

**STIKEMAN ELLIOTT**

# **STEP Bahamas**

**Structuring for Latin American Clients**

**Nassau, Bahamas**

**Richard J. Hay  
24 June, 2003**

# Structuring for Latin American Clients

## Overview

- vast liquid wealth, unequally distributed
- domestic political risks lead to capital flight
- recent local trend toward worldwide taxation

## Pressure to Upgrade Tax Systems

- yawning government deficits require external borrowing
- IMF funding comes at a price
- Mexico is OECD member
- tax treaty aspirations
- rolling back a culture of non-compliance
- domestic political agendas

# Comparative Economic Data

**Statistics  
2003,  
Estimated**

	Mexico	Venezuela	Argentina	Brazil	US
Population (mn)	103.7	25.66	38.45	172.6	281.9
Total GDP (US\$ bn)	679.5	91.47	79.73	423.0	10,188.5
GDP per head (US\$)	6551	3564	2073	2450.2	36,155
Annual End Period Inflation (%)	4.1	30.0	30.6	7.7	3.4
Total External debt (US\$ bn)	161.00	37.0	195.0	228.0	n/a
Total External debt as % of GDP	23.7	40.4	244.6	53.9	n/a

# The Move to Worldwide Taxation

- adoption of comprehensive “low tax jurisdiction” blacklists for CFC purposes
- existing “offshore” structures taxable and reportable
- no provision (yet) for minimum tax in non-listed jurisdiction
- HTJ structures not subject to CFC rules

# Private Bank Pressure to Adopt Compliant Structures

- local fiscs have limited enforcement capability for international income
- are clients motivated to comply?
- ultimate resource costs for risky business
- proceeds of crime legislation in offshore centres
- institutional embarrassment
- commercial value of compliant structures

## Country Spotlight

# Mexico

- LTJ blacklist rules effective Jan 1, 1997
- controlled “offshore” trusts and companies fully taxable
- 2002: LTJ structure reportable only if it has income
- minimum tax for HTJ structures stalled in Mexican Congress in late 2000
- pending change in control of Mexican Congress?

## Country Spotlight

# Venezuela

- unstable and divisive government
- new tax rules follow Mexican model
- worldwide tax, with CFC rules, effective in 2001
- general anti-avoidance rule
- let the rich pay



## Country Spotlight

# Argentina

- worldwide taxation, with CFC rules
- personal assets tax applies worldwide
- economic crisis after peso unpegged
- capital flight amid political risk concerns
- new government
- recent signs of recovery

# Comparative Economic Data for Argentina

## Statistic

	Argentina 2001	Argentina 2003
Population (mn)	37.5	38.45
Total GDP (US\$bn)	280.84	79.73
GDP per head (US\$)	7489	2073
Annual End Period Inflation (%)	-1.54	30.6
Total External debt (US\$bn)	170	195.0
Total External debt as % of GDP	60.5	244.6

## Country Spotlight

### Brazil

- new leftist President took office 1 January 2003
- current worldwide tax for all residents
- CFC rules applicable only to companies
- “optical” concerns with LTJ structures
- tax and Central Bank reporting for offshore structures
- tax reform in prospect

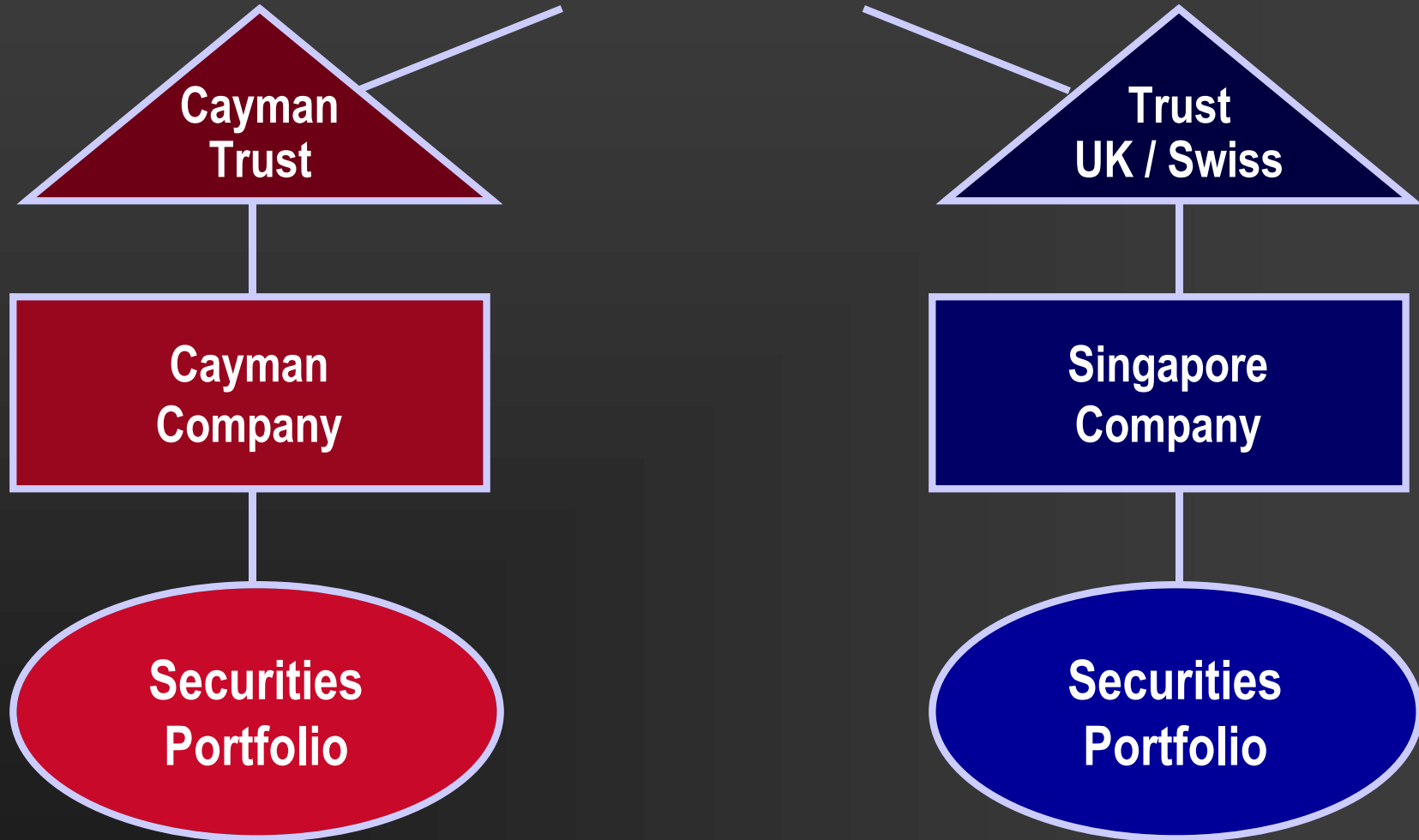
# New Compliant Structures

- mitigate income, gains, gift, estate, wealth taxes
- eliminate unnecessary reporting
- reformat in tax effective manner
- avoid estate tax liabilities in investment jurisdiction
- preserve existing cost basis into new structure, or lift to FMV

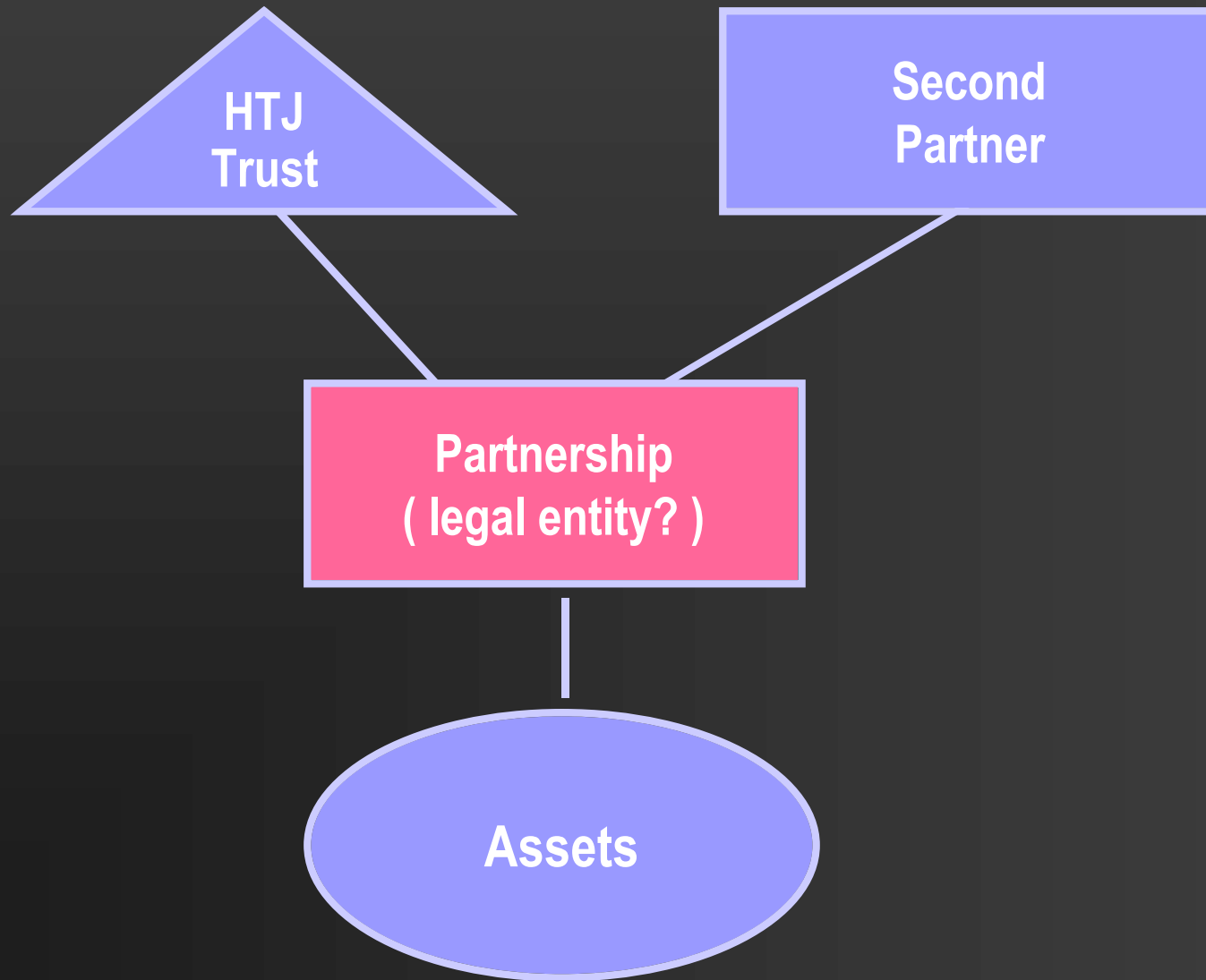
Old

# Latin Resident

New



# Latin Resident



# **Servicing Latin Clients in Bahamas**

- **low-tax jurisdiction control issues**
- **provide administrative services falling short of control**
- **open new markets through information exchange agreements?**
- **negotiate bilateral investment protection agreements?**

# New Opportunities for Latin Estate Planning

## Mexico

- LTJ structures can now avoid tax and reporting
- plan for new rules taxing onshore structures

## Argentina

- Plan for increased political risk
- plan for assets tax

## Brazil

- plan for new CFC rules
- improve optics of current offshore structures



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