

December 2006


**Global Consultants and Services Limited**

10th Floor, Baskerville House, 13 Duddell Street, Central, Hong Kong  
 Tel : +852 2526 2736 Fax : +852 2526 2757  
 Email : intray@gcsl.info www.gcsl.info

Merry Christmas, Happy Hannakah  
 and Safe New Year!!

Professional, Confidential, Trustworthy and F  
 GCSL - We are here to CONSU



Hong Kong Anguilla Belize Cook Islands Samoa Singapore

Scenes of the smiling faces of GCSL's people in our global offices as they prepare to celebrate th


**JACK'S CORNER**

"Pet Peeve" of the month...has been postponed for the holiday season. I feel like being happy 😊. Since I e received regarding my last Jack's Corner, I thought it might be of interest to share another curious event in n year on a happy note 😊

**East vs West:** I was honored to join a panel of distinguished academicians and business people from China America (West) recently in the picturesque Huang Shan (Yellow Mountain), China. Being the youngest (rare and clearly least qualified (fairly common) of the panelists, I was very much impressed with the insights of my even more intrigued by the scope of the conversation which focused on the perceived differences in manage styles between the East and West. I say "perceived" because after more than 20 years of working in the Eas the differences are so dramatic. In addition, the more the panelists discussed the topic, the more it became c the East and the West often think and act the same. We all breathe air, wear clothing, eat food, seek to find v hard to make money, make strides to better the future of our families, smile, laugh, frown, cry...come to think panelists concluded we were all human!!! Yes, the East and West had some differences. Heck, that is what r chocolate ice cream...and even strawberry, which I prefer. Having said that, it appeared we had more simila mentioned he thought it would be useful if our leaders focused more on the similarities. Ah, yes, perhaps the place. For me, given my obvious Western physical features, the odd thing was the fact I had few differences more self knowledge, self deception...

Onwards and upwards...



## GCSL NEWS

### **Cathy Odgers – GCSL's new legal eagle!!!**

Greetings from sunny Samoa. I have joined GCSL this month from another fiduciary services firm. My position is Group Legal Counsel with primary responsibility of working with the GCSL offices in Hong Kong, Belize, Anguilla and Singapore to ensure they are compliant with both local regulations and GCSL Group policy. While I handle general client matters at times, my position is a broader overseeing role to ensure that GCSL and its clients are compliant with regulatory matters worldwide.

I am a qualified New Zealand lawyer and have worked previously in New Zealand, the United Kingdom and the United States before arriving in Hong Kong in February 2005. In terms of my career experience to date, I had an extensive background in taxation matters in New Zealand for a big 4 firm before commencing my offshore career which has involved working in several fiduciary departments at different firms.

Of particular interest to myself is ensuring that offshore companies and trusts are set up in compliance with the law of the relevant jurisdiction. My task is to ensure GCSL complies with the law while providing clients with a cost-effective service. I work with clients to ensure the requirements are "met" but not "set" by us.

On a personal side, being a New Zealander I enjoy watching and sometimes participating in most sports and activities with my colleagues, clients and friends. I look forward to meeting and working with our clients and colleagues.

### **Tony Chan – GCSL's new fiduciary services general manager**

Tony has more than 15 years experience working in financial services in Hong Kong and across Asia. He previously worked in investment banking as well as commercial banking - cash management. Tony has a joint honors degree in Commerce and Economics from a UK university and recently completed a Masters in International Management (with distinction) from Strathclyde Business School. Tony brings to the GCSL skills in banking, securities and offshore structures as well as fluency in Cantonese, Mandarin and English.

### **GCSL'S 2<sup>ND</sup> COCKTAIL PARTY & CHRISTMAS CELEBRATIONS**

Great fun as our party combined an early Christmas party (Jack is traveling until January), Jack's 20th+++ birthday celebration of a lot of the good people with whom we enjoyed our initial 5 months of successful business activities. It was all!!!



## USA UPDATE

### **USA LIMITED LIABILITY COMPANIES SUBJECT TO SCRUTINY...FINALLY!!!**

The USA Financial Crimes Enforcement Network (FinCen), which is under the Department of the Treasury, has issued a report entitled *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies* (November 2006, [http://www.fincen.gov/LLCAssessment\\_FINAL.pdf](http://www.fincen.gov/LLCAssessment_FINAL.pdf)). The stated intent of this report is to demonstrate the nature of the vulnerabilities that limited liability companies present, provide examples of known vulnerabilities, and present some specific steps which can be taken to reduce the risk to the financial system while preserving the utility of limited liability companies for legitimate business use."

The paper is unusually clear as it points out the "...ease of formation and the absence of ownership disclosure lack of transparency coupled with the credibility of an USA entity is the key reason why USA limited liability companies are exceedingly popular vehicles for engaging in illegal activities in the international and domestic arena. The International Federation of Commercial Administrators estimates there were more than 4.9 million limited liability companies active or in good standing at the end of 2005. The number of USA limited liability companies dwarfs that of the TOTAL number of international limited liability companies and other entities formed in the so-called "offshore tax havens".

The five states that had the most limited liability companies active or in good standing as at 2005 were the following:

- **Delaware 333,565**
- California 325,738
- Florida 293,845
- New York 275,503
- Michigan 274,940

Delaware is highlighted as it is rumored in the international community that the Delaware limited liability company remains the entity of choice for people seeking to engage in illegal activity on a global scale. The high profile money flowing through the Bank of New York focused the spotlight on the Delaware limited liability company known as the Russian mafia (Bees International LLC).

The paper is complete with a great deal of interesting facts from which much or little can be concluded. However, the "preliminary conclusion" was as follows:

"A preliminary conclusion based on the above information suggests that having all states require LLCs to disclose the identities of members and managers would not significantly affect the number of LLCs formed or the revenue generated among states. Therefore, **it appears that the vulnerabilities of the states which provide less transparency can be reduced through requiring greater transparency without a major effect on revenue generated by those states.** In contrast, the ensuing benefits to law enforcement and regulatory entities of greater transparency will prove significant." (bold added for emphasis)

FinCEN is clear in its interest in persuading states to require a greater degree of transparency in the formation of LLCs. This transparency seems to focus on making such information publicly available as opposed to requiring a corporate service provider to maintain such records and disclose the same as and if required by law enforcement or court order.

If FinCEN is successful in convincing the states to require full disclosure of both the real, rather than nominee, managers of a limited liability company, then it seems likely that the international business person, regardless of where the limited liability company is formed, would no longer seriously consider an USA limited liability company when engaging in business activities.

*For more information, contact Cathy Odgers, Group Legal Counsel, The GCSL  
Cathy's email: [odgersc@gcsl.com](mailto:odgersc@gcsl.com)*



## NEW ZEALAND UPDATE

### FOREIGN TRUST DISCLOSURE AND RECORD KEEPING REQUIREMENTS

New rules regarding New Zealand foreign trusts came into effect on 1 October 2006. The rules are to ensure that trust records are either maintained or available in New Zealand, so that the New Zealand Inland Revenue Department is able to obtain the information to meet any valid exchange of information request under a double tax treaty or agreement.

A New Zealand resident trustee may be a "qualifying resident foreign trustee", but there is no strict requirement for a resident foreign trustee. A qualifying resident foreign trustee is defined as a person who is a resident foreign

- If a natural person, is a member of an approved organization (approved by IRD); and
- If not a natural person, has a director or other natural person in a position allowing significant influence over the management or administration of the trustee, who is a resident of New Zealand and a member of an approved organization.

Barristers and solicitors holding New Zealand practicing certificates as well as chartered accountants who hold certificates with the New Zealand Institute of Chartered Accountants will meet this criteria.

- The trustee must advise the IRD of the following:
- The name or other identifying particulars (e.g. date of the trust deed) for the trust.
- The name and contact particulars of the New Zealand resident foreign trustee.
- Whether a settlor is resident in the Commonwealth of Australia.
- The name of the approved organisation of which the trustee or director/manager is a member (if applicable).

For existing New Zealand foreign trusts, this information must be provided to the IRD by 1 December 2006 and any changes to these particulars must be disclosed to the IRD within 30 days. The IRD have produced a specific list of trustees to complete to meet these requirements.

In addition to these very basic disclosure requirements the trustee must maintain records in New Zealand in relation to the trust. The trustee may make a written application to the IRD to have the records held offshore for each separate trust but the records must be retained for seven years after the end of the relevant income year.

There are penalties for non-compliance with these new rules. In addition, if there is no qualifying resident for records required to be kept under the legislation are not provided to the IRD then a liability can arise for tax on the trust's income. However, this liability can be extinguished if the information is provided.

If a qualifying resident foreign trustee does not disclose information or keep or provide records, the trustee (as well as the trust) is liable to a monetary fine, imprisonment or both. The trust will **not** however become subject to tax in New Zealand on its income.

*Contributed by Marcus Diprose, New Zealand Barrister  
Marcus' email address is*



## HONG KONG UPDATE

### HONG KONG IPO FEVER CONTINUES

In late November, Zhaojin Mining (China's 2nd largest coal miner) and Kingboard Laminates received offers at 500 times and 200 times the shares on offer, respectively. Each company generated retail offers to subscribe for 1 billion shares worth 1 billion Hong Kong dollars.



## CHINA UPDATE

### NYSE DEBUTS IN BEIJING!!!

John Thain, the chief of the New York Stock Exchange visited Beijing to setup a representative office. Thain said that the Chinese legislation proposed to regulate overseas listings of Chinese companies would only hurt the Chinese market by restricting access to capital. The NYSE is competing with other major international exchanges for a bit of the market, which in the year ending October 2006 was valued as the highest in the world with US\$43.1 billion raised in New York and USD40.5 billion in London.

*Contributed by Johnshon Chien, General Manager – Fiduciary Services  
Johnshon's email address is*

### **GUIDELINES FOR THE INFORMATION SYSTEM OF BANKING FINANCIAL INSTITUTIONS**

The Guidelines for the Information System of Banking Financial Institutions (the "Guidelines") are enacted with the aim of effectively identifying, evaluating, alarming and controlling the risks of information system, and therefore ensuring the stable operation and development of banking financial institutions. The Guidelines consist of 73 articles in 8 chapters.

General Provisions, Institutional Responsibilities, General Risk Control, R&D Risk Control, Operation and Maintenance, Outsourcing Risk Control, Audit and Supplementary Articles. Relevant international experiences are referred to in the Guidelines. It is believed that the Guidelines will contribute a lot to the improvement of risk control and management. The “information system” mentioned herein shall refer to the systems of banking financial institutions concerning information management and internal control to which the modern information & communication technologies are applied.

The Guidelines protect the Intellectual Property Rights. Piratical software and hardware are not allowed to be used in financial institutions. The Guidelines require that online-safety should be ensured. The Guidelines execute the measures in different sectors such as senior decision-making, R&D of information system, operation and maintenance.

*Contributed by Wenger & Vieli ([www.wenfei.com](http://www.wenfei.com)), which is the firm in China, provides legal counseling and assistance in all fields of law.*



## SINGAPORE UPDATE

Singapore has done it again. Moody's Investor Services has once again given the Republic the highest grade. Moody's report said that Singapore's conservative fiscal and monetary policies, strong government position and strong investment position won Singapore the highest grade – Aaa. It is also reported that Singapore enjoys consistent account surpluses, political stability and substantial foreign direct investment. Reforms in the services sector and maintenance of an attractive investment regime are likely to support economic growth going forward. Moody's has demonstrated its ability to withstand external shocks, and will likely do so again. Singapore's per capita GDP is approaching the levels of France and Germany." The only other Asian country to be given the "Aaa" rating is Japan.

In another development, Singapore has begun to embark into the exotic multi-billion business of art repository. So doing, Singapore will take its first slice of the pie away from Switzerland, where most of the world's art treasures have been kept in secret vaults. However, changing laws in Switzerland no longer suit the owners of these pieces, their acquisitions confidential and low profile. The introduction last year of tough new Swiss laws in line with a new cultural property, that Switzerland signed in 2003, has made the movement of art pieces, especially that may be considered “cultural heritage” subject to strict checks. The checks are especially tough on those engaged in the art trade and auction. Due diligence to prove ownership of the art works is essential. New art owners, including wealthy Arabs and Indians, are searching for new havens to send their treasures for safekeeping. As a start, already US\$15 billion worth of art has been moved to Singapore.

*Contributed by Lawrence Fong, MA  
Lawrence's email*



## THAILAND UPDATE

### THAILAND: THE GUIDE TO DOING BUSINESS IN THAILAND

Michael is a **Friend of Jack** and GCSL, exceptional lawyer (yes, he is the second one to be born in Arkansas; other?), able to speak, read and write Thai (no easy task), partner of the prestigious Thailand law firm of Serimanop ([www.serimanop.com](http://www.serimanop.com)) and great all around guy who has lived in Thailand for more than ten years and has led the way in the legal and practical way in the Land of Smiles. His book entitled Doyle's **Practical Guide to Thailand** won rave reviews from many a CEO of large multinationals and small businesses alike. Below, we provide an overview of **How does the VAT system work?**

The Value Added Tax (VAT) system in Thailand is initially difficult for many foreign business people to understand, especially if the person is from the USA or another country that does not use a VAT system. Businesses in Thailand are required to obtain a VAT Certificate and make periodic VAT filings, unless their business activities are specifically exempt from this requirement. The rate of the tax is 7% of the value of the goods sold or services rendered; however, many goods and services are zero-rated (subject to 0% VAT) and many are exempt. Also, if the business's gross income has not reached 1.2 million baht the business is generally not required to be in the VAT system. You will have to check the Code or consult with your accountant or tax attorney to determine whether any of the exceptions and/or zero-rated apply to your business.

If you would like to purchase the book, communicate with Michael about doing business in Thailand or just list your comments, please contact Michael at [michael@serimanop.com](mailto:michael@serimanop.com).

about his interesting life in Thailand over the last decade, please contact him at [Michael@serimanop.com](mailto:Michael@serimanop.com)



## OFFSHORE UPDATE

### **ANGUILLA: WHERE THERE IS NO TAXATION, CAN TAX EVASION BE A CRIMINAL OFFENCE? HMMM QUESTION TO ASK IN ANGUILLA.**

Tax evasion has been recognized as a criminal offence under tax law and/or the criminal statutes of most developed countries where income and corporate taxation is imposed. The reasoning of this position is clear. Since the state imposes taxes on citizens' and/or residents' incomes, the profits of corporations, the transfer of estates from one generation to another, dividends, capital gains and other sources of revenue, it follows the state would make it a criminal offence to

However, an interesting question, but one which is rarely asked, is can tax evasion be a criminal offence in a jurisdiction where there is no income, corporate, dividends, withholding, capital gains, or any form of direct taxation? In Anguilla, this question is increasingly necessary to ask especially given the initiatives of the OECD and EU in recent years. Anguilla is a jurisdiction where neither Anguilla domestic companies nor international business companies, as other corporate entities, are subject to tax. This is specifically provided for under each relevant piece of legislation. Unlike other jurisdictions, where tax evasion is a criminal offence, Anguilla never had any ring-fenced

Government revenue is raised primarily through customs duties on imports, accommodation tax on hotel room taxes, and other minor taxes. While it is clear that failure to deliberately pay any of these taxes is a criminal offence, as in the case of the United States under Part 9 of the Customs Act, in the context of international financial services, there appears to be no criminal offence of tax evasion. This, of course, makes sense where there is no possibility of a predicate act there can be no offence. Where there is no tax, there can be no tax evasion.

In Anguilla, the only relevant legislative instrument that deals with tax and tax evasion, and this is in a peripheral way, is the Mutual Legal Assistance Treaty between Anguilla and the USA. This treaty makes it an offence to fail to disclose information on the proceeds of illegally obtained income. Of course, the underlying offence would be one which would have occurred in the USA or at least by a USA citizen or taxpayer and is unrelated to activities in Anguilla. It would be to willfully or dishonestly submit a false tax return, in this case, to the IRS. Needless to say this Treaty does not apply to Asian or European citizens.

What does relate to European citizens is the Mutual Legal Assistance (Tax Matters) Act 2005 which basically implements the EU Savings Tax Directive. Anguilla chose the exchange of information option and thus even in the context of the Directive is not relevant.

When asked specifically whether or not tax evasion is a criminal offence, a member of government replied: "The answer is no." Having said that, GCSL and the Anguilla government, of course, do not advocate tax evasion. However, note that the answer appears unequivocal. However, the courts of Anguilla have yet to opine on this since no cases have come before them.

Interesting...

*Contributed by Carlyle Rogers, Managing Director, Global Consultants & Advisors, Inc.  
Carlyle's email: carlyle@carlyle.com*

### **BELIZE: THE SPENDTHRIFT TRUST**

For many persons of high net worth, the challenges they face in making financial arrangements for the future are often times dwarfed by the stress faced in dealing with the intended beneficiaries: their children. We must admit that in many instances there is an element of entitlement amongst children of persons of considerable wealth; the countless instances of debauchery and wanton spendthriftiness that populate the pages of the tabloids on a daily basis are testimony to this.

So what options lie open to the affluent yet still frugal-minded individual who wishes to have his child possibly receive money, and at the same time, not completely erase the trust property in the process of learning? He or she can structure the trust deed so as to reflect the restriction on the little spender with respect to the trust property, and ensure that the Trustees, for one,

It is one thing to have this simply worded into the trust deed so as to incorporate these wishes. It is quite another thing under which the deed is being settled makes express provision for such a situation. Section 12(1) of the Trusts (Substantive Laws of Belize, Revised Edition 2000) reads as follows:

The terms of a trust may make the interest of a beneficiary:

- a. Subject to termination;
- b. Subject to a restriction on alienation of or dealing in that interest or any part of that interest; or
- c. Subject to diminution or termination in the event of the beneficiary becoming insolvent or any of his property to seizure or sequestration for the benefit of his creditors and such a trust shall be known as a protective

Of particular interest also is the “determining event” as defined in Section 12(3). It is defined as “the occurrence of an act or omission on the part of the beneficiary (other than the giving of consent to an advancement of the trust result in the whole or part of the income of the beneficiary from the trust becoming payable to any person other than the Trustee, in Section 12(2), is charged with the responsibility of holding the property until such a determining event occurs upon the termination of the trust period or cessation of the existence of a class of beneficiaries, or the named beneficiary, or the named beneficiary allows for the Settlor to define such an event to his own satisfaction, thus creating the desired protection of the trust even the beneficiary himself.

Sometimes, only a protective or spendthrift trust can cure the “disease” of indiscretion. Sometimes it is the case of the playboy son, especially when Father Settlor wants a grandson born in wedlock (NB. We at GCSL do not do that!!). If it is not offensive to public policy (as in, morally offensive), then the restriction can be inserted to achieve the desired objective. To all of you who fear for the unfettered permanent disbursement of your hard-earned wealth to thoughtless beneficiaries, this is an excellent way in which you can preserve the wealth you have worked so hard to accumulate. Even if you didn’t work hard to accomplish it, who likes to lose money?!

You better Belize it....

*Contributed by Carlo Mason, Managing Director, Global Consultants  
Carlo's e*

### **SAMOA – LAND OF OPPORTUNITY AND TAXIS**

Robert Louis Stevenson, the famed writer, fell in love with Samoa the moment he set eyes upon it. To this day it captivates the imagination of the intrepid traveler, many of whom choose never to leave its shores, but rather are induced to the magic of Samoa. Unspoiled and seducing, this lion of a nation located right smack in the middle of the Pacific is open for business. Tourism will steadily become more and more important as people discover the beauty of the island and the opportunities aplenty in this land.

Opportunity is probably the best word to describe the Samoan taxi. At every turn, you will find a taxi in the market. The sheer volume of taxis means that getting around Apia and Samoa is a breeze. Who would have thought that Samoa would have taxis which can match the famed New York taxis. Well, I’m willing to put my money on Samoa. Certainly, language is a barrier, but some taxis aren’t quite limousine standard, but walk out of your hotel, office or anywhere for that matter and you will find a taxi. There would have to be more taxis in Samoa per capita than anywhere else in the world.

The Samoa taxi in many ways epitomize the entrepreneurial spirit of the Samoans, which spirit marks this nation to succeed. Sure there are the problems of being dropped off at the wrong hotel at 2am (Jack Flader can give you the story), but for all its faults, there is one undeniable element that drives the Samoan taxi – opportunity. The taxi industry will improve and get even better, but like great bread, it takes time to bake.

Likewise with the offshore industry of Samoa, it is only just starting to bake. From an initial slow start the jurisdiction catapulted itself to become a leading IBC jurisdiction. The Samoa jurisdiction is aiming high, and with a clear charge, this bullish jurisdiction is set to make waves on the international stage. Like it’s taxis, Samoa is seizing the day with their lion spirit, who dares to doubt that they will succeed?

*Contributed by Puai Wichman, Managing Director, Global Consultants  
Puai's e*

### **COOK ISLANDS OPENS ITS DOORS**

Close on the heels of opening our Samoa office, this month will see the official opening of our office in the Cook Islands. Puai Wichman as Managing Director and Tai Ngari as our Manager. This is the 6th office in as many months to join the GCSL family. Puai has been involved with the offshore industry of the Cook Islands for nearly 15 years and brings with him particularly in the area of Asset Protection Trusts. The inclusion of the Cook Islands in the GCSL family will see us deliver high quality Trust services from two leading jurisdictions in the area of Asset Protection; Belize and the Cook Islands. Puai has written a number of articles on the area of Asset Protection and is highly regarded by his peers in this area. No doubt, we will see many more articles coming from him in the near future.

The Cook Islands needs no introduction with respect to its trust laws, considered by many to be second to none. Many trusts are registered in the Cook Islands;

- has no taxation liability in the Cook Islands and no requirement to file any returns, reports, or records.
- allows the Settlor to retain or acquire; a power of revocation of the Trust; a power of disposition over T to amend the Trust Deed; and to retain an interest in the Trust property.
- is not void or voidable in the event of the Settlor's bankruptcy.
- will not recognize foreign judgments. Any claimant must commence new proceedings in the Cook Islands law. Any such proceedings must be brought within 12 months of the settlement or disposition t

The Cook Islands boast a strong judicial precedent, which supports its asset protection legislation. There are confidentiality provisions in the Cook Islands legislation, which requires government officials, trustee compan to observe strict secrecy.

By now those in the USA will have had an opportunity to view the natural beauty of the Cook Islands through Islands" reality television series currently on air in that country. Keep an eye out as Puai Wichman makes a s doing what comes naturally to all Cook Islanders, the pulsating traditional drum dance. If you have already m just drop him a line at [puai@gcsl.info](mailto:puai@gcsl.info), and he would be more than happy to show off some photos of his dan



## TIDBITS

The things that make us smile, frown and generally make life interesting...

### OUR MONTHLY QUOTE THAT MADE US SMILE

"Those who say it cannot be done should not interrupt those doing it." Chinese Proverb

### CATHAY PACIFIC MAKES US SMILE 😊

We recently flew Cathay Pacific on the day of our birth and were pleased to receive a birthday bag including Chandon, excellent chocolates and a personalized birthday card signed by the crew of CX767. Outstanding e effort from our favorite airline. Three cheers for Cathay Pacific!!!

### NOW, THAT IS WHAT WE CALL SPENDING MONEY!!!

We have been reading lately about the multitude of ways the "rich and famous" spending their money. Below require much comment...other than we want to be Mr. Goldberg's dinner guest when he starts quaffing the 'E

- Gustav Klimt's "Portrait of Adele Bloch-Bauer II" for nearly US\$88 million.
- Property tycoon Joseph Lau of Hong Kong paid approximately US\$17.4 million for Andy Warhol's port
- Sir Gordon Wu dishes out approximately US\$160,000 for a 1.5kg Alba white truffle...and he claims no odd smelling mushroom.

Howard G Goldberg in New York paid more than US\$1 million for fifty cases of Chateau Mouton-Rothschild 1 US\$1,700 per bottle.

### LOVE BOAT...CHINESE SYTLE

We read without surprise as 119 wealthy Chinese men (networth of at least USD250K) and 289 "pretty and d women paid approximately USD3,500 each to join a cruise designed to give everyone an opportunity to find t We love the math as it would appear the fellas will have a chance at two for the price of one. Yeah baby, let's conservative Chinese culture...and some people wonder how China amassed 1.5 billion people!!!

### MODELS IN THE AIR

We read while smiling and applauding the claim by Kingfisher, an Indian domestic carrier, about the looks of stewardesses. Yippee...let's hear it for honesty. After the food, wine, movies, music and, well, not much el: approach to giving the client a bit of "eye-candy" is not all that bad. Hey, if we can hire people because they e also hire people because they are PHAT!!!!??? Works for us...

### THEY KNOW HOW TO SELL PROPERTY...YEAH BABY 😊

We read with unabashed interest about the "two 42-inch-long-legged models, entirely in the nude"...who wer Properties to prance around a Hong Kong mall in an effort to promote a new project. Sadly, the photo reveal: press release exaggerated about the nudity, but he was spot-on regarding the 42-inch-long-legged bit...yeah

call selling property 😊!!!

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