PRACTICE DIRECTION

Concerning procedures and fees for International Business Companies and International Societies with Restricted Liability under the New Regime Effective January 1st, 2019

The following guidelines will apply to the granting of a Foreign Currency Permit to Regular Barbados Companies (RBCs) and Societies with Restricted Liability (SRLs) that earn 100% of their income in foreign currency and to the transitioning of International Business Companies (IBCs) and International Societies with Restricted Liability (ISRLs) under the regime of the Companies Act Cap. 308 and the Societies with Restricted Liability Act Cap. 318B.


Existing Licensed Entities

Impact on Entities involved in a Non-IP Regime

Transitional Provisions:

Non-IP IBCs and ISRLs licensed

- before October 17th, 2017 will be entitled to be grandfathered as prescribed by legislation
- on or after October 17th, 2017 will be transitioned to the new regime automatically by operation of law

Process for Grandfathered Entities:

1.) Renew licence for 2019 before December 31, 2018
2.) Renew existing licences each year during the grandfathering period

Process for Non-Grandfathered Entities:

1.) Renew licence for 2019 before December 31, 2018 and by operation of law an entity will be issued with a FCP
2.) File a declaration by a director/manager certifying that the entity will generate 100% of its income in foreign currency
3.) With effect from January 1, 2019, legislative amendments will provide that the restriction contained in the Articles of Incorporation or Organisation will be deemed to be null, void and of no effect.

**Impact on Entities involved in an IP Regime**

**Transitional Provisions:**

IP IBCs and ISRLs licensed
- on or before June 30th 2018
  - with IP Assets acquired before October 17th 2017
  - with IP Assets acquired after October 17th 2017
    - If the IP asset was already benefitting from an existing backend regime or
    - If the IP asset was acquired from an unrelated party
      will be entitled to be grandfathered as prescribed by legislation

**Process for Grandfathered Entities:**
1.) Renew licence for 2019 before December 31, 2018
2.) Renew existing licences each year during the grandfathering period

**Process for Non-Grandfathered Entities:**
1.) Renew licence for 2019 before December 31, 2018 and by operation of law an entity will be issued with a FCP
2.) File a declaration by a director/manager certifying that the entity will generate 100% of its income in foreign currency
3.) With effect from January 1, 2019, legislative amendments will provide that the restriction contained in the Articles of Incorporation or Organisation will be deemed to be null, void and of no effect.

**Formation of New Entities**

1. The usual suite of incorporation/organisation documents must be submitted together with the prescribed incorporation fee and the non-refundable application fee of $250 for the Foreign Currency Permit, at the Corporate Affairs and Intellectual Property Office. A receipt will also be issued for the Foreign Currency Permit application fee.
2. Simultaneously, the application for the Foreign Currency Permit must be made by letter in a confidential, sealed envelope addressed to the Director of International Business, 8th Floor Baobab Tower, Warrens St. Michael (pending the issue of a prescribed form), and delivered to CAIPO and must include:

- the registered office address;
- Contact details of the licensed service provider licensed under the Corporate and Trust Service Providers Act acting on behalf of the RBC/SRL;
- Contact details of auditor, if applicable;
- Financial Year-End;
- Number of persons to be employed by the company requiring work permits and the positions to be held by such persons;
- Names, address registration/incorporation number of all related entities carrying on business, licensed, incorporated, registered or organized in Barbados;
- Details of the activities in which the RBC/SRL will be engaged;
- A profile of each shareholder (academic qualifications, training, experience, corporate status and description of business where relevant);
- A profile of each director/manager (academic qualifications, training, experience, corporate status and description of business where relevant);
- An indication as to whether any director/manager has ever in any jurisdiction been convicted of a criminal offence involving fraud, money laundering, insider dealing;
- An indication as to whether any director/manager has ever in any jurisdiction been investigated by any regulatory body;
- Statutory declaration of a director/manager confirming that 100% of the income earned will be in foreign currency;
- The cheque number for the foreign currency application fee, and related bank name should be detailed in the letter.
3. Once the Ministry of International Business and Industry notifies the Corporate and Trust Service Providers that the application has been approved, the Foreign Currency Permit fee of $1000 must be submitted to the Ministry. A Foreign Currency Permit will thereafter be issued by the Ministry.

4. It is a condition of every Foreign Currency Permit that a statutory declaration of a director or manager must be filed with the Ministry of International Business and Industry certifying that 100% of the RBC/SRL income will be in foreign currency. **Copies of audited financial statements no longer need to be submitted to the Ministry of International Business and Industry.**

5. All RBCs/ SRLs which are holders of the Foreign Currency Permit must retain a service provider licensed under the Corporate and Trust Service Providers Act.

**Highlights of New Provisions**

1. It shall be a condition of every foreign currency permit that a prescribed annual fee initially in the sum of $1000 (which will be due for renewal as follows: for companies incorporated between January 1st and June 30th, the Foreign Currency Permit is to be renewed no later than June 30th; for companies incorporated between July 1st and December 31st, the Foreign Currency Permit to be renewed no later than December 31st) shall be paid to the Ministry of International Business and Industry. Should this fee not be paid within three days of the renewal date, the Permit shall automatically expire.

2. It is a condition of every foreign currency permit that a declaration by a director/manager must be filed with the Ministry of International Business and Industry on or before the anniversary date certifying that a corporation tax return has been filed for the previous year with the Barbados Revenue Authority, and confirming that 100% of the income earned was in foreign currency.

3. All foreign currency permit holders shall be required to retain a Corporate and Trust service provider duly licensed under the Corporate and Trust Service Providers Act.
**Grandfathering**

A grandfathering policy is a provision in which an old rule continues to apply to some existing situations while a new rule will apply to all future cases. In the case of Barbados, the IBCs and SRLs that meet certain criteria will be grandfathered i.e. will continue under the existing regime until 30 June 2021. Those that don’t meet the criteria will be subject to the rules of the new regime.

If an IBC or ISRL wishes to remain in the previous regime and avail itself of its right to the grandfathering provisions, it shall submit a letter indicating same to the Ministry of International Business and Industry.