of the company and its assets but being unable to receive financial benefit from holding the shares. All of the net (after payment to preference shareholders) financial benefits flow to the beneficiary members, placing them in a position rather like the beneficiaries of a typical trust. A beneficiary member's interest may be extinguished on death to eliminate succession problems, remove any probate requirements and therefore potentially avoid any inheritance tax/estate duty implications.<sup>1</sup>

This wide range of choice of share structures gives international tax planners many opportunities to establish tax efficient vehicles which suit the needs of their clients.

### 2. Trusts of Shares

The Act also provides for much of the flexibility currently gained through using a BVIVista trust, by allowing shares to be held by a unit trust. In particular, it is specifically designed to guard against the responsibilities imposed on trustees by the rule in *Barclays Bank v Bartlett*.

Trustees of unit trusts or international trusts governed by St. Vincent and The Grenadines law, who hold shares in a SVG IBC, have no duty to enquire into the management of underlying companies etc.

This provision could be quite useful in attracting clients to using SVG IBCs and trusts.

### 3. Segregated Cell Companies

The new Act also provides for the segregation of assets held in different share classes within a single company, known as segregated cell companies (SCCs). The insolvency or underperformance of one share class does not "contaminate" other share classes, as would be the case in a traditional company without segregated cells. Creditors of the insolvent class cannot claim against the assets of other classes.

SCCs are new to the jurisdiction, and should help to boost the insurance and mutual funds sectors.

### 4. Taxation

In a move that is a departure from the traditional "zero tax" categorisation of all offshore structures in SVG, the new Act now provides that an IBC may elect to pay a 1% tax. The default position continues to be that IBCs are not taxable or subject to audit in SVG. However, at incorporation, an IBC may elect (irrevocably) to be taxed at 1% on its profits etc. This is particularly useful for companies that can take advantage of the Caribbean Community (Caricom) tax treaty, under which a company, once taxed in its home country, pays no further tax within Caricom.

In addition, all IBCs are given exemption from indirect taxes and duties.

## New LLC Act

SVG has opted to introduce a free-standing LLC law as part of the move to have some of the most advanced international company law in the offshore industry. The decision has been taken to model the LLC Act on the tried and tested Delaware LLC, incorporating the concept of the recent Delaware Series LLC, which is explained below.

The Delaware Series LLC permits a single limited liability company to own multiple

subsidiary limited liability companies, each of which owns a single-asset business. This innovative concept allows one LLC to establish separate series, or units, under the same LLC umbrella. Each unit of a Series LLC can own distinct assets, incur separate liabilities, and have different managers and members. A Series LLC pays one filing fee and files one income tax return each year.

Under the Delaware Series LLC, liability incurred by one unit does not cross over and jeopardise assets titled in other subsidiary units of the same Series LLC. Although the same liability isolation can be achieved in any state with multiple entities, the Delaware Series LLC, in theory, offers superior and more economical asset protection under a single roof. In short, this type of LLC allows for segregated cell capacity within the existing LLC.

The new LLC statute, recently commissioned, will also allow for the traditional benefits of the LLC including limited liability (allowing general members non-exposure to legal liability), tax flexibility (being able to choose if it will be taxed in the US using the pass-through method or as a company), adaptable management structure, and versatile distribution of profits and losses.

The drafting of the new Act has just been commissioned, and is slated for consultation in July and passage in Parliament by September 2006.

### Trust Companies/Financial Fiduciaries – Foreign Ownership Allowed

In preparation for the Caribbean Single Market and Economy (CSME) and its trade liberalisation requirements, there was an amendment made to the Registered Agent and Trustee Licensing Act (the Act that governs the regulation of trust companies) to allow foreign persons to hold trust company licences. Accordingly, foreign persons and firms can now be licensed agents, trustees and financial fiduciaries, which are authorised to provide offshore services such as the registration of IBCs and trusts, as well as the representation of offshore banks and other entities. Some financial intermediaries and law firms prefer to hold such licences themselves rather than outsource the work to a company that is not known to their client base. For persons seeking to set up an IBC company or an asset protection trust and, in particular, where they wish their financial intermediary to play a role as nominee director or trustee, it is useful for the same intermediary to be a licensed agent or trustee.

In the business of asset planning and protection, where a fiduciary relationship comes into play, the trust factor is very important. For example, a 70 year old widow in Los Angeles, who has been accustomed to dealing with one law firm (which specialises in tax law) for many years, and wishes to set up a trust for her children, may more readily accept that the law firm, which she has known all her

life, acts as the trustee to that trust, rather than a trustee who is unknown to her and resides in a jurisdiction with which she is unfamiliar.

Onshore tax planners are taking advantage of this provision and becoming licensed agents and trustees in SVG. In most cases, they choose to partner with local agents, rather than setting up a full establishment from scratch.

### Conclusion

In this industry, as in all others, change is the constant. In order for the services to remain viable, change is a must. All changes introduced in SVG are in keeping with our commitment to the fight against money laundering and terrorist financing and other relevant best practices. By the last quarter of 2006, SVG will have one of the most dynamic international company law regimes in the offshore world, creating vast possibilities for asset protection structures.

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### ENDNOTE

*I. Isaac Legair, Dennings Trustees Ltd. "The Hybrid Company" June 2005.*



*"St. Vincent & The Grenadines prepares to catch the spillage" May 2005, Issue 156*

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