CGF POINT OF LAW

E-NEWSLETTER OF CLARKE GITTENS FARMER – ATTORNEYS-AT-LAW

ABOUT

Clarke Gittens Farmer is one of the principal law firms in Barbados. The firm is a commercial law firm, providing legal services for both domestic and international corporate and private clients. The firm strives to provide high quality work in banking, corporate, commercial, business law and commercial litigation. The firm also advises clients on the purchase and sale of residential and commercial property in Barbados and maintains a significant trademark and patent registration practice.

INTRODUCTION

The April issue of the Newsletter features articles from our Corporate, Commercial and Property Departments and covers a mix of corporate law, commercial arbitration and real property law.

Our first article expands on a previous article published in our newsletter relating to the incorporation of a company in Barbados. Your company has been incorporated in Barbados and you have received your Certificate of Incorporation. You may ask, "What's next?" Well, before you go "full speed ahead," our article discusses some ongoing compliance requirements stipulated in the Companies Act Cap. 308 of the Laws of Barbados with respect to maintaining its good standing in the Register of Companies at the Companies Registry in Barbados and also outlines the penalties for non-compliance.

Our next article urges you to "begin with the end in mind" when drafting an arbitration agreement in commercial transactions. This article briefly examines a possible challenge to a successful arbitration due to a poorly drafted arbitration agreement arising from certain inherent challenges associated with a "multi-tier" arbitration agreement. The article concludes by providing useful guidelines on how the parties may avoid common pitfalls so that the arbitration tribunal is able to render an enforceable and binding award.

Our final article focuses on a common feature in sale of land transactions, namely the payment by the purchaser of a deposit in an agreement of the sale of land. We state the purpose and also the effect of the payment of the purchase price, examine the terms under which the purchase price is paid, and discuss those events which may lead to the forfeiture of the deposit by a vendor or recovery by a purchaser.

We hope you enjoy! ~

The e-Newsletter Committee~

In This Issue

Ms. Joanna M. Austin

Ongoing Corporate Compliance

By Ms. Joanna M. Austin, Senior Associate

Ongoing Corporate Compliance

In a previous article we outlined the steps to be taken by the board of directors at the organisational meeting of the directors following the issue of the company's certificate of incorporation by the Registrar of Corporate Affairs and Intellectual Property (the "**Companies Registry**"), (the "**Registrar**") pursuant to the Companies Act, Cap. 308 of the Laws of Barbados (the "**Act**").

At the organisational meeting of the board of directors, the directors may inter alia (a) make by-laws; (b) appoint officers (if considered necessary); (c) appoint an auditor to hold office until the first annual meeting of the shareholders; (d) authorise the issue of shares; (e) make banking arrangements; and (f) transact any other business which may come before the meeting, such as approving the company's entry into a contract.

In this article we highlight the next steps to be taken after the organisational meeting of the directors and some of the basic maintenance requirements for domestic company pursuant to the Act.

Shareholder Meetings

Following the directors' organisational meeting, the directors must call the organisational meeting of the shareholders not late than 18 months after the date of the company's incorporation.

At the organisational meeting of shareholders, the shareholders must take the following actions:

(i) appoint the current slate of directors for a further term, or appoint new directors who will hold office until the next Annual Meeting or until their successors are appointed;

(ii) ratify, confirm and approve the by-laws enacted by the directors; and

(iii) appoint the auditors (if necessary).

Annual Meeting

The board of directors of a company must call an annual meeting of shareholders (the "**Annual Meeting**") **not later than 15 months** after the organisational meeting of the shareholders.

All directors, shareholders and the auditor (if any) must receive **not less than 21 days' nor more than 50 days'** notice of the Annual Meeting. The shareholders must address the following business at the Annual Meeting:

(a) consideration of the financial statements submitted by the directors;

(b) the auditor's report, if any;

(c) the election of directors; and

(d) the reappointment of the incumbent auditor, if applicable.

It must be noted that any other business transacted at an Annual Meeting of the shareholders is special business and the meeting should properly be called an annual special meeting.

Special Meeting

Special meetings may be called for matters such as amendments to the company's articles of incorporation. Notice of a meeting of shareholders at which special business is to be transacted must state:

(a) the nature of the business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and

(b) the text of any special resolution to be submitted to the meeting.

Ongoing Corporate Compliance, Cont'd...

By Ms. Joanna M. Austin, Senior Associate

Filing Requirements under the Act

A company is required to inform the Registrar of certain changes to the information which is maintained on the company's file at the Companies Registry. Below are some of the changes which must be filed:

A. *Changes to the Board of Directors*

Section 74(1) of the Act provides that changes to the board of directors must be reflected on a Notice of Change of Directors in the prescribed form, which must be filed with the Registrar within 30 days of the change being effected. The fee payable to the Registrar for filing a Notice of Change of Directors within the prescribed time is BDS$25.00.

There is a penalty of BDS$100.00 for filing the Notice of Change of Directors after the 30 day period.

B. *Changes to the Registered Office Address*

Where a company changes its registered office address a Notice of Change of Registered Office Address in the prescribed form must be filed with the Registrar within 15 days of the change being effected.

C. *Unanimous Shareholder Agreements*[1]

Where the shareholders execute or terminate a unanimous shareholder agreement written notice of that fact together with the date of the execution or termination thereof, must be filed with the Registrar within 15 days of the action being taken. There is no requirement to file a copy of the agreement itself at the Companies Registry.

D. *Annual Return (Form 35)*

Companies are required to file a prescribed form of Annual Return (Form 35) for each year commencing with an Annual Return for the year ending 2015. The Annual Return must be filed by January 31 for the preceding year. The filing fee for the Annual Return is BDS$100.00.

A company that fails to file an Annual Return for the preceding year within the period prescribed is liable to a penalty of BDS$10.00 payable to the Registrar for every day that the default continues.

Directors and officers of the company who knowingly and wilfully authorised or permit the default are also personally liable to pay the penalty. As the penalty for default is not a fixed fee but is instead accumulated on a daily basis, a company may incur significant costs for non-compliance for which the directors and officers may be personally liable. Additionally, please note that the Act empowers the Registrar to strike a non-compliant company off the Register of Companies.

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[1] Section 133(1) describes a unanimous shareholder agreement as an otherwise lawful written agreement among all the shareholders of a company, or among all the shareholders and a person who is not a shareholder, that restricts, in whole or in part, the powers of the directors of the company to manage the business and affairs of the company.

Ongoing Corporate Compliance, Cont'd...

By Ms. Joanna M. Austin, Senior Associate

E. *Filing Financial Statements*

A company that is either a public company *or* the gross revenue of which, as shown in the most recent financial statements **exceeds BDS$2,000,000.00**[2] or the assets of which as shown in those financial statements **exceed BDS$2,000,000.00** for any period from January 1, 2011 to December 31, 2013, or **BDS$4,000,000** for any period from January 1, 2014, must have an audit of its financial statements. The audit must be conducted by a member of the Institute of Chartered Accountants of Barbados who holds a current practicing certificate.

A copy of the audited financial statements must be filed annually with the Registrar. The following penalties apply for failure to file audited financial statements:

(a) Where a company fails to do so it may become guilty of an offence and liable on summary conviction to a fine of BDS$750.00 for every year that the documents under section 152(1)[3] are not submitted to the Registrar.

(b) Where a director or officer of the company knowingly authorised, acquiesced in or permitted the contravention of that director or officer is also guilty of an offence and liable on summary conviction to a fine of BDS$750.00 or imprisonment for a term of 6 months, or both.

A company must also keep at its registered office, a copy of the financial statements of each of its subsidiary bodies corporate, the accounts of which are consolidated in the financial statements of the company.

Where the company has not met the threshold for the audit in any financial year, a director of the company must make a written declaration to that effect and also file the declaration at the Companies Registry. The fee for filing the declaration is BDS$25.00.

Record Keeping Requirements

The company is required to keep at its registered office, the following:

(a) the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement and amendments thereto;

(b) copies of all minutes and resolutions of shareholders and directors of the company;

(c) copies of: (i) Notices of Directors and Change of Directors and (ii) Notices of Address of Registered Office and Change of Address of Registered Office;

(d) copies of the share register(s) showing (i) the name and last known address of each shareholder; (ii) a statement of the shares held by each shareholder; (iii) the date on which each person was entered on the register as a shareholder; (iv) and the date on which any person ceased to be a shareholder;

(e) record of the beneficial ownership[4] of the company;

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[2] This threshold was raised from BDS$1,000,000.00 with effect from 2011. For years prior to 2011, an audit of the financial statements is required where the company's gross revenue or assets exceeded BDS$1,000,000.00.

[3] Section 152(1) of the Act states that a company (a) that is a public company, or (b) the gross revenue of which, as shown in the most recent financial statements referred to in section 147, exceed $1 million, $2 million or $4 million (as the case may be) or the assets of which as shown in those financial statements exceed $1 million, $2 million or $4 million (as the case may be), shall send a copy of the documents referred to in section 147 to the Registrar not less than 21 days before each annual meeting of the shareholders or forthwith after the signing of a resolution under paragraph (b) of subsection (1) of section 128 in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been.

Ongoing Corporate Compliance, Cont'd...

By Ms. Joanna M. Austin, Senior Associate

(e) copies of all mortgages and debentures created or assumed by the company together with a register showing (i) the name and last known address of each debenture holder; (ii) the principal of the debentures held by each holder; the principal of the debentures held by each holder; (iii) the amount or the highest amount of any premium payable on the redemption of the debentures; (iv) the issue price of the debentures and the amount paid up on the issue price; (v) the date on which each person was entered on the register as a debenture holder; and (vi) the date on which each person ceased to be a debenture holder;

(f) a company that grants conversion privileges, options, or rights to acquire shares of the company shall maintain a register showing the name and the latest known address of each person to whom the privileges, options and rights have been granted, and such other particulars in respect thereof as are prescribed.

(g) copies of all contracts approved by resolution of the directors; and

(h) all financial statements and accounting records of the company.

Where any accounting records of a company are kept at a place outside Barbados, accounting records that are adequate to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis must be kept by the company at the registered office of the company or at some other place in Barbados designated by the directors.

Accounting records must at all reasonable times be available for inspection by the directors.

Offences

A person who does not comply with the record keeping requirements prescribed by the Act is guilty of an offence and is liable on summary conviction to a fine of BDS$10,000.00.

A person who makes or assists in making a report, return, notice or other document that:

(a) is required by the Act or the Companies Regulations to be sent to the Registrar of Companies or to any other person; and

(b)(i) contains an untrue statement of a material fact; or

(ii) omits to state a material fact required in the report, return, notice or other document or necessary to make a statement contained therein not misleading in the light of the circumstances in which it was made

is guilty of an offence and liable on summary conviction to a fine of BDS$10,000.00 or to imprisonment for a term of 6 months or to both.

Many of the filing requirements stipulated in the Act incur a penalty, and in some cases a default in filing may result in personal liability of the directors and officers. It is therefore important that companies ensure that there is on-going compliance with the maintenance and filing requirements of the Act. It is advisable for a company to appoint a company secretary who is familiar with the requirements of the Act to help to maintain the company's records and to bring maintenance requirements to the attention of the directors on an ongoing basis.

Ms. Lanasia N Nicholas

"Always be Cautious!" ABCs of Drafting Arbitration Agreement Clauses in Commercial Agreements

By Ms. Lanasia N. Nicholas MCIArb, Associate

Introduction

Parties to international commercial agreements generally provide an alternate means of settling disputes, usually by way of arbitration. Quite often however, draft arbitration clauses are not heavily reviewed and scrutinized as other substantive clauses in the agreement. Often referred to as "midnight clauses," arbitration clauses are sometimes "thrown in" at the end of the agreement and are not given much attention until a dispute later arises and the question of "Did we *agree* to arbitrate?" arises.

An arbitration proceeds on the basis of party autonomy and unlike litigation, arbitration proceedings are heavily party-driven. An agreement to arbitrate is critical to the proper determination by the arbitral tribunal of an arbitral award and a well drafted arbitration agreement is the key to ensuring that the arbitration meets its primary goal of giving a binding enforceable award and avoiding unwanted court intervention.

'Kompetenz – Kompetenz' under the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law")

It should be noted that within the international commercial arbitration context, the Model Law provides a mechanism for the arbitral tribunal to resolve a dispute as to whether there was a binding agreement to arbitrate. The Model Law provisions have been substantially incorporated into the domestic law of several Commonwealth Caribbean countries. Barbados has substantially incorporated the Model Law in its domestic law in the International Commercial Arbitration Act Cap.110B of the Laws of Barbados.

Referred to as the '*kompetenz – kompetenz*' principle (or "competence-competence") the Model Law provides that the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. Essentially, an arbitral tribunal is competent to rule on its own competence.

For this purpose, an arbitration agreement clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration agreement clause.

Multi-tier Arbitration Agreements

One type of clause that usually leads to a dispute arising as to whether a valid arbitration agreement exists is a clause often referred to as a "two-tier" or "multi-tier" dispute resolution clause. Multi-tier clauses are those which appear internally contradictory since they include an arbitration clause and a jurisdiction of the court clause. Such clauses are not uncommon in practice and it has been considered that the courts generally adopt a pro-arbitration stance rather than decline to give effect to an arbitration provision. However, such "pathological" arbitration clauses often pose a challenge since it is considered that once a matter is referred to arbitration, the result of that arbitration is binding upon the parties so that the dispute between them is thereby resolved and therefore no second stage in the courts would arise.

"Always be Cautious!" ABCs of Drafting Arbitration Agreement Clauses in Commercial Agreements, Cont'd...

By Ms. Lanasia N. Nicholas MCIArb, Associate

An example of a pathological arbitration clause reads as follows:

> *"In the event of any dispute between the parties pursuant to this Agreement, the parties will endeavour to first resolve the matter through Swiss arbitration. Should a resolution not be forthcoming the courts of England shall have non-exclusive jurisdiction."*

In a recent English case *Kruppa v Benedetti & Anr* [2014] 1887 (Comm) on an application to stay proceedings, the court had to consider whether the clause in question constituted a valid agreement to arbitrate under the English Arbitration Act, 1996. Although the definition of "arbitration agreement" in the English Arbitration Act is not based on the Model Law, the definition is analogous in essence to the definition of "arbitration agreement" in Article 7(1) of the Model Law. In *Kruppa*, the court determined that the phrase "the parties will endeavour to first resolve the matter through Swiss arbitration" did not amount to the parties' agreement to submit to arbitration. In its decision, the court took the view that an agreement that a party will "endeavour" to resolve a dispute through Swiss arbitration lacked the essential requirement that the parties must agree to submit to a binding arbitration.

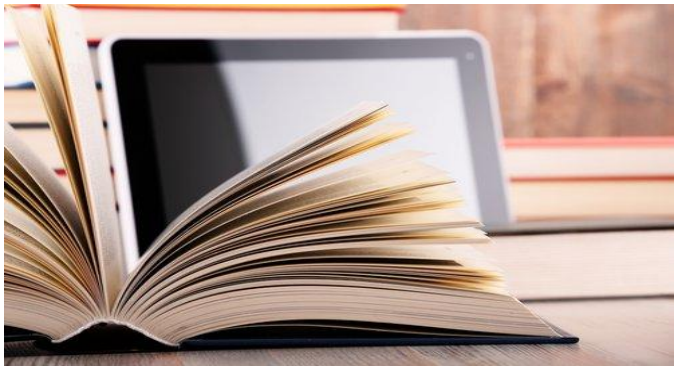
Secondly, the clause appeared to provide for a two-stage dispute resolution process whereby the parties should first "endeavour to resolve" the matter through Swiss arbitration and, if unresolved, either party could refer the dispute to the English courts. In the court's view such a procedural provision was not consistent with, and "logically not possible to have an effective multi-tiered clause consisting of one binding tier (arbitration) followed by another binding tier (litigation)."

ABCs of Drafting an Arbitration Agreement

Thankfully, a similar pitfall may be avoided where drafters observe some ABCs of drafting the arbitration agreement:

(i) **A**lways **B**e **C**oncise

An agreement to arbitrate must be clearly stated in order to minimise or avoid a challenge as to whether a party voluntarily submitted to resolve disputes by arbitration proceedings. Stating that the parties agree to resolve their dispute by reference to a number of alternative dispute resolution (ADR) mechanisms may not be clear enough, especially where the language used in the arbitration agreement is similar to the clause examined above. References to multiple ADR mechanisms that are binding in effect may be considered counter-intuitive since such references may be considered vague, leading to possible confusion in its interpretation.



(ii) **A**lways **B**e **C**ritical

When reviewing arbitration agreement clauses, drafters should adopt a "close reading" approach towards the draft arbitration clauses and should also be satisfied that the clause/agreement conveys the meaning that the parties intended during their commercial negotiations. Reference to multi-tier arbitration clauses, in particular, should be consistently reviewed before finalisation of the commercial agreement so as to minimise a challenge when a

"Always be Cautious!" ABCs of Drafting Arbitration Agreement Clauses in Commercial Agreements, Cont'd...

By Ms. Lanasia N. Nicholas MCIArb, Associate

dispute later arises that there was no valid agreement to arbitrate. Due to the nuanced nature of such clauses and their seeming potential for ambiguous interpretations parties should carefully consider whether the inclusion of a multi-tier dispute resolution clause best suits their commercial realities or whether an alternate draft would achieve a similar objective.

(iii) **A**lways **B**e **C**omprehensive

An agreement to arbitrate must capture all or nearly all elements or aspects of the parties' intent to arbitrate. In the case highlighted above a mere reference to the word "arbitration" in the clause above was not within the court's view, a sufficient basis of deciding that the parties had an agreement to arbitrate. While an absence of the use of the word "arbitration" or a reference thereto is not, by itself, a sufficient basis to successfully challenge an arbitration agreement it is likely that an agreement that is vague may be open to a number of interpretations and pose difficulties in determining whether arbitration was originally contemplated by the parties.

Conclusion

"Begin with the end in mind." This adage holds true when drafting commercial arbitration agreements. Remember that the goal of a successful arbitration proceeding is to render an enforceable award that is recognised and may be enforced internationally. Therefore, at the heart of any arbitration is the arbitration agreement.

Without an agreement to arbitrate between the parties, they may have to turn to the competent national courts to resolve their dispute.

Paying keen attention to drafting arbitration agreements is critical to the efficient resolution of disputes within the context of an international commercial agreement, which enures to the benefit of both parties.

Mr. Ralph Edghill

Purchaser's Deposit in an Agreement for the Sale of Land: "I mean business!"

By Mr. Ralph Edghill, Associate

Introduction

In the usual course of business, a person who is purchasing property will be required to pay a deposit (usually 10%, but can be negotiated) of the purchase price. A formal agreement for sale should be drawn up by the vendor's Attorney-at-Law, within which there should be a clause providing for the payment of the deposit and also providing that the remainder of the purchase price will be paid at the completion of the sale.

This article seeks to show the purpose and effect of the payment of the deposit, the terms under which it is paid, and the events which may lead to the forfeiture of the deposit by a vendor or recovery by a purchaser.

An example of the deposit a clause in an agreement for sale is as follows:

"The purchase price of the property is the sum of Five Hundred Thousand dollars ($500,000.00) of which the sum of Fifty thousand dollars ($50,000.00) has been paid by the Purchaser to Justin Thyme, Attorney-at-Law for the Vendor as stakeholder as deposit in part payment and on account of the purchase price of the property (the payment of which is hereby acknowledged by the vendor)."

What is the Purpose/Effect of the Payment of a Deposit?

The deposit serves two main purposes- its primary purpose is that it serves as a guarantee that the purchaser means business since it provides a financial incentive for the purchaser to complete the sale transaction, as stated by Lord Macnaughten in *Soper v Arnold (1889) 14 AC 429*. Its secondary purpose is to give the vendor a fund to meet his wasted expenses if the sale falls through due to the purchaser's default (*see forfeiture below*). The effect of the payment of the deposit is also twofold- firstly, if the purchase is carried out, it goes towards the purchase price and secondly, upon payment the purchaser obtains an equitable interest in the property by virtue of the binding agreement for sale.

To Whom Should the Deposit be Paid?

A purchaser ought not to pay his deposit directly to a vendor but should pay it to a third party. It must be explicitly stated in the agreement for sale to whom the deposit should be paid and the capacity in which the payee is to receive it, as this will have an effect on the eventual disposition of the funds. Most commonly, a deposit is paid to the vendor's agent or the vendor's Attorney-at-Law as stakeholder:

- Vendor's Agent - If the deposit has been paid to a third party as agent of the vendor, the agent is free to release the monies to the vendor immediately. Obviously, this poses an inherent risk to the purchaser where there is a subsequent default by the vendor. In such a case, even though a purchaser would be legally entitled to the return of the deposit, the purchaser may experience practical difficulties in the actual recovery of the monies from the vendor's agent or the vendor himself.

- Vendor's Attorney-at-Law as Stakeholder - The safer approach for a purchaser is for the deposit to be paid to the vendor's Attorney-at-Law as stakeholder. A stakeholder owes various legal duties and has a number of responsibilities under the law towards the parties to the transaction. The stakeholder is the agent for both parties, and is

Purchaser's Deposit in an Agreement for the Sale of Land: "I mean business!", Cont'd...

By Mr. Ralph Edghill, Associate

restricted from paying the deposit to either party without the other party's consent, unless and until completion or collapse of the contract. Further, if a deposit is being paid to a stakeholder, and it is intended that the usual obligations of a stakeholder should not apply or should be expanded, the agreement for sale should be drafted to include express clauses clarifying the intention of the parties. This is so as to avoid any unintended obligations by the use of the term "stakeholder". Below are examples of clauses regulating the duties of a stakeholder:

a) *The deposit shall be released out of escrow by the stakeholder and paid over to the Vendor on the completion date provided*

   i) *the title is in order;*

   ii) *the Vendor has given vacant possession of the Property and has duly executed a proper Deed of Conveyance in favour of the Purchaser.*

b) *In the event of a dispute between the parties as to whom the deposit should be paid, the stakeholder shall continue to hold same in an interest bearing account to abide by the final determination and direction of a Court of competent jurisdiction regarding the deposit.*

Forfeiture of the Deposit by a Vendor

To reiterate, aside from the fact that the payment of a deposit confirms the purchaser's intention of going through with the purchase, it is also designed to recompense the vendor for expenses incurred as a result of the purchaser not going through with the sale. Therefore, if a purchaser breaches a term of the agreement (which is specified as giving rise to forfeiture), the vendor will generally be entitled to forfeit the whole deposit, even if the vendor had suffered no loss.

In practice, the most common reason that a vendor will seek to forfeit a purchaser's deposit is that the date set for completion has passed (usually 3 months). The deposit is not automatically forfeited after the passing of the completion date, as "time is not of the essence of the contract" (i.e. the failure to complete on time does not automatically trigger forfeiture of the deposit). A usual agreement for sale will include a clause providing that, after the completion date has passed, the vendor must give the purchaser a notice requiring him to complete within a specific time, thereby making time of the essence. A failure to complete within this notice period will result in the forfeiture of the deposit to the vendor. However, if the agreement is conditional i.e. requires that some specified event occurs (e.g. obtaining planning or exchange control approval), an inability to meet the condition will not normally be an event of default leading to forfeiture.

Recovery of the Deposit by a Purchaser

On the other hand, there are circumstances under which the purchaser may be entitled to recover his deposit. Where a vendor fails to perform certain obligations under the contract, a purchaser will be entitled to the recovery of his deposit. These obligations include: providing a good and marketable title, delivery of the original title deeds to the purchaser, obtaining necessary planning approval and giving vacant possession of the property.

A prudent purchaser should ensure that the agreement contains clauses: a) allowing him to give the vendor notice to complete (thereby making time of the essence of the contract); b) providing that upon the expiration of this notice period, the purchaser is entitled to the recovery of his deposit; c) dealing with the effect of misrepresentation or misdescription of the property; and d) dealing with the effect of third party activity such as compulsory acquisition of portions of the property.

Purchaser's Deposit in an Agreement for the Sale of Land: "I mean business!", Cont'd...

By Mr. Ralph Edghill, Associate

Below is a short illustration of principles associated with the payment of a deposit:

Deposit-Holder	Holds Deposit on Behalf of	Who Is Liable to Refund The Purchaser
Vendor	**Vendor**	**Vendor**
Stakeholder	**Both Parties. Cannot pay the deposit to either party without the other's consent until completion/default**	**Stakeholder** **If not recoverable from Stakeholder, loss borne by Vendor**
Vendor's Agent	**Vendor. Must pay the deposit to Vendor on demand**	**Vendor**

Conclusion

The purpose of this article is to provide an insight into the nature and principles associated with the payment of a deposit in a sale of land transaction. Prospective purchasers should now have a more comprehensive understanding as to why a percentage of the purchase price is paid up front, months in advance of the completion of the purchase and of the various rights and obligations which attach to a vendor and purchaser under an agreement for sale, following the payment of a deposit. Lastly, prospective purchasers should be cognisant of the fact that unexpected events requiring large sums of money (such as medical emergencies or accidents) could happen to even the most prudent purchaser who at the time of the signing of the agreement had every intention of completing on or before the set date. Although no one can predict the vicissitudes of life, a purchaser may protect himself by ensuring that prior to signing and binding himself to a completion date, he makes reasonable provision for unexpected circumstances by having more than enough money to complete the purchase.

ATTORNEY PROFILE

Mr. R. Omari Drakes, Senior Associate

In this issue we continue our series of profiles of the firm's associates. We profile Mr. Omari Drakes, one of our senior associates in the Litigation Department.

A former intern with the firm, Omari is a Senior Associate in our Litigation Department where he practices civil litigation. He joined the firm in 2010 after receiving his Legal Education Certificate from the Hugh Wooding Law School in Trinidad & Tobago and being admitted to the Bar in Barbados that same year.

Omari graduated in 2007 from the University of Kent, Canterbury, England with an LL.B (Hons.). He completed the Bar Vocational Course at the College of Law of England and Wales and was called to the Utter Bar of England and Wales at the Honourable Society of the Middle Temple in 2008.

Omari was appointed as a Deputy Chairman of the Employment Rights Tribunal in April 2013 and remains in that post today. In this capacity he is responsible for enforcing the rights conferred upon persons by the **Employment Rights Act - 2012** and the **Employment Sexual Harassment (Prevention) Act - 2017**.

Omari is also a keen sportsman and a published poet.

SPECIAL CONGRATULATIONS

Our firm wishes to extend special congratulations to our Managing Partner Mr. Ramon O. Alleyne and Mrs. Rosalind K. Smith Millar, Partner in the Property and Intellectual Property Departments, on their recent appointment as Queen's Counsel.

Being appointed one of Her Majesty's Counsel is one of the highest honours in the legal profession. We wish them continued success.

CGF NEWS Cont'd...

Seminars and Appointments

On Saturday February 24, 2018, associates from the firm attended CIBC FirstCaribbean International Bank's Mortgage Seminar. The seminar was geared towards persons seeking to invest in real property. Topics covered at the seminar included:

i) guidelines to the process of carrying out development on your property and building your home;

ii) the importance of insurance coverage;

iii) the dos and don'ts of purchasing; and

iv) things to consider when buying property and the mortgage process.

The seminar was attended by Miss Jaina Colucci, Senior Associate and Mr. Ralph Edghill, Associate in our Property Department. Miss Jaina Colucci presented on the topic "Legal Journey to Home Ownership: What you should know when purchasing a property." There were also presentations by Mr. George Browne from the Town & Country Planning Office as well as Ms. Kathy Stuart, Ms. Geri-Ann Ince and Mr. Kwame Mascoll of CIBC FirstCaribbean International Bank .

Pictured above from L-R:
Cecil Harewood, Snr. Relationship Manager
Sales & Platinum Banking, Ralph Edghill, Geri-Ann Ince, Relationship Manager, Jaina Colucci, Kia Clarke, Associate,
Kathy Stuart, Relationship Manager and Gregory Blackman, Manager, Sales & Business.

On April 6, 2018, attorneys from the Commercial and Corporate Departments attended the Barbados International Business Association's Fintech Seminar titled, "Barbados Blockchain Beach". The members of the firm who attended the workshop benefited from a timely discussion on Fintech development opportunities in Barbados and the way forward in terms of a regulatory framework.

Mrs. Nicola A. Berry, Partner in the Commercial Department, also participated in a panel discussion at the seminar on legal and regulatory issues entitled "Green Lights and Red Lines". Mrs. Berry's contribution to the panel was clear, informative and well-received.

On March 15 and 16, 2018, the Fair Trading Commission hosted its Annual Training Programme in Competition Law and Policy at the Accra Beach Hotel and Spa at Rockley, Christ Church Barbados. The themes included Introduction to Competition Law and Policy, Abuse of Dominance and Case Analysis and Mergers and Agreements.

The Training Programme featured interactive sessions, discussions and and Questions and Answers.

Pictured above are our attorneys who were in attendance. From L-R: Mrs. Sharmila Williams-Nascimento and Mr. Corey Greenidge, associates in our Corporate Department and Ms. Sabrina Maynard, an associate practising in our Commercial Group.

Mrs. Williams-Nascimento and Mr. Corey Greenidge, Associates in our Corporate Department and Mrs. Sharon Rawlins attended a panel discussion entitled "Compliance is our Business" along with other professionals within the financial, real estate, jewelry and legal industry hosted by the Barbados Association of Compliance Professionals on 19 March 2018 at the Accra Beach Hotel. This interactive discussion included issues such as Anti Money Laundering Compliance, Corporate Governance and Sexual Harassment in the Workplace.

During February 2018 our Rosalind Smith Millar, a Partner in our Intellectual Property Department, continued to participate in the work of the Trademarks Legislation Committee and the Business Names Legislation Committee of the IMPACT Justice Project (Improved Access to Justice in the Caribbean) funded by the Government of Canada.

The work of the Committees is to prepare draft model laws and regulations with a view to harmonizing the Registration of Business Names and Trade Marks laws and regulations for 13 Caricom jurisdictions.

Mrs. Rosalind Smith Millar was appointed as a member of the Judicial Council of Barbados for a term of three years effective from 1st March 2018.

Mrs. Smith Millar also participated in a consultation for the Impact Justice Technical Advisory Group on the Legal Profession and Public Legal Education in April 2018.

Clarke Gittens Farmer Annual UWI Faculty of Law's Mooting Competition

The 2018 Clarke Gittens Farmer Mooting Competition was held at the Faculty of Law, University of the West Indies, Cave Hill Campus in April 2018. The areas of focus were: Criminal Law, the Law of Torts and Human Rights Law.

Judges included our Mr. Michael Koeiman, Ms. Shena-Ann Ince, Miss Jaina Colucci, Mrs. Olivia Burnett, Mr. Dario Welch and Miss Ruth Henry.

The finals of the competition took place on 12 April 2018 and the winners of the competition were as follows:

First Year Students: Maxron Holder and Shannon Potter;

Second Year Students: Ashley Dussara and Jamoia Jennings; and

Third Year Students: Monique Moses and Renee Thompson.

The firm congratulates all of the participants in this year's competition for their stellar performance!

Pictured above are Mrs. Olivia N. D. Burnett, Senior Associate, listening to the submissions of a finalist while Miss Ruth J. Henry and Mr. Dario A. Welch, Associates, review the team's written submissions during the Third Year Final of the CGF Mooting Competition. Our associates served as judges in the competition.

CGF POINT OF LAW

CGF POINT OF LAW published by Clarke Gittens Farmer is an e-Newsletter for clients, colleagues and friends of the firm. This e-Newsletter provides an overview of notable news and legal developments.

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