

**PRESENTATION TO STEP MILAN**

**September 22, 2009**

**Milan, Italy**

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Hello everyone :

I am very pleased to have been invited to speak to you today. Greetings from the STEP Bahamas Branch which is over 400 members strong, making it the fifth largest chapter in the worldwide organization of STEP-this despite the fact that The Bahamas is a very small nation. The board of directors, which I head as Chairperson, is responsible for carrying out the objectives of STEP in The Bahamas. As you know, these aims relate to the education, training and the exchange of ideas among STEP members-all with a view to better equipping us to meet the needs and expectations of our clients in the financial services industry.

Before I talk to you about private trust companies in The Bahamas, let me tell you a little bit about my country, the Commonwealth of The Bahamas.

The Bahamas is an archipelago of 700 islands extending across some 500 miles in the north Atlantic Ocean. At the northern end of our island-nation, less than 50 miles off the Florida coast – is the United States of America. To the west, just a short distance from the island of Andros, the largest of all our islands, lies Cuba. At the southern extremity of The Bahamas, the island of Inagua is situated less than 50 miles from the island of Hispaniola which, as you know is shared by the Dominican Republic and the Republic of Haiti.

The Bahamas comprises an English-speaking population that is about 330,000. This population is heavily concentrated on the islands of New Providence (where Nassau, the capital city, is located) and, to a lesser degree, Grand Bahama (where Freeport, the largest free trade zone in the hemisphere, is located). The Bahamas has an adult literacy rate of 95%. A parliamentary democracy for more than two-and-a-half centuries, The Bahamas has continued to enjoy unmatched political and social stability since its independence from Britain in 1973. Democratic elections

are held every five years. Voter turnout is consistently on the magnitude of 90+%, and elections are free and fair. There have been three changes of government in the last 17 years and each change has occurred smoothly and peacefully.

The Bahamas is an economically prosperous country, thanks to the success of our tourism and financial services industries over many long years. Evidence of this prosperity is to be found in the fact that The Bahamas has the third highest per capita income among all sovereign nations in the region. Only the first world economies of the United States and Canada rank higher.

With more than 6000 professionals covering every aspect of financial services, The Bahamas is one of the most developed financial centres in the world. The Bahamas has been providing banking and trust services to the international financial community since the 1930s. According to the latest published statistics of the Central Bank of The Bahamas, there are some 260 banks and trust companies licensed in The Bahamas. Most of these institutions are branches or subsidiaries of banks based in Europe, Asia, the Middle East, South and Central America, the United States, or Canada.

Not one to rest on its laurels or to take its success for granted, The Bahamas is constantly seeking to find ways to improve the financial services sector; to adapt it to the ever-evolving needs of the international marketplace; to make it more responsive to the increasingly complex needs of wealth conservation planners around the world, especially in relation to high net-worth individuals and families for whom dynastic or succession planning and a more hands-on approach to the management and investment of liquid family assets are central concerns.

The Bahamas has therefore had to stay on the cutting edge of product innovation and first-class service delivery to keep pace with the changing environment in which it operates as an international financial centre. It has had to increase and diversify its toolkit to ensure that it can provide a full range of solutions to the needs of its clientele.

The introduction of legislation for Private Trust Companies - "PTCs" for short - was a another definite step in that direction. And it is to this subject that I now turn.

Prior to 2007, a company that sought to do trust business in The Bahamas had to obtain a trust license from the Central Bank of The Bahamas. This process was costly and time consuming. Moreover, it was by no means certain that a licence would be granted. Indeed, the Central Bank had become extremely restrictive in the granting of trust licences of the traditional type. On top of that, even where licenses were granted, the licence fees and associated costs (e.g. the cost of full annual audits; the need for physical presence in The Bahamas and associated infrastructural and staffing costs) made a trust licence prohibitively expensive for just about everybody except, of course, for the big, full-service international trust companies.

Recognizing, however, that there was still a need – and a growing need at that – to provide a legal regime under which family-type self-managing trusts could be created in The Bahamas with a minimum of cost and with a minimum of regulatory oversight, the decision was made to create a unique type of trust company known as a PTC which would be exempt from the licensing requirements applicable to trust companies under the Banks and Trust Companies Regulation Act. This type of trust company

would act as trustee of a single trust or a group of related trusts for single individuals or single, blood-connected families.

Some useful facts about PTCs are:

- A PTC is usually structured as a Bahamian International Business Company or "IBC". An IBC is a special type of company which can be inexpensively incorporated in The Bahamas. It is an extremely flexible and highly adaptable vehicle for an almost infinite variety of applications, including, most notably, the holding and investment of assets in a trust structure.
- No annual audit requirement, thereby freeing PTCs from this potentially very considerable expense
- No licensing requirement and no ongoing regulatory supervision
- Licence fees are very modest in comparison to licence fees for ordinary trust companies: \$5,000.00 per annum
- Small capital requirement: \$5,000 initially
- Minimal annual reporting requirements
- Bahamas nexus consolidated through the "Registered Representative" which every PTC must have, the Registered

Representative being required to be resident in The Bahamas. The Registered Representative must be either a licensee of the Central Bank (bank or trust company) or a financial and corporate service provider.;

- In common with all companies in The Bahamas, there are no nationality restrictions on directors and officers so that all of the directors of the PTC, if need be, could be outside of The Bahamas.

The following scenario illustrates the uses to which a PTC and other Bahamian products may be put.

Mr. X is a High Net Worth Individual (HNWI) who is concerned about maintaining confidentiality and who also wants to maximize executive control over his assets while at the same time putting in place a structure that will ensure a smooth transition upon his death to his three sons. Mr. X's assets are derived mainly from closely held family businesses. His assets are all very liquid (no real estate).

So Mr. X's objectives are: confidentiality, control, and succession or dynastic planning.

Let's look at each of these a little more closely in the context of PTCs.

### Confidentiality:

Because the members on the board of the PTC can be limited to family members (and perhaps only one "outside" professional director (if he so desires)), Mr. X can limit the disclosure and circulation of information concerning the family's affairs. This benefit is of particular concern in countries where individuals are concerned about their personal safety if information about their wealth becomes public knowledge.

### Control:

Again, because Mr. X can determine who sits on the board of the PTC, he is able to exert a degree of control over the trust or trusts that he would not otherwise be able to if the Trustee were a professional trust company. He can also establish family advisory committees to provide guidance to the board regarding the handling of family assets. The only caveat here is for Mr. X to ensure that the PTC is being run in a professional manner, that is,

Mr. X must ensure that the PTC is complying with the express terms of the trust deed and the law relating to trusts so that the validity of the underlying trust is not compromised. The point here is the need to be responsible. As in all things, moderation is a virtue. Yes, maximal control by the settlor may be legally possible, but it may be more desirable to introduce checks and balances on a settlor's control so as not to necessarily invite criticism of the PTC structure as being a sham. As I said earlier, a professional director who is not a family member and who is not employed by or otherwise dependent on the family would assist in bringing a level of objectivity and professionalism to the board that might not otherwise be achievable with family members only. In this way, the legitimacy of the PTC is enhanced as well.

#### Smooth orderly transfer of assets:

Mr. X can ensure that the PTC is structured in such a way that Mr. X and perhaps a professional non-family director are the directors during his lifetime but upon his death one or more of Mr. X's sons automatically become the director(s) thereby facilitating a smooth transition from one generation to the next.

If for tax or other estate-planning reasons it is undesirable for one of Mr. X's children to be directors, however, the constitution can provide that some other person can be appointed or some other person can be made responsible for appointing some other person to be director. For example, the Articles could provide that upon Mr. X's death, a pre-designated person will appoint a director from among a specified class of persons thereby ensuring a smooth transition. It is important to stress that this does not involve disturbing the underlying trust itself-that would continue as before since all changes would be taking place instead at the PTC level.

Another useful structuring approach to PTCs is the use of a purpose trust or a foundation to hold the shares of a PTC. This avoids the issue of having to identify some human person or group of persons as the owners of the PTC. Instead it would be owned by a Purpose Trust which need not have any beneficiaries, only purposes. Indeed, the sole purpose of the Purpose Trust could be declared to be the holding of the shares in the PTC.

Similarly, a foundation which is, of course, a type of vehicle with which you, from a civil law country, are conceptually more familiar, need not have any beneficiaries either. The Foundation

constitution need merely provide for the appointment of a beneficiary in the future. There is no time limit on when this has to be done.

In either structure the absence of a need to create a conventional ownership structure may possibly have significant tax and estate planning benefits in the relevant home jurisdiction although, needless to say, that is a matter that only experts in the laws of the relevant jurisdiction would be competent to advise upon.

Putting all that I have said together, it means, therefore, going back to our hypothetical scenario, that it would be possible for Mr. X to set up a trust for his three sons but to have as the trustee of that trust a Bahamian PTC which, in turn, would be owned by a purpose trust whose sole purpose would be to hold the shares in the PTC.

Moreover, as previously emphasized, it would be possible for Mr. X to so design the board of the PTC as to maximize control over the operation of the PTC and its underlying trust, albeit in a responsible and not overly self-indulgent way.

Let me conclude by pointing out that the reception to this new product – the PTC – has been extremely positive. There is increasing demand for it, and not surprisingly either because it does indeed represent an ideal way of ensuring that those who are accustomed to taking a “hands-on” management of their assets can effectively continue to do so albeit under the aegis of a separate legal entity which will not only act as a closely-managed trustee but will, at the same time, provide an excellent platform for the transition to the next generation once the Settlor dies or wishes to surrender control.

I would therefore recommend that when you come to examine various structuring possibilities for the holding and management of your clients’ assets, you do so by having a close look at what my country, The Bahamas, has to offer; and that you give particular, focused attention to the pivotal role that a Bahamian PTC can perhaps play in bringing the whole structure together into a coherent whole.

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