

## **Innovative Risk Transfer Solutions ITS ALL IN THE ART-**

### **Using Barbados Segregated Cell Accounts and Segregated Cell Companies**

#### **Reasons to Consider ART Solutions**

Increasingly complex risks and a hard market have meant that conventional risk transfer products cannot always provide adequate cover. This has led to considerable growth in the use of alternative risk transfer (ART) solutions. Where feasible, ART solutions should be an essential part of a company's overall strategy for risk management. They should also be seen as a method of funding for and management of a company's risk. ART Solutions can help to finance conventional risk exposures in an alternative manner, or finance conventionally uninsurable risk exposures using an insurance mechanism.

#### **New Legislation**

In 2001, Barbados introduced both segregated accounts and segregated cells legislation as amendments to its Companies Act of Barbados, Cap. 308. Unless stated otherwise, the provisions of the Barbados Companies Act apply to both segregated cells and segregated accounts. Segregated cells do not have legal personality independent of the Segregated Cell Company.

There is significant potential for long-term savings through risk management and loss control. A captive program, for instance, that is performance-driven, with potential for profit return can consider Barbados Segregated Cell Accounts or forming a Segregated Cell Company as part of their ART solutions.

Dramatic rate swings in the traditional insurance marketplace can be avoided by creating a stable, predictable, efficient program. Loss fund dollars can be invested for additional income with insurance for catastrophic loss purchased. The international business community has already accepted the concept of segregated cells for insurance risk management as well as for non-insurance purposes.

#### **Barbados Segregated Accounts**

Separate accounts may be established only for insurance business. The designation, restrictions, conditions and rights attaching to each separate account must be specified in its articles. The assets of the company are segregated into separate accounts that are kept separate from the general assets of the company.

These "assets of a separate account" include, the specific assets credited to the respective separate account, all income, interest, gains, expenses and losses incurred or earned, in respect of the company's dealing with the assets that are allocated to the separate account. All this, in accordance with the terms of the contract that relate to the establishment of the separate account. A company that has established a separate account may invest and deal with the assets of a separate account in accordance with the terms of the

relevant contract. Separate books of record are also kept for each separate account.

### **Barbados Segregated Cell Companies**

Segregated Cell Companies (SCCs) are 'protected cell' companies, also known as 'sponsored captive insurance companies' in some industry circles, in which the assets and liabilities of each participant are segregated in a separate cell. No participant's liabilities can affect the other participants' assets. SCCs can do insurance business as well as other types of non-insurance business.

It is stated expressly in the legislation that notwithstanding the fact that a segregated cell company may create one or more cells, the company is still a single legal entity and further that a cell is not a single legal person.

Segregated cell captives are growing especially rapidly because it's easier and cheaper to add a cell to an existing cell captive than to launch an entirely new captive from scratch. Barbados Segregated Cell Companies can be formed in one of the following ways:

- (i) A company that is incorporated as a segregated cell company
- (ii) An existing company that is converted to a segregated cell company
- (iii) An external company which can be either
  - (a) registered as a cell company in Barbados or
  - (b) continued as a cell company in Barbados.

Segregated-cell captives also can be owned by a single parent that has elected to place different risks into different cells, or owned by a group captive that has separated its individual members' risks into different cells.

The Companies Act also provides that the recourse available to a creditor of a segregated cell is limited to the assets of that cell, and similarly that a creditor of a SCC itself is limited to that asset of the SCC, and not any of its cells but does provide for non-cellular assets of the cell company to be exposed upon the deficiency of the cell. It should be noted that no Barbados court has considered the insolvency issues of segregated cells nor has this issue been addressed in most of the other international business jurisdictions as yet.

### **Innovative Uses due to Flexibility**

- Captive/ insurance business asset pools
- Mutual Funds
- Multi-series Securitisation
- Investment Funds
- Family Office

With structure flexibility there are innovative ways to use these cellular structures. Mutual funds and insurance business asset pools, could use this type of structure as it is well suited to highly geared funds using higher levels of debt or through trading on margin in derivative contracts and even as issuing vehicles in multi-series securitisation programmes in respect of separate pools of assets.

For insurance structures, no cell would want to write a line of business which it could not foresee being able to cover and which it would have concerns over, with possible consequences of wrongful trading being an issue. With an incorporated segregated cell company, however, the emergence of claims against one specific cell or line of business should have no impact upon the continuing ability of the other cells or the cell company to continue to run their own businesses unaffected by the

problem cell and to continue to write new business.

Banking, investment, fiduciary and insurance businesses require a licence in Barbados to be lawfully conducted. This does not limit in any way the existing insurance uses for captive and reinsurance business, but opens up the use of Barbados SCCs as a wealth management structure for example, family offices wishing to facilitate the holding of assets, asset pools or businesses.

### **Why Barbados?**

- Extensive international business legislation

- A positive image in the market place
- An excellent reputation in international business industry
- A well educated population
- Good business infrastructure and competent, skilled service providers
- Social, political and economic stability
- Well regulated environment; prudent regulatory authorities
- A diverse network of double taxation and bilateral investment treaties

***Dawn A. Williams LL.B., M.B.A. is an Attorney-at-law and can be contacted by email: [daw@meridianlawbb.com](mailto:daw@meridianlawbb.com)***