

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

What does Blockchain, Estate Planning and Sports Arbitration all have in common? These topics are all featured in this issue!

Our first article provides you with reasons why blockchain companies should consider being based in Barbados or including companies incorporated in Barbados as a part of their corporate group structure. The article elucidates on Barbados' growing blockchain ecosystem, its favourable regulatory and technological environment and the Barbados Stock Exchange's Special Listing Facility for Digital Assets.

Cinderella's father may have benefitted from our second article which focuses on the importance of arranging your affairs in order to effectively manage and dispose of your assets both during your lifetime and after death. The article gives an idea of what may comprise a person's estate and focuses specifically on wills, one of the planning tools a person may use.

Picture it! A typical Caribbean cricket scene: a bucket, 'soft-ball' and an old piece of wood for a bat! Rihanna flings the ball towards the bucket trying to hit it before Collin reaches the 'stumps' as Collin leans forward stretching out his 'bat' towards home. The ball bangs into the bucket shifting it to the left; Rihanna jumps for joy while Collin throws down his 'bat' in dispute, 'I made it in time!' How are sports disputes to be settled? Our final article focuses on the value and relevance of arbitration as an alternative to litigation in sports related disputes and its potential to be the preferred dispute resolution mechanism for regional sports.

~ We hope you enjoy! ~

The e-Newsletter Committee

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Mrs. Nicola A. Berry

Why Barbados for Blockchain?

By Mrs. Nicola A. Berry, Partner and
Mrs. Olivia N. D. Burnett, Senior Associate



Mrs. Olivia N. D. Burnett

Introduction

There are a number of reasons why blockchain companies should consider being based in Barbados or include companies incorporated in Barbados as a part of their corporate group structure. These reasons include:

1. A Growing Blockchain Ecosystem

Barbados is the home to Bitt Inc. ("Bitt"), a financial technology company that utilizes blockchain and distributed ledger technology to, amongst other things, facilitate secure peer-to-peer transactions with seamless mobile money across a suite of Bitt's software and mobile applications. Bitt is recognized as the Caribbean's first digital asset solution and distributed ledger technology company of its kind. Bitt's major investor, Overstock.com, was the first publicly traded company to accept Bitcoin as payment.

Barbados has also attracted Polymath, a company specializing in solutions to tokenize and trade assets. Notable blockchain companies such as Aion and Shyft have also chosen Barbados as a site of their global business.

2. Favourable Regulatory Environment

Barbados has a reputation as a highly regarded international business centre which seeks to promptly comply with international best practice standards. Barbados has a robust regulatory environment for its financial services and international business sectors and has enacted legislation that is enforced by regulators in each sector.

Although there are currently no laws, regulations or guidelines (including tax laws) in Barbados which specifically govern entities carrying out cryptocurrency brokerage activities or other blockchain-based solutions, the Government of Barbados has indicated that it will support new technologies such as

blockchain. It is also interesting to note that Barbados has been viewed by some as "the Caribbean Crypto-paradise"¹.

The Central Bank of Barbados and the Financial Services Commission (the "FSC"), the two main regulators of the financial services sector, have also demonstrated their support of financial technology companies (and in particular, those utilizing blockchain) by establishing a regulatory sandbox where entities can do live testing of their products and services. The regulatory sandbox provides the regulators with an opportunity to better understand the nature of the product or service and by extension determine whether the existing regulatory framework is adequate or whether a new type of legislation is required to be introduced to address the emerging sector.

3. Favourable Technological Environment

Barbados' highly-skilled, English-speaking work force is now being further technologically equipped by blockchain education and training that is being offered at the University of the West Indies, Cave Hill Campus. It is hoped that this will assist blockchain companies based in Barbados to readily source a wealth of blockchain knowledge and skill on the island.



¹ Ellie Geo, 'Top 8 Crypto-Friendly Countries – Mapping the World of Blockchain Supporters' <https://medium.com/%C3%A6ternity-ventures/top-8-crypto-friendly-countries-e6bbf90e816> accessed September 24, 2019

Why Barbados for Blockchain?...Cont'd

By Mrs. Nicola A. Berry, Partner and
Mrs. Olivia N. D. Burnett, Senior Associate

4. Barbados Stock Exchanges

The Barbados Stock Exchange (the "BSE") has been granted regulatory approval from the FSC for its Special Listing Facility for Digital Assets (inclusive of rules and guidance for its operational development). The Special Facility Listing will operate under the BSE's International Securities Market (the "ISM") – a market which promotes token listings. Coin Start Limited, a company specializing in initial coin offerings and sponsoring the public listing and trading of blockchain security tokens, is a listing sponsor of the ISM.

Daxnet, a Gibraltar-based digital asset stock exchange and promoted as the world's first dedicated tokenized stock exchange, has also recently been issued a self-regulatory organization licence by the FSC. According to Daxnet's website, this charts the course for it to become the "first fully regulated stock exchange to provide primary issuance and secondary market trading exclusively for tokenized securities"².

Given the above, there is no question that Barbados is a jurisdiction deserving of consideration as a launching pad or a satellite location by blockchain companies.



² <https://www.daxnet.exchange/>



Mrs. Laverne O. Ochoa-Clarke

Estate Planning: Planning for the Future

By Mrs. Laverne O. Ochoa-Clarke, Senior Associate

What is estate planning and why is it important?

Estate planning is the process of anticipating and arranging for the management and disposal of assets during a person's life and after their death.

What is your estate?

Your estate comprises everything you own:

- real estate;
- vehicles;
- life insurance policies;
- bank accounts and other investment accounts;
- other investments vehicles: (shares, mutual funds, and government bonds); and
- furniture and other personal possessions.

The above list is not exhaustive, but illustrates the types of property you may own during your lifetime.



The process of estate planning involves:

- the assessment of your assets and liabilities (e.g. mortgage or other debt);
- consideration of how to maximise your personal wealth;

- a determination of who would be the preferred beneficiary/ies of that wealth; and
- the implementation of a plan to transfer your wealth either during your lifetime or after your death.

There are many different estate planning devices one can pursue, however, this article focuses on the making of a will. Ultimately, making a will is the step that ensures that your wishes are carried out after your death.

What is a will?

A will is a document by which a person known as the testator, specifies how the testator's assets are to be distributed and affairs managed after he dies.

A will is a common estate planning tool, and is usually the simplest device for planning the distribution of your estate. It is important that you obtain advice from your Attorney-at-Law in the jurisdiction where your assets are located to prepare your will.

Who can make a will?

Anyone who is 18 years of age or older and of sound mind can make a will.

What is meant by "sound mind"?

Being of sound mind means:

- you have the mental capacity to understand the nature of the business in which you are engaged;
- you understand who you have identified to be the beneficiaries of your wealth; and
- you understand the manner in which your wealth is to be distributed among your beneficiaries.

Estate Planning: Planning for the Future...Cont'd

By Mrs. Laverne O. Ochoa-Clarke, Senior Associate

Your will tells people three very important things:

1. Who is your executor

Your executor can be anyone who is 18 years or older and of sound mind. Your executor should be someone who is responsible, trustworthy, willing and able to manage your affairs when you die. A maximum of 4 people can act as executors of your estate.

2. Who are the beneficiaries of your estate

Your beneficiaries are the people who are named in your will as being entitled to receive your wealth when you die.

3. What happens to your wealth after you die

What should happen to your money, possessions and property after you die?

Subject to certain statutory provisions relating to spouses and dependants, you are generally free to bequeath your assets to anyone in your will.

Here are some legal and practical reasons why you should make your will.

1. Making a will allows you to make provision for members of your family such as your parents, aunts, siblings or close friends and organizations that may not be entitled to inherit a share of your estate if you died intestate (without a valid will).
2. Making a will allows you to determine what share of your estate your beneficiaries are to inherit. You can even stipulate, how and when your beneficiaries should inherit.
3. Making a will allows you to avoid potential conflicts and hardship for your loved ones during the difficult period after your death.

4. Making a will allows you to have a peace of mind, knowing that your wishes are well documented, valid and enforceable.
5. From a cost perspective, it is less costly to apply for a grant of probate (the application that is made to the Registrar of the Supreme Court when your executors wish to probate your will) than to apply for a grant of administration (the application that is made to the Registrar of the Supreme Court when you die intestate).



6. Less documentation is required to obtain a grant of probate than is required to obtain a grant of administration. One notable difference is the requirement for a surety and an administration bond in all cases of administration, except where it is expressly ordered otherwise by the court. A surety is never required for an application for a grant of probate.

Estate Planning: Planning for the Future...Cont'd

By Mrs. Laverne O. Ochoa-Clarke, Senior Associate

Some guidelines to get you started on making a will:

Step 1 - Make a Plan

You should set down the basics of your plan before you visit an Attorney-at-Law.

Your plan should contain:

- The names and address of the executors and beneficiaries of your estate.
- A list of your assets and roughly what they are worth.

Think about how you want to divide your assets in your will.

- All of my assets to A absolutely; or
- All of my assets to A and B as tenants in common in equal shares absolutely.

Think about protecting your beneficiaries.

- Specify the age that you want your beneficiaries to inherit your assets or stipulate the conditions upon which you want your beneficiaries to inherit.

Step 2 - Get Your Will Prepared

- **Best practice** – instruct an Attorney-at-Law to prepare your will.

A word of caution: in considering or preparing your will avoid using templates found online. Often times these templates are prepared based on the laws in jurisdictions whose laws are not the same as the laws in your jurisdiction. The best practice would be to instruct an Attorney-at-Law in the jurisdiction where your assets are located to prepare your will.

Plan your estate now!





Mrs. Olivia N. D. Burnett

When Sport is No Longer a Game: Sport as a Use Case in the Advancement of Regional Arbitration

By Olivia N. D. Burnett, Senior Associate

Introduction

From the days of back-yard cricket and childhood races on grass, disputes were recognised as an innate part of the sporting experience. Whether these disputes surrounded selection for teams, results or cheating, dispute resolution was necessary – and was hopefully not administered by a police officer patrolling the neighbourhood! If we consider these realities in our nascent sporting involvement, it is clear that there is philosophical justification to settle disputes related to sports outside of the court room.

Although many sporting activities are directly adversarial, the rigours of litigation and its associated stigma does not seem to sit well with the concept of sportsmanship much more than does an off-field brawl. This may even be so when sport is no longer a game and millions of dollars and the livelihood and reputation of persons, especially professional sportspersons, are on the line. Involvement in a sporting activity is almost always born from talent and/or a love for the sport, and not primarily a desire for wealth, recognition or power. At its core, a desire for sport is a desire for fun. It is probably for this reason, albeit subconsciously, that a large number of sport-related disputes have already been settled by alternative dispute resolution and, in particular, arbitration.



For instance, arbitration is the preferred method of dispute resolution advanced by the World Anti-Doping Association. For Barbadian professional athletes, article

13.2.1 of the Rules for the National Anti-Doping Commission of Barbados provides that cases involving international level athletes may be appealed exclusively to the Court of Arbitration for Sport ("CAS"). This rule was recently utilised by Levi Cadogan, a 100m and 200m track athlete and Olympian, whose appeal to CAS was partially upheld and his period of sanction reduced after the sole arbitrator found that "it was not established that the anti-doping rule violation was intentional"¹. The arbitral award provides useful guidance on how the Barbados Anti-Doping Disciplinary Panel may formulate appropriate sanctions in the future. The benefit arbitration provides in relation to anti-doping matters is equally advantageous in disputes related to team selection disputes, sponsorship agreements and the like.

It is no wonder then why CAS does not only hear appeals related to anti-doping, but also sits as a first-instance tribunal of sporting disputes pursuant to an arbitration clause in an agreement concluded either before or after the dispute arises. It is also this jurisdiction which has caused CAS to become globally recognised for its expertise and authority in sports-related arbitration². Unfortunately for the Caribbean region, however, the cost, time and inconvenience of having a Caribbean sporting dispute arbitrated by CAS, which has its seat in Lausanne, Switzerland, may simply not be worth it in all cases. Haynes and Marcus have lamented that "despite numerous informal calls for and casual conversations about a Caribbean version of the CAS, that reality does not appear to be anywhere on the horizon".³

¹ CAS 2018/A/5739 Levi Cadogan v National Anti-Doping Commission of Barbados

² In 2018, the European Court of Human Rights confirmed that CAS is an independent arbitration tribunal and that such sports jurisdiction is necessary for uniformity in sport.

³ Haynes and Marcus, *Commonwealth Caribbean Sports Law* (Routledge, 2019) 43.

When Sport is No Longer a Game: Sport as a Use Case in the Advancement of Regional Arbitration, Cont'd

By Olivia N. D. Burnett, Senior Associate

It is in light of this state of affairs that an arbitral institution such as the Arbitration and Mediation Court of the Caribbean ("AMCC"), established in 2017 in Barbados, holds promise for sports-related arbitration in the region. Although appeals of disciplinary decisions by national or regional sporting organisations may be required by their rules and international standards to be heard in a certain manner e.g. before their own appeal panels or CAS, there appears to be room for the AMCC to hear Caribbean sporting disputes (especially those of the contractual kind) and potentially develop its own sporting division.

Indeed, the AMCC may be viewed as an untapped resource that has the potential to accelerate the

maturity of sporting relationships and governance in the Caribbean. Where the AMCC can match the benefits arbitration offers with respect to time, cost, flexibility, privacy and finality with a roster of arbitrators with expertise in sports law, the union should be harmonious.

Although regional courts will undoubtedly continue to have their say on some sporting matters, arbitration has yet another opportunity to demonstrate its relevance and value in the Caribbean and be the go-to dispute resolution mechanism for regional sports. To take another course may succeed in simply taking the fun out of the sport!



ATTORNEY PROFILE

Mr. S. Matthew Goodin, Senior Associate

In this issue we continue our series of profiles of the firm's associates and turn our focus on Mr. Mathew Goodin, a Senior Associate in our Litigation Department.



Matthew is an associate in our litigation department where he advises and represents corporate and commercial clients on contractual and employment matters, as well as insolvency, judicial management, debt collection and other enforcement proceedings. He joined the firm in 2014 having been admitted to the Bar in Barbados the previous year.

Matthew obtained his LL.B (Hons.) in 2010 from the De Montfort University in England. He then attended University College London, England where he obtained his LL.M with Merit in the area of corporate law.

He subsequently completed the Bar Professional Training Course at Nottingham Law School and was called to the Bar of England and Wales at the Honourable Society of Lincoln's Inn in 2012.

Matthew later attended the Norman Manley Law School in Jamaica where he obtained his Legal Education Certificate. He completed his in-service training with a law firm in Jamaica, where he was exposed to family law, property, personal injury and civil litigation and also later interned with a well-known Queen's Counsel in Barbados.

Outside of the firm, Matthew's interests include sports, reading and travelling. He is a playing member of Carlton Football Club and has received various medals in swimming, athletics and football. In addition, he has also authored an article for Oxford Brookes University in 2013 on judicial selection in Barbados.

CGF NEWS

Seminars and Conferences

Members of our Commercial Department attended Bitt's Annual Central Bank Meets Blockchain Conference - now in its third year. The Conference was well-attended and much ado was made about the need and benefits of a Caribbean settlement network for the progress of regional development.

Olivia Burnett, Senior Associate in the Commercial Department attended the Barbados Stock Exchange Corporate Governance & Accountability Conference on September 27, 2019. The conference highlighted the current "wins" in Barbados' corporate governance culture and where improvements would be welcomed as Barbados seeks to emerge from its economic difficulties.

Debbie Fraser, Head of our Commercial Department, attended the annual meeting for World Services Group ('WSG') held September 4-6, 2019 in Washington, DC. WSG describes itself as a multidisciplinary professional services network of independent law, accounting and investment banking firms. It is one of the largest such groups. Its objective is to bring together professionals in a professional services network to create business opportunities and relationships for its members so that they are better able to service their clients.

At this year's WSG meeting, presentations were made by members and invited speakers on areas including Cybersecurity and Privacy, Changing Trends in Trade Policy and Investment Regulation, Taking the Wheels: Connected Car Market Disruption to shared mobility, and the restructuring of Overseas Private Investment Corporation and investing in emerging markets.

On September 10, 2019, Nicola Berry, Partner in our Commercial Department, attended the Barbados Alternative Energy Conference at Accra Beach Hotel. The conference offered a chance for stakeholders to openly

discuss the future of the renewable energy, storage and transportation sectors in Barbados and was described as being an engaging and fruitful event.

On October 7 and 8, 2019, Shena-Ann Ince, Senior Associate in the Litigation Department attended an Insolvency Workshop held by Impact Justice in association with the Supervisor of Insolvency.

Training

In compliance of the Safety and Health at Work Act, Cap. 356 of the Laws of Barbados, our firm's members of the Health and Safety Committee and Wardens, were trained in First Aid and cardiopulmonary resuscitation ("**CPR**") by Ms. Sharon Estwick of St. John's Ambulance Brigade from September 16-19, 2019. Some of the training included emergency scene management, how to treat an injured person with a broken limb, seizures or diabetes and how to carry out CPR on a child and adult, etc.



Pictured above are some of the firm's Wardens and Health & Safety personnel who took part in the training programme.

In addition, training was also conducted in Fire Safety by Fire Officers Mr. McClean and Mr. Glasgow at Arch Hall Fire Station, St. Thomas. The Committee members and Wardens were trained in understanding the nature of a fire, fire prevention, how to use a fire extinguisher and which type to use based on the fire, etc.

CGF NEWS Cont'd...

Bahamas Relief

Following the devastation brought on by Hurricane Dorian in September, 2019 in The Commonwealth of the Bahamas, our firm made a monetary donation to the CDEMA Barbados/Bahamas Relief Fund towards CDEMA's relief efforts in The Bahamas.

Events

On Sunday, October 6, 2019 staff members of Clarke Gittens Farmer once again showed their support for the fight against breast cancer by participating in the annual 'Walk for the Cure – National Walk for Breast Cancer Awareness'. The Walk is organised by the Barbados Cancer Society in association with CIBC FirstCaribbean International Bank.



Pictured above are staff and family members supporting the 'Walk for the Cure' charity event.

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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