



## PRIVATE TRUSTS - AN INVESTMENT ALTERNATIVE

### WHAT'S INSIDE THIS ISSUE

- Private Trusts - An Investment Alternative
- Staff Highlight
- Legislative Updates
- Statistical & Survey Updates
- Messages from the Team
- ...and more!

**INTRODUCTORY NOTE:** The corporate purpose of IBCs incorporated during 2020, was for the most part related to the shipping industry. Other purposes included private investment, asset holding and protection. Inquiries were received into other asset protection structures, such as the international trust, which is amongst the leading wealth management vehicles.

The registration and administration of international trusts pursuant to the International Trust Act, 2007 (the “ITA”) is an activity which is authorized under the Corporate Management and Trust Service Providers Act, 2008 (the “Act”). In this issue, we will consider the **functions and benefits** of private trusts and discuss key provisions and requirements under the ITA.

The Antiguan international trust provides several key advantages to investors seeking flexible wealth management options in jurisdictions with robust legislative framework and stable political environments which will now be discussed in the context of the International Trust Act.

**ASSET PROTECTION PRIVILEGES** - A top priority when seeking to protect assets is to identify a secure, legislatively sound environment for the growth or maintenance of assets. Private trusts are also appealing for succession planning and to protect the inheritance of young children and vulnerable family members.



The ITA holds several firewall provisions geared at protecting trust assets from external forces or parties not recognized within the trust deed or deed of settlement. Under the ITA, for instance, no creditor of a trustee, other than a settlor or beneficiary has the right to an asset or property held by the trust.

**CONFIDENTIALITY PRIVILEGES** - International trusts provide clients with opportunities to manage their affairs with a high level of confidentiality. Under the ITA there are no public filing requirements and the register of international trusts is not accessible for inspection to anyone other than the trust parties. Likewise, apart from beneficial ownership filing obligations, there is no requirement for the trust deed to be filed with the Commission. Greater confidentiality may also be achieved within the terms of the trust deed itself which may outline disclosure requirements for beneficiaries.

**FLEXIBILITY PRIVILEGES** - The ITA provides broad flexibility in terms of the trust type or purpose and structure. An international trust may be formed with several objectives, such as estate or succession planning, asset holding or charitable purposes. In line with this, and in keeping with the terms of the trust deed, one may decide on a trust structure which best aligns with their investment/financial needs. These may include:-

- **Discretionary Trusts:** The settlor sets criteria for the trustee's discretion concerning the investment of assets on the behalf of beneficiaries. These instructions/guidelines may be outlined in the deed of settlement or a separate document referred to as the Letter of Wishes.
- **Fixed Trusts:** This structure allows the distribution of assets predicated on certain fixed conditions. For instance, the distribution of assets to a minor beneficiary on reaching the age of majority.
- **Bare Trusts:** Under the ITA a settlor may also be a beneficiary or the sole beneficiary of the trust. A bare trust may be an appealing structure in arrangements which provide settlors and beneficiaries with access to trust property.

In addition to the trust purpose and structure, the deed of settlement will also outline the trust terms relating to the rights and benefits of settlors, beneficiaries and trustees. The trust deed may also discuss the terms governing other parties, such as protectors.

Another highlighted feature is the flexibility of assets which may be held within an international trust. These may include businesses, cash, securities and real estate.

**TAXATION PRIVILEGES** - International trusts registered in Antigua and Barbuda enjoy favorable tax treatments which include exemption from income tax, capital gains tax, estate and inheritance and stamp duty relating to the trust property.

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The following table extracted from [www.premieroffshore.com](http://www.premieroffshore.com) was modified to provide a comparison between provisions of the International Trust Legislation of Antigua and Barbuda and other offshore jurisdictions. The table highlights several key protection provisions relating to settlors, beneficiaries and foreign judgments and creditors.

**Table 1 - ANTIGUA INTERNATIONAL TRUST STRUCTURAL OVERVIEW**

Wealth Protection: Specific Provisions	Antigua	Bahamas	Belize	Bermuda	Cayman Islands	Cooks Islands	Gibraltar	Jersey	Turk & Caicos
<b>Protection of Settlor</b>									
Settler can be a beneficiary	Yes (Section 47)	Yes	Yes	Yes		Yes		Yes	
Retention of Control by Settlor			Yes			Yes			
Protection from Subsequent Bankruptcy	Yes					Yes	Yes		Yes
<b>Protection of Beneficiary</b>									
Spendthrift beneficiary provisions			Yes			Yes		Yes	
Avoidance of forced heirship	Yes (Section 72)	Yes	Yes		Yes	Yes			Yes
<b>Protection from Foreign Judgments</b>									
Specific non-recognition provisions						Yes			
Is the Hague Conventions applicable?	No	No				No			No
<b>Protection from Creditors</b>									
Exclusion of Statute of Elizabeth laws	Yes (Section 7.5)	Yes			Yes	Yes	Yes		
Trust invalid if transfer fraudulent	Yes (Section 7.5)					No	No		
Creditor must prove fraudulent transfer	Yes (Section 7.5)	Yes			Yes	Yes			Yes
Clear definition of fraudulent transfer						Yes			
Separation of creditor claims		Yes			Yes	Yes	Yes		Yes
Statutory limitation on fraudulent transfer		Yes (2 yrs)		Yes (6 yrs)	Yes (6 yrs)	Yes (1 yr)			

## AN INTRODUCTION TO INTERNATIONAL TRUST REGISTRATIONS

**CLASS OF LICENCE:** - The provision of services as a trustee of international trusts is authorized under a Class C licence under the Act. Alternative trust structures may include a fourth party known as a protector. This service, unlike trustee services, is authorized under a Class B licence.

**REGISTRATION REQUIREMENTS:** - A corporate service provider who intends to register an international trust on the Register of International Trust must first submit a name approval request to the Commission via the eRegistry. Proposed names are reviewed for compliance with the requirements of the ITA without cost.

An application to register a trust on the Register of International Trusts is made by submitting a completed Application for Entry on Register of International Trust (Schedule 1). The completed application must be accompanied by a Certificate of Antigua and Barbuda Trustee (Schedule 2) which seeks to confirm that at least one trustee is a domiciliary of Antigua and Barbuda where multiple trustees are appointed. Under the ITA a maximum of four (4) trustees may serve at any time and at least one (1) must be domiciled in Antigua and Barbuda.



**DOMICILIARY REQUIREMENTS:** - Under the ITA, neither a settlor or beneficiary of an international trust is to be domiciled in Antigua and Barbuda. In the case of trustees, at least one must, at all times, be domiciled in Antigua and Barbuda. Similarly, the registered office of an international trust must be the address of the Antigua and Barbuda trustee. This will be the address for delivery of documents to the international trust.

**TIMELINE:** - An application to be registered on the Register of International Trusts is to be made to the Registrar within forty five (45) days of the date of execution of the trust deed of settlement by the Antigua and Barbuda trustee. On failure to meet this registration timeline, a trustee has to submit an application to the Registrar under Schedule 3, *Application for Extension of Entry on the Register of International Trust*, who may extend the period to be registered on the Register by forty-five (45) days, provided that the reason for the delay is satisfactory.

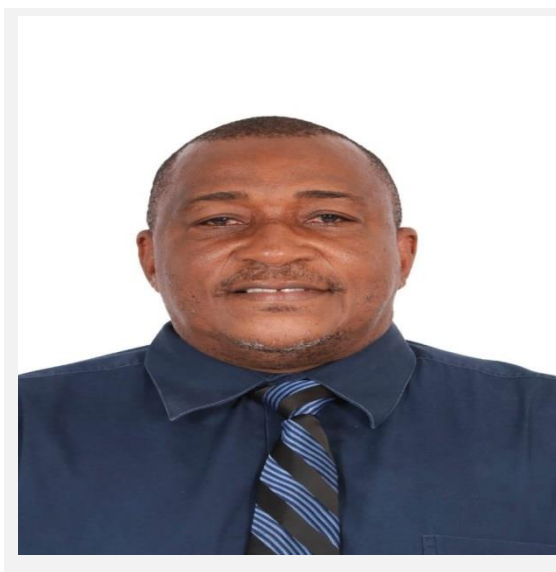
A foreign trust which intends to be registered on the Register of International Trust may submit an application under Schedule 1 within forty-five (45) days of the date on which an amendment was executed to change the governing law to the law of Antigua and Barbuda.

**REGISTRATION:** - On registration of an international trust, the Commission will issue a Certificate of Registration as conclusive evidence of the existence and validity of a trust and its compliance with all registration requirements of the ITA. A certificate of registration will remain valid for a period of one (1) year from the date of registration and is renewable in accordance with the ITA.

### INDEPENDENT RESOURCES ON TRUST ADMINISTRATION

- [Economic benefits of trusts](#)
- [Global HNW families and their wealth structures](#)
- [Trustee Information](#)





**LAUCKLAND JOSEPH** is being recognized for his cooperative spirit and positive attitude during the year 2020. Mr. Joseph was assigned to the Corporate Management and Trust Service Division in 2015 as a Regulatory Team Support. During this time he has actively sought opportunities to become knowledgeable in the full range of services offered by the department and is often ready to assist at a moment's notice. Congratulations Lauckland!

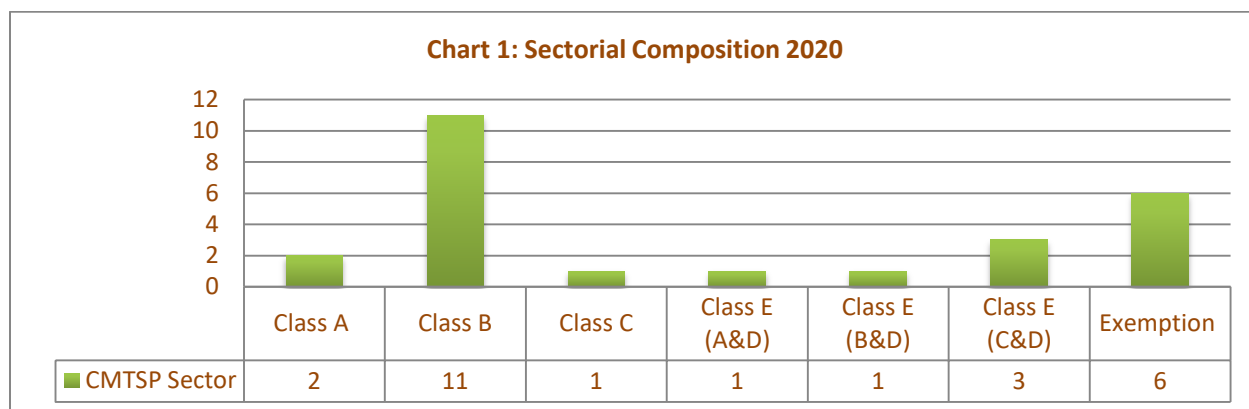


## LEGISLATIVE UPDATES

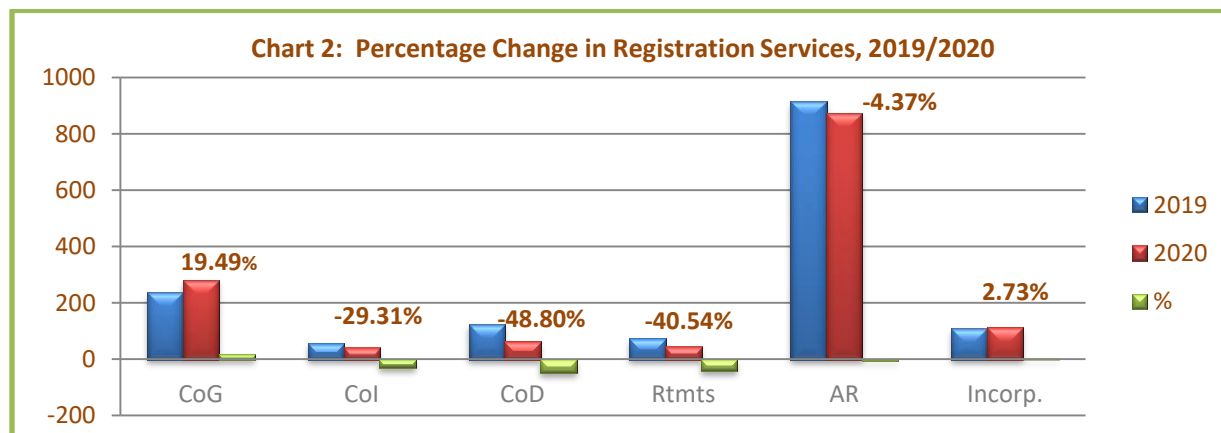
- **International Trust Registrations:** Work is ongoing to develop new regulations to the International Trust Act, 2007 to inform on registration requirements and other trustee obligations in line with the principal Act. It is anticipated that draft regulations will be made available for sectorial consultation and feedback within the first half of 2021.
- **Key Amendments to the International Business Corporations Act, Cap. 222:**
  1. Under the Law (Miscellaneous Amendment) Act, No. 26 of 2018, Section 4 of the IBC Act was amended to provide IBCs with the option to invest in, trade with or provide services to persons within the Antigua and Barbuda jurisdiction, subject to approval by the Commission. Work is ongoing to develop regulations to give effect to this key amendment which will become available for sectorial review and feedback within the first half of 2021.
  2. Under the Law (Miscellaneous Amendment) Act, No. 3 of 2020, Section 27 of the IBC Act was amended to ensure that the shares of entities are in registered form only. Similar amendments were also made to Sections 136(1), 140(2) and 344 to remove bearer shares from the IBC Act. In keeping with these changes, the Articles and By-Laws of a new incorporation requests filed with the Commission must permit the issuance of registered shares, only.

## STATISTICAL UPDATES

During the year ended December 31, 2020 the corporate service providers sector comprised of nineteen (19) licensees maintaining licenses ranging from Class A to Class E which authorize blended services under the Act. Limited services were also provided by persons exempt from the provisions of the Act. A breakdown of the sectorial composition for the year 2020 is shown at Chart 1 below.



An analysis of key registration services conducted during the year 2020 has shown some decline in annual registrations and other services which may be associated in part with the ongoing COVID 19 pandemic. Of note, some increases were seen in new incorporations and certificates of good standing requests. Corporate purpose assessments conveyed interests in several areas but the sector remains heavily aligned with the international shipping industry.

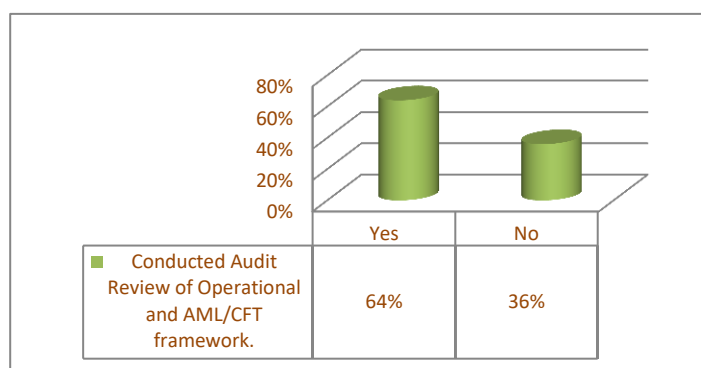


COG	Certificate of Good Standing	RTMTS	Reinstatement of Company
COI	Certificate of Incumbency	AR	Annual Renewals
COD	Change of Directorship	Incorp.	New Incorporations

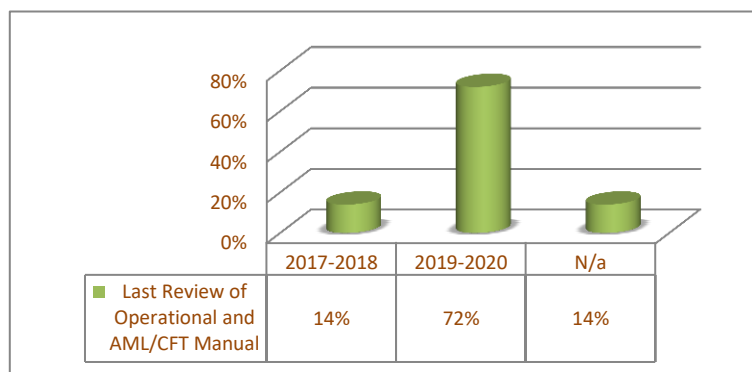


The Commission conducted a survey of the corporate services sector which focused on aspects of the internal control framework. Responses to the survey were received from 74% of licensed corporate service providers. The following graphs provide answers that were extracted from the survey responses which show varying levels of sectorial controls.

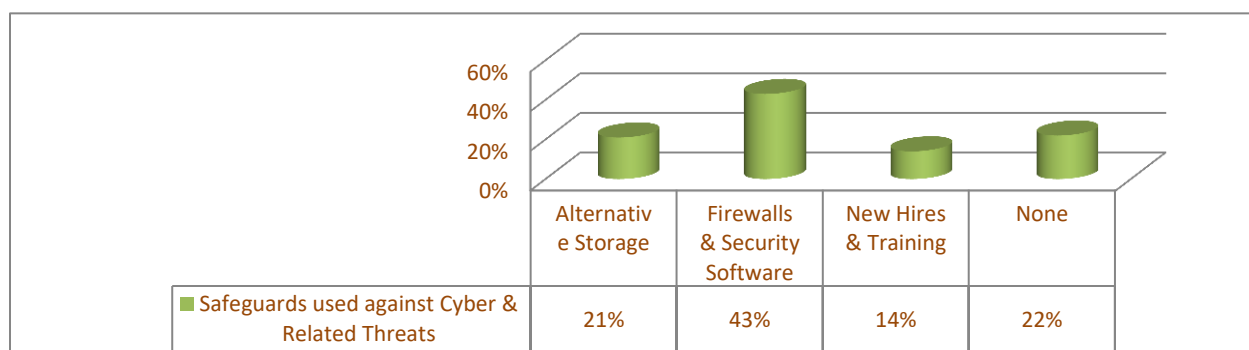
## Independent Audit of Operational & AML/CFT Framework



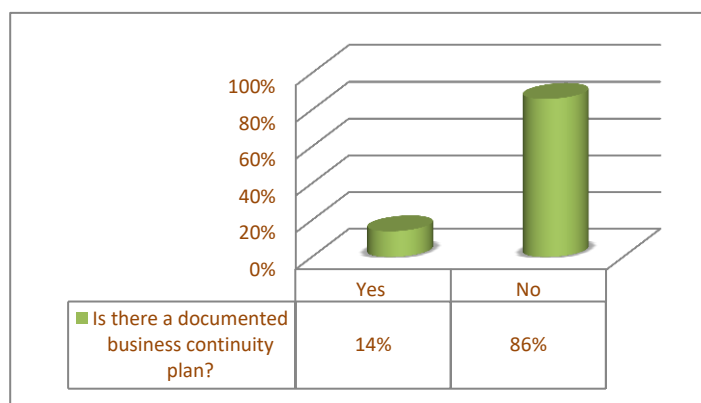
## Last Review of Operational & AML/CFT Manual



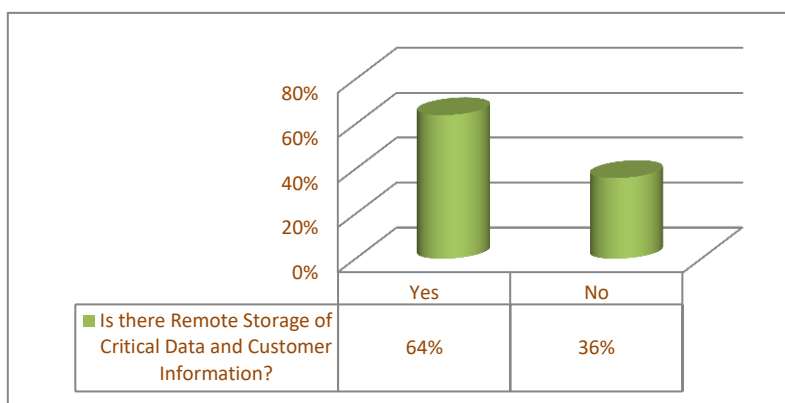
## Safeguards from Cyber & Related Threats



## Is there a Documented Business Continuity Plan?



## Remote Storage of Critical Data and Customer Information



➤ **ONSITE EXAMINATIONS:** Due to the ongoing restrictions of the COVID19 pandemic, onsite examinations have been suspended for the time being. In the interim, examinations will be conducted using a virtual platform.

➤ **DEFECTIVE NOTICES:** The Commission has noted a surge in incomplete, inaccurate or otherwise defective pre and post incorporation requests which have negatively impacted the response time of requests, in some cases. In consequence, the issuance of Defective Notices will be reintroduced with effect from April 1, 2021 to be completed as a prerequisite to finalizing incomplete or inaccurate requests.

➤ **COMPANY SEARCHES:** In line with COVID 19 guidelines, the department will receive and process file search requests, at regular cost, remotely. In such cases, copies will be dispatched via email. Company searches and corporate status reports will be processed within a 24 hour timeline, subject to application requirements.

➤ **ANNUAL RETURNS:** Quarterly returns should be filed with the Commission within three (3) months of the end of the financial year or by **March 31 annually**. All certificates of solvency issued pursuant to Section 23 of the Act must specify the applicable currency and be auditor certified.

➤ **BENEFICIAL OWNERSHIP & CONTROL:** Attestations of beneficial ownership and control should be filed with the Commission by **March 31 annually** for all entities under management. Attestations filed with the Commission should be fully completed and accompanied by the signed statement of confirmation.

**WEB MARKETING:** - Simply building a website does not guarantee internet traffic or mean that your website would be found by perspective clients. In order to increase the chance of your business appearing in search results linked to particular jurisdictions, service type or other inquiries, certain strategically selected keywords should be linked to your website. Google Ads, the world's largest and most commonly used search engine, offers this service which can improve online presence and ensure clients can easily locate your business. Benefits of using Google Ads include:

- Increased online presence
- Greater brand awareness
- Improved market reach
- Greater competitive advantage
- Access to market analytical tools

**ENCOURAGING A CULTURE OF COMPLIANCE:** - Regulatory compliance is becoming increasingly important in the supervision of any licensed sector. Unfortunately, some view compliance as another costly initiative which does not deliver added value to the company. However, a well-structured, adequately resourced and vigorously maintained compliance program within your organization can provide the following benefits:

- **Delivers protection** from fines and other forms of regulatory enforcement.
- Stronger more robust risk management platforms also help to **safeguard limited resources** from becoming susceptible to fraud and other dubious activities.
- Improved client onboarding and retention through building a legitimate client base which **delivers client security and peace of mind**.
- Enhanced business reputation which becomes a catalyst for **building market share and stimulating greater profitability**.

## WORD PUZZLE - PRIVATE TRUSTS

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 USGZBTTVVFRGKRZBDJ V XNPZG  
 CSOJMFRDWPXCTRMWRCFMJTC  
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 EZJFHUSOBZDUXNZASSETTLORG



ABITA	Asset Protection
Beneficiary	Charitable
Class C	Deed
Flexibility	Governing Law
Investment	Letter of Wishes
Privacy	Property
Protector	Register
Settlor	Succession Planning
Trustee	Wealth Management

**Our Mission: To develop Antigua and Barbuda as an effectively regulated, well managed major financial services jurisdiction**

**2021**

**International Business Corporations and Corporate Management and Trust Service Providers Department**

**Financial Services Regulatory Commission**

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