

Raising the bar on a daily basis

WORLD FINANCE spoke to Keithley FT Lake, managing director and CEO of First Fidelity Trust Company.

First Fidelity Trust Ltd has been a key player in Nevis for over 10 years. During this time you have witnessed some monumental events including the blacklisting of the financial centre by the FATF and OECD, and more recently its removal from these lists. How have these events affected the country's reputation and its ability to do business?

It was not surprising that the inclusion of Nevis on the blacklist was not good either for business or the jurisdiction. However, it quickly became apparent that the use of the blacklist became questionable because of its selective use particularly against smaller jurisdictions, who did not have the resources or the political clout to defend themselves, while larger financial centres who had the banking and investment capacity necessary for money laundering were conveniently left off the blacklist and were not subject to the OECD and FATF dictates. Fortunately, Nevis has always enjoyed the reputation as a clean and well regulated jurisdiction, which has allowed it to avoid the consequences that befell other financial centers on the blacklist in that customers looked past the so called blacklist and continued to use the jurisdiction.

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Nevis is now a stable and secure economy as a result of its recent list removal. What kinds of anti money laundering compliance is in place to safeguard the region's acceptance as a credible financial centre?

In 2000 the federation of St. Kitts & Nevis adopted a number of statutes all designed to combat money laundering and the proceeds of crime. Those enactments made it mandatory to have in place antimoney laundering policies that facilitate the identification of suspicious transactions and require that they be reported to authorities. Those regulations also require that you know your customer and maintain the necessary records in the event the authorities needed to verify the beneficial owners involved in a transaction.

All service providers must appoint a compliance officer who's task it is to ensure that the AML procedures are followed and kept current. In addition, regular training of employees is encouraged by the legislation.

How has the recent veneration of the financial centre affected the current legislation and does it prove to be progressive and user friendly for investors?

It is our view that the recent veneration of the financial centre merely formalised what most service providers were already doing. We as an industry have always realised that there is plenty of good business out there and there is no need to risk our personal reputation or place our business at risk by dealing with questionable persons or being involved

with illegal transactions. Our clients are relatively sophisticated and understand the need for additional documentation and are quite compliant with our verification polices. What we have found to be helpful is to acquaint to the customer early in the process of what documentation is needed so that it does not become a last minute issue as a transaction is about to close. We also conduct quarterly seminars for our service providers to acquaint them with the laws, regulations and documentation required under Nevis law, so they are better able to prepare their clients. Moreover, the Ministry of Finance has made it a priority to make the legislative requirements customer friendly and they themselves conduct regular seminars to acquaint service providers with any changes or updates.

The Nevis International Exempt Trust Ordinance provides a number of special provisions that make Nevis arguably one of the preferred jurisdictions in the Caribbean for the establishment of asset protection trusts (APTs). Tell us about these provisions and the benefits they provide to private clients?

The fraudulent conveyance sections of the Nevis International Exempt Trust Ordinance makes it one of the preferred jurisdictions in the world for the establishment of assist protection trust. Under these sections an action must be brought within two years of the registration of the trust or within one year of the cause of action, whichever shorter. If those prerequisites can be met, the creditor must still prove its claim beyond a reasonable doubt. In addition, the creditor must file a bond with the court as security for the costs in the event the action fails. These provisions together provide good protection for client and it is a deterrent from unwarranted legal actions.

The Nevis Limited Liability Company (LLC) provides an alternative to those who might consider the implementation of a partnership or a corporation. What are the specifications of the LLC ordinance and is this a credible alternative?

Under the laws of Nevis, one or more persons may form a Limited Liability Company (LLC) by signing and filing articles of organisation with the Registrar of Companies. Such persons need not be

members at the time of formation or after the formation.

LLC's are unique creatures that have their origins in US tax law. LLC's are essentially hybrid entities that provide the limited liability protection of a corporation but are treated under US tax laws as a partnership for tax purposes. This allows the earnings of the LLC to flow through to the individual members to be taxed at the members applicable rate. Subsequently, International financial centres including Nevis adopted of LLC's in their financial services legislation to accommodate clients who need them for the offshore tax structures.

The Nevis LLC has a unique feature that makes it even more attractive for investors. It provides for segregated interests of members so that a creditor only has access to that particular member's interests. This in essence provides an additional layer of asset protection.

The recently passed Nevis International Insurance Ordinance 2004 provides for the regulation of persons establishing and maintaining offshore insurance business in Nevis. Tell us more about the legislation.

The Nevis International Insurance Ordinance 2004 states as its primary purpose is the regulation of persons establishing and carrying on offshore insurance business from within Nevis. As a result, the ordinance requires all persons such as insurance managers, registered agents and directors of a company seeking to carry on insurance business to be fit and proper persons and to have the requisite expertise and knowledge necessary for undertaking insurance business.

It is clear from those requirements that the Nevis Government has embraced the concept that an industry is only as good as the persons involved in that particular industry. The ordinance and the associated regulations require applicants to demonstrate that they are fit and proper persons and have the necessary qualifications and experience to warrant a licence to undertake any particular aspect of the insurance business sector. In fact, the regulations require that existing persons already acting in these capacities have a six month time frame within which to satisfy the registrar that they meet the requirements of the ordinance.

This can only be good for the

industry and for the reputation of Nevis as a jurisdiction. It has been the experience in jurisdictions that are not effectively regulated that either undesirable persons or persons without the adequate experience or knowledge become the prime players in scandals within the particular industry. While nothing is foolproof, the standard that Nevis now requires will go a long way forward assuring that its insurance sector will avoid the pitfalls of less regulated jurisdictions.

What efforts are being made by the Ministry of Finance to enact legislation for financial products that will enhance the attractiveness of the financial centre?

The Ministry of Finance in Nevis is very proactive in maintaining Nevis as a premier financial centre. It is also constantly reviewing existing legislation to make sure it is current with the needs of the industry and its customers. The Ministry actively solicits the views and opinions of the industry on emerging trends and is always ready to facilitate customers under the existing legislation. Most importantly, the Ministry never tires in its efforts to promote the jurisdiction. It is a full partner with the industry in enhancing the effectiveness of the financial services sector.

As the Managing Director of First Fidelity Trust Ltd, you are a trained litigator practising in the US and internationally. Has your legal expertise contributed to a successful history in defending trusts in foreign courts on behalf of clients? Tell us more about your legal history, and your role as MD and CEO of the company?

Fortunately, we have not had to defend any trust in our custody on behalf of our clients. We believe in concentrating our efforts at the intake side of the business so as to avoid subsequent attacks on the trust. I spend a significant amount of time reviewing trust documents to make sure they are compliant with Nevis laws and that they do not contain provisions that make them subject to attack. I believe that these efforts are largely responsible for the lack of action against our trusts.

I am fortunate to have a well-rounded legal career. I am a 1979 graduate of the University of Missouri, Kansas City School of Law where I

received a Juris Doctor degree with distinction. I served as a staff attorney for the United State Labour Department, Office of the Solicitor and functioned primarily as a litigation attorney. In 1984 I joined Allied Signal Kansas City Division as a staff attorney and subsequently was appointed General Counsel. In 1994 I founded the law firm called Keithley Lake & Associates in Anguilla, which is now the largest Law firm in Anguilla.

In my role as MD and CEO of First Fidelity Trust, I am responsible for the strategic direction of the Company. I am also directly involved on a daily basis on all trust applications and the review of trusts deeds. I consult regularly with service providers who are seeking to address the unique needs of their clients and designing solution to overcome those problems. I am also involved in the marketing of the business and am often in attendance at seminars and trade shows as a representative of the trust company.

How did your experience as a Corporate Counsel prepare you for what you are doing today?

The experience I gained while working as a corporate lawyer was excellent training for me in transitioning to the private sector. It taught me first of all that no matter how well you did yesterday, that is history. Everyday you have to be able to perform at your very best for the client. In addition, the concept of customer service was one that came slowly to the legal profession. I was fortunate in my years at Allied-Signal to learn and appreciate that no matter what your calling everything begins and ends with customer service. That concept has stayed with me as I assorted in the development of First Fidelity Trust. My primary focus is the customer. Are we meeting their needs? What can we do to make the experience for the customer as pleasant as possible? I do appreciate that it is something that you have to constantly work at and I try to communicate that to my staff. We cannot afford to sit on our achievements because that is merely history. Satisfying our customers needs today is essential to our survival and hence our growth. ■

Mr Lake is a barrister and solicitor of his own firm in Anguilla, in addition to his duties with FFT.