BARBADOS

The following is a summary of recent legal developments in Barbados.

During 1986, several legal and related developments have occurred with the Barbados offshore financial service. These developments are significant for foreign investors and persons interested in the legal developments of international and comparative law. Some of the developments resulted from the enactment of treaties, while others derived from new legislation. Still other developments deal with the infrastructure and legal culture.

I. OFFSHORE INSURANCE

The double tax convention between the United States and Barbados became effective in February 1986. As a result, twenty-three licenses for offshore insurance have been issued in 1986, bringing the total to twenty-nine. In April 1986, the Parliament of Barbados enacted an amendment to the Barbados Companies Act, 1982 providing Barbados with a more effective exempt insurance regime. The amendment, known as the Companies (Amendment) Act 1986, is significant for corporations with international operations and also for corporate and professional groups which seek to self-insure their risks through captive and other offshore insurance carriers. The 1982 Act provides a modern corporate framework. This is evidenced by the Act's incorporation of insider trading sanctions and special provisions for external companies. The amendment adds a new division concerning corporations "undertaking contracts of insurance whereby the company is directly or indirectly owned by its members and provides insurance or reinsurance directly or indirectly for the benefit of such members." New Division E complements the Exempt Insurance Act and fa-

3. Companies Act, § 356.7, Division E (Mutual Insurance Companies).
cilitates the operation of captive insurance carriers in a mutual form. The change illustrates the Parliament of Barbados awareness of increased foreign—and particularly U.S.—interest in captive operations in Barbados which benefit from the excise tax exemptions contained in the new U.S.-Barbados tax treaty. In addition, the new law shows the effort of the recently elected Democratic Labor Party under the Administration of Prime Minister Errol Barrow to make Barbados a competitive jurisdiction for offshore insurance regimes.

Under Article 2(1) of the U.S.-Barbados treaty, a Barbados captive is exempt from the one percent U.S. excise tax on reinsurance and the four percent excise tax on insurance premiums. Although a proposed tax treaty between the United States and Bermuda incorporates provisions placing Bermuda on an equal footing with Barbados, the ratification of that treaty is doubtful because several key persons in Congress have opposed it because it runs counter to established U.S. tax treaty policy. Barbados thus remains the only nation in the Caribbean with an excise tax waiver for both direct insurance and reinsurance premiums.

The Companies Act amendment extends the tax exemption to mutual captives. Under new section 356.9, shareholders of an exempt insurance company which has an insurable interest in property of the kind to be insured by the proposed mutual company, or with a common interest in protecting each other from business risks may incorporate a mutual company without sharing capital. The articles of incorporation must describe the establishment and maintenance of the reserve fund which cannot be less than B$250,000.00, and the first insured risks, as well as contain a restriction of the company's business purposes as to the insurance business. Each member's liability for losses, claims or demands against the company are limited to the member's premium.

5. The amendment complements not only the existing insurance legislation, but also the entire offshore sector which ranges from banking to Foreign Sales Corporations. See, e.g., Alleyne, Barbados: Foreign Sales Corporations Act 1984, 61 TAXES INT'L 12 (1984).


8. See, e.g., Tax Treaties: Rep. Rostenkowski Protests New Accord with Bermuda, DAILY TAX REP. (July 22, 1986) at G-3. The draft double taxation agreement between the United States and Bermuda does not actually deal with double taxation because Bermuda has no income tax, so that double taxation cannot occur.


10. Id. at § 356.11.
There are no restrictions as to the type of insurance—direct or re-insurance—risk coverage, premium volume, retention capability or the creation of an offshore profit center.\textsuperscript{11}

The amendments to the Companies Act allowing for mutual insurance companies will have a positive effect on Barbados as an offshore business center. The Act will facilitate the availability of administrative expertise which has already increased considerably since Barbados began establishing a framework for offshore operations with its International Business Companies legislation in 1965.

II. FOREIGN SALES CORPORATIONS

In August, the Industrial Development Corporation announced that more than 240 foreign sales corporations (FSC's) have established operations in Barbados. The establishment of FSC's in eligible jurisdictions such as Barbados enables U.S. corporations to obtain income tax benefits for exports to any place outside the United States. Barbados enacted the Barbados Foreign Sales Corporation Act 1984 in response to incentive legislation of its competitors—the U.S. Virgin Islands and Jamaica—who had begun marketing FSC's six months earlier.\textsuperscript{12} During the past twenty months, Barbados had the legislation as well as capabilities of the onshore business sector to administer FSC and other offshore entities successfully. Barbados has been mentioned as the best jurisdiction to host state-sponsored FSCs.

III. INFRASTRUCTURE DEVELOPMENTS

Barbados has taken steps to open a stock exchange. Recent reports state that it could be in place by April 1, 1987.\textsuperscript{13} The Exchange, which will be an association of brokers and dealers operating from a central market place, will allow trading in the purchase

\textsuperscript{11}The suitability of Barbados as an insurance profit center derives in large part from tax treaties Barbados maintains with several European countries. A judicious use of these treaties permits favorable tax treatment of a captive's asset investments in countries such as Denmark, Norway, Sweden or Switzerland. See Zagaris, \textit{Seminar on the Barbados/U.S. Treaty}, 78 \textit{TAXES INT'L} 9, 12 (1986).


\textsuperscript{13}Lovell, \textit{Stock Exchange May Be Ready by April 1}, (Daily) Nation, Dec. 9, 1986, at 1, col. 4.
and sale of securities. The stock exchange will provide increased liquidity in the market. It will also allow investors to diversify more readily. The Market will facilitate the raising of capital by new and existing enterprises.

Several major investments have occurred in the field of data entry and telecommunications in Barbados. For instance, R.R. Donnelly in Chicago, announced in September that it would start a data entry operation in Barbados through a wholly-owned subsidiary, Donnelly Caribbean Graphics, Inc. in order to key in manuscripts sent from the company’s composition center in Cherry Hill, New Jersey. On October 2, 1986, Phil Karben, Chairman of Keyboarding Systems International Limited (KSIL), announced that sixty-five more Barbadians would be hired to undertake complex data entry work, such as mathematics, physics and chemistry. Recently the Barbados Government approved the purchase of a majority shareholding (approximately sixty-five percent of the stock) in the Barbados Telephone Company by Cable & Wireless of the United Kingdom from the Continental Finance Corporation of Atlanta, Georgia. Financial analysts estimated the purchase price at approximately US $7.5 million. The remaining shares are owned by the Barbados Government and private shareholders. Cable & Wireless and the Barbados Government discussed the company’s capital structure, management structure, and regulatory details. The company employs 663 workers. Cable & Wireless also has a fifty-five percent shareholding in the Barbados External Communication (BEI), a joint venture with the government. Cable & Wireless operates the telephone services in most of the Leeward and Windward Islands.

IV. PROSPECTS FOR OFFSHORE SERVICES

On October 29, 1986, Dr. Richard Haynes, Minister of Finance for the Government of Barbados, publicly stated that the Barbados Government wants to extend its network of tax treaties to other countries. In addition, he stated that the government plans to extend the offshore business services to include free trade zones. The Barbados also has tax treaties with the United Kingdom, Norway, Denmark, Sweden, Switzerland, and Canada, as well as two tax agreements with the members of the Caribbean Community and Common Market. See, e.g., Zagaris, Barbados: A Base for International Operations and Investment, U.S. Taxation of International Operations Service 8512 (P-H) (1986).
government has already commissioned a study on the Bridgetown Port as one such zone. Another area where activity is expected is the use of Section 936 funds to finance new offshore services. Recently, high level officials of the Puerto Rican and Barbados Governments discussed matters relating to Section 936 funds. Currently, Barbados is the only jurisdiction eligible to receive Section 936 funds as a result of the Tax Information Exchange Agreement with the United States.\textsuperscript{15}

Barbados, as well as the countries attracted to its growing offshore activities, is likely to continue to diversify the scope of its offshore activities. Its strong legal base and secure political conditions will continue to play an important role.

Bruce Zagaris
Berliner & Maloney
Washington, D.C.

\textsuperscript{15} Tax Reform Act § 1231 (1986).