

March 2008

Home



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### JACK'S CORNER

Last month, I had the opportunity to share with you a story of the Naughty Trustee. More than 20 of our readers responded and more than half of you guessed the identity of the Naughty Trustee, which is quite sad and very disturbing. Well, this month as I look out at the beautiful postcard view of Lugano, I have to tell you about the conduct of a Shocking Trustee in a different jurisdiction. Basically, a GCSL client has been trying to transfer quite a few companies to GCSL since November 2006. Although many of the companies have been transferred after the payment of an outrageous transfer fee to the Shocking Trustee, we are now in March 2008 with a handful of the companies still seeking to reach the client's preferred registered agent. The client did pay an outrageous transfer fee to the Shocking Trustee for these companies, but after doing so, was informed that the transfer fee paid was owed to the Shocking Trustee's very Unpleasant Intermediary. Now, the Shocking Trustee demanded additional transfer fees before releasing the companies. The amount of the combined transfer fees would exceed what the client actually paid every year for the government and registered agent fees!!! Yes, this is a true story. Out of control? Yes. Outrageous? Yes. Perhaps even more interesting are some of the comments made by the Shocking Trustee:

- The Shocking Trustee's Unpleasant Intermediary wrote "...we agree the transfer out after received the **transfer service fees...**" The Shocking Trustee wrote "In relation to the money owed to the Unpleasant Intermediary by your client. This related to the **renewal fees...**"

Did we miss something? The Unpleasant Intermediary clearly referenced "transfer service fees". Somehow, the Shocking Trustee translated the same to mean "renewal fees".

- The Shocking Trustee wrote "It is worth mentioning from what I understand that we were one of the last Trustee Companies to charge transfer fees and we have only had to do this because of the actions of competitors."

The thinking of the Shocking Trustee is quite interesting as he seems to indicate his firm was reluctant to impose transfer fees no doubt due to a belief the same were bad. To justify the firm's conduct, he has effectively said "because other people are acting badly, we have to act badly, but we were the last to do so." It is sort of like Little Johnny saying "I didn't want to kick Suzy, but everyone else was kicking Suzy, so I did, but I was last." Incredible!!!

I could give you a few more zingers supplied by the Shocking Trustee, but I am confident this will become a matter of public record as the case will be going to court this month. Yes, we cannot wait any longer as our client's rights are being trampled upon.

By the way, I use the term "Shocking Trustee" this month because I have been shocked with the conduct of this well-respected trustee regarding this matter. Shocking 😞

Onwards and upwards...



### GCSL NEWS

#### VISITS TO GCSL SAMOA AND GCSL COOK ISLANDS IS, AS ALWAYS, COOL

Jack made the rounds with the fellas and ladies, good food and, of course, good drink J. Samoa saw our friends from from SIFA joining our office cocktail to the very end...good on ya, Erna!!! Cook Islands with some beautiful ladies (forget the fellas J) on Valentine's Day at the beach was spectacular!!! Photos say it all...



### GCSL SHANGHAI VISIT WITH OUR SEYCHELLES AND CHINA STREETSMART FRIENDS

Jack and Marina popped in for a visit to GCSL Shanghai and caught up with our friends from the Seychelles International Business Authority and China Street Smart. Thanks for lunch, John. A photo says it all!!!



### THREE CHEERS FOR MR. ROGERS' NEIGHBORHOOD

Although many of you know GCSL Anguilla's Carlyle Rogers, I imagine many of you have never met John (Bob) Rogers, the man largely responsible for bringing Carlyle into this world (Carlyle's Mom is a most excellent lady and obviously was very much involved) and making Carlyle the man he is today (yet again, let's hear it for Mom). Bob and family recently completed The Rogers' Office Complex in Anguilla, which is described by the local newspaper as "an imposing and beautiful edifice which has come on Anguilla's landscape at a time when office accommodation in a rapidly developing island is both scarce and demanding." In addition to GCSL Anguilla, the building is now home to the Community College Development Unit of the Ministry of Education. Simply stated, The Rogers' Office Complex is a most excellent achievement for a wonderful, local Anguilla family. Three cheers for Mr. Rogers' Neighborhood!!!



## AOA 2008

The AOA has many plans for 2008 including the following:

- AOA Dubai, 16th to 18th March 2008:** Ya gotta see Dubai to believe it!!! The Raffles Hotel will be the venue. We now have confirmed that **Mr. Sandy Shipton, Executive Director - Wealth Management, Dubai International Financial Centre**, will kick off the Conference. Sandy is a well-known practitioner in the international arena, excellent speaker and all 'round good fella. Sandy's colleague, **Mr. Nik Norishky**, Executive Director - Islamic Finance, will also provide us with a brief insight into the workings of Islamic law and finance on our second day. Other notable speakers will include **Mr. Norman Glickman, Ms. Irene Potter, Mr. Brett King, Mr. Alexander Alexeev, Mr. Sam Lohman, Mr. Stany Pereira, Mr. Osama Al Masri** and, of course, our very own **Larry Lipsher**. Remember – what happens in Dubai, stays in Dubai!!!
- AOA & American Academy of Financial Management (<http://www.aafm.org>):** The AOA has arranged for the preferential Membership in and access to Continuing Professional Development courses with **The American Academy of Financial Management™**, which is a worldwide financial professional organization with members in 150+ countries hosting and organizing certification training worldwide and offering our exclusive board certification designations to candidates who meet the high standards. AAFM is in alliance with the top 560 business schools in the world. Further details of the AOA's arrangement with the American Academy of Financial Management will be sent to members in January. We are pleased to announce that **Mr. Brett King, Vice President, AAFM, will be a speaker at the AOA Dubai.**
- Young AOA:** With the help of Itzik Amiel, we have launched the Young AOA. Members have received an announcement via email. Please contact Itzik at [itzik@asiaoffshore.org](mailto:itzik@asiaoffshore.org) for more information on how you can participate in this exciting new AOA committee.
- AOA & Thomas Jefferson School of Law (<http://llmprogram.tjsl.edu>):** The AOA has arranged for a special member price of US\$2,500 per course, which is a US\$500 discount. **Thomas Jefferson School of Law** offers specialized graduate degrees and certifications through the Walter H. and Dorothy B. Diamond Graduate Law Program in International Tax and Financial Services. Established in 1998, the program remains the first and only one to offer graduate law degrees and certifications through an entirely online course of study at an ABA accredited law school.

- **AOA Hong Kong, 21st to 23rd September 2008:** Coming back home will be oh so sweet as we hold our conference at The Mandarin Oriental Hotel



## INTERNATIONAL UPDATE

### LIECHTENSTEIN: GERMAN ATTACK CALLS INTO QUESTION BANK CONFIDENTIALITY

Two of the most common questions that are asked in the offshore industry are "how safe is my banking information" and "can anyone have access to that information?"

These questions were answered again recently by a man (formerly) of the name of Heinrich Kieber. His conduct and that of his sponsor – the German Government – said "bank confidentiality definitely doesn't exist as a guarantee."

Especially, when bank employees steal the information and sell the same to the German Government.

Mr. Kieber worked for the LGT Group, specifically at LGT Treuhand AG, until 2002. A man of questionable background with allegedly an international arrest warrant issued in 1997 from a fraudulent real estate deal, he left Liechtenstein in November 2002 but not before stealing confidential data from his employer LGT and making copies on a DVD. Reports suggested German authorities then paid Kieber €5 million for the data. The data, containing apparently in total 1,400 "client relationships", 600 of those from Germany was quite a bounty for the German authorities. However, Germany apparently also sold or distributed the information to the Governments of Britain, France, Italy, Spain, Norway, Ireland, Netherlands, Sweden, Canada, the USA, Australia and New Zealand.

Reports allege that Kieber had access in 2001 and 2002 to these records because he was digitizing its paper archives. Any structures created after this date or files from other parts of the LGT Group, the impacted unit that sets up foundations, remain unaffected according to the LGT Group.

The furor created since is unfolding right now across the world as Kieber currently in witness protection is public enemy number one in the Principality of Liechtenstein. LGT is presided by the Liechtenstein's billionaire royal family. The entire financial services sector has a share of 30% of the Liechtenstein gross domestic product. 14.3% of all people employed in the Principality of Liechtenstein work in the financial services sector. Banking secrecy and its refusal to share information has been one of Liechtenstein's largest selling points. Liechtenstein and the principalities of Monaco and Andorra have been cited by the OECD for failing to comply with its information-sharing rules. This case has shone the spotlight back on the issue of a nation's Sovereignty and banking confidentiality.

While most Governments have been happy to pay to receive stolen information, Denmark is the notable exception and took a stand when the tax minister, Kristian Jensen, described the affair as an "advanced form of handling stolen goods". He goes on "I think it's a moral problem to reward a criminal for some information that he stole". "I don't like this and I don't think this ethic is the best way to ensure that taxes are paid correctly".

Germany on the other hand has threatened to extend its campaign to Switzerland, Luxembourg and Austria - all of which claim some form of banking confidentiality.

Of course there are two sides to every story and LGT and Liechtenstein itself have good claim to the theory that other Governments and LGT's competition are using mis-information to scare people off the jurisdiction and indeed the bank. Governments around the world seem to be creating a "surrender now" campaign when in effect they miss that it is quite legitimate to want to set up confidential bank accounts for broader reasons than that of the criminal nature.

Indeed most of us like to believe that our bank accounts are private information, when in essence even at a friendly local branch of Bank of America there could be a Kieber working overtime in the copy room ready to sell your client data to the highest bidder, whether it be gangs, criminals or, given some of the recent conduct, arguably the biggest criminal gang of them all - Governments.

This case doesn't stop at Liechtenstein or LGT. Once again, all banking confidentiality is once again put into question.

*Contributed by Cathy Odgers, Group Legal Counsel and Compliance Officer, GCSL Hong Kong  
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### RETIREMENT AND TAX IN THE USA

When you leave an employer, you are going to be asked to make one of the biggest financial decisions of your life. Do you want to roll over your retirement plan or not? It only makes sense due to the dollars riding on the decision that you should seek out help. However, under a little known government ruling, this decision could be one of the most expensive decisions you will ever make.

Back in 2005, the government issued an interesting opinion. This opinion stated if you paid a financial planner to help you with decisions regarding your retirement plan, your advisor would become a fiduciary to you and those retirement plan assets. To put it differently, if you are confused by the investment options with your employer's retirement plan and hire a financial planner to help you figure out these options, once the financial planner receives a fee for helping you with the account, they are considered a fiduciary to you.

This by itself does not present a problem. After all, this only makes sense, doesn't it? If you rely upon someone for advice regarding your retirement funds, they should be a fiduciary to you. Here is the problem with this situation. In that exact same ruling, the government is of the opinion that you probably have engaged in a prohibited transaction if the following occurs:

1. You ask your advisor/fiduciary for advice on what to do when you leave your employer.
2. The advisor tells you to roll the 401(k) money that you have with your employer plan into an Individual Retirement Account (IRA) managed by that advisor.

So what is a prohibited transaction? It is a death sentence for your IRA account. The tax code says that if you engage in a "prohibited transaction" with your IRA assets, the account ceases to be an IRA account. This means the value of the account is now treated as if it was fully distributed and currently taxable. Yep, you read that right, you now owe taxes on what you thought was a tax-free rollover.

The real tragedy is that thousands, if not millions, of people are going to fall into this trap unknowingly. One major investment firm even has a marketing campaign about something they call the "retirement red zone". They define the retirement red zone as the 5 years before and the 5 years after you retire. Presumably, their purpose in creating this "red zone" is to urge individuals to seek out financial planning advice before they retire from their company. Just imagine the unknowing client who does in fact hire an advisor sometime within the 5 years before they retire from their employer. Since financial advisors are paid by the assets they manage, high on the advisor's list of what to do is suggesting the client rollover his funds to an IRA managed by the same advisor. If the client follows that advice, they have just run afoul of this little known government ruling. Depending upon the age of the client, they are probably going to lose anywhere between 30 to 50% of their account value, an account they worked years to build up. Also, don't forget that a retiree who takes this advice will lose any future tax deferred growth on the account as well.

Yep, this sounds like a red zone.

If you are getting ready to retire and you want to take control of your retirement funds, make sure you talk to an advisor who knows the prohibited transaction rules inside and out so you don't lose your nest egg!

Please visit [www.trustmakers.com/Education-Self-Help/US-Department-of-Labor-ERISA-Prohibited-Transaction.php](http://www.trustmakers.com/Education-Self-Help/US-Department-of-Labor-ERISA-Prohibited-Transaction.php).

Contributed by Tim Berry, JD, Trustmakers ([www.trustmakers.com](http://www.trustmakers.com))



## HONG KONG UPDATE

### HONG KONG BUSINESS REGISTRATION FEE WAIVED

"I further propose to waive the business registration fee for 2008-09 to benefit all companies. This proposal will cost the Government \$1.6 billion in the year". And with these words John Tsang, Financial Secretary of Hong Kong, announced that the Business Registration fee (currently \$US350 equivalent) will be waived for Hong Kong companies in 2008/09. Quite how this is to be implemented we are still waiting as at the time of publication. However, GCSL proposes to deal with it in this fashion:

1. As at the date of implementation to be announced, GCSL will issue a credit note to each client with a Hong Kong company equal to the amount of the 2008/09 Business Registration fee waiver.
2. Current debit notes issued will be due in full and the credit note for the amount of the Business Registration fee will be applied against future debit notes issues for the Hong Kong Company.

And we urge all suppliers of champagne and fine wine to pass on all budget savings to their consumers in a similar fashion. Unlike the last time!!!

### HONG KONG WINE AND BEER DUTY ABOLISHED

Mr. Tsang carried on with good news by announcing the abolition of duties on wine and beer in Hong Kong with a clear objective to establish Hong Kong as Asia's leading wine hub. Aside from that, it is anticipated that GCSL Hong Kong will seek to benefit from this move in terms of the quality and quantity of wine served at Jack's Private Bar!!!

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## GULF UPDATE

### REVIVING A TIMELESS TRADITION

The almost extinct Gulf heritage of pearl trading is set to be resurrected in Dubai. However, this revival is a far cry from the old days of pearl diving when divers spent weeks searching for the treasure hidden in oysters. When the Pearls of Arabia project is completed in two years, creating a pearl business hub on "Antarctica" at The World manmade island cluster, the new face of the pearl trade in Dubai will reflect the progress the city has seen since the pre-oil era.

Led by the Dubai Multi Commodities Centre (DMCC), Pearls of Arabia is designed to serve as a hub for retail and wholesale pearl traders. It will also become a tourist attraction in the city, which is targeting 15 million tourists in 2015.

Last year Dubai set up an exchange to provide a platform for pearl trading. The 6,000-square-metre Pearl of Arabia features a themed cultural heritage centre, a performing arts theatre, an exhibition gallery and a seafood restaurant alongside boutiques to be run by top pearl fashion houses.

Pearling was the lifeblood of Arabia less than a century ago and accounted for some 80,000 jobs in the UAE alone. Pearling represented 95% of the country's revenues. The UAE had some of the best pearls at the start of the 20th century, but the diving tradition died out in the wake of the wealth generated from oil.

### TIME TO INVEST MORE IN MEDIA AND INFORMATION TECHNOLOGY

Arab investments in global markets, especially European and USA markets, have grown lately, as a natural result of the increasing oil revenue and cash surplus in oil-producing countries. These investments, estimated at US\$150 billion in 2007 and more than US\$50 billion this year so far, included many sectors, such as property, retail, banking, finance, industry and bonds.

Yet, there were no investments in the media sector, which is one of the most important modern sectors, and has been attracting huge investments

in the past few years, and generating more revenues than other strategic sectors.

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## SOUTH AFRICA

### MP FINANCE GROUP CC (IN LIQUIDATION) V CSARS

Supreme Court of Appeal (2007)—69 satc 141 (judgment delivered by Howie p; Nugent ja, Lewis ja, Van Heerden ja & Snyders aja concurring): This is an appeal from itc 1789 (2005) 67 satc 205 (2006 tsh 52). Even though a pyramid scheme is unlawful, the proceeds received by the taxpayer from its participants were taxable. The taxpayer had the intention of retaining them for its own benefit. It made its money by swindling the public. The proceeds were thus 'received' within the meaning of 'gross income'. Even though they were refundable to participants, the scheme was unlawful. The relationship between the taxpayer and the *fiscus* was different from the one between the taxpayer and the participants. An unlawful contract may hold fiscal consequences. This judgment explains why the proceeds of theft, a unilateral activity, would not be taxable but the disposal of those proceeds for value, a bilateral undertaking, would be.

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## THAILAND UPDATE

### INTELLECTUAL PROPERTY RIGHTS AND COMMON ENFORCEMENT SITUATIONS (PART II)

The purpose of this article is to explain common IP enforcement procedures in Thailand.

#### Enforcement Procedures

The normal process to enforce trademark, patent and copyright rights in clear infringement situations in a criminal proceeding is as follows:

- i. The rights owner gathers information concerning the infringement and reports infringement to police.
- ii. The police liaise with the Court to obtain necessary warrants.
- iii. The police raid and attempt to seize infringing material and/or make arrests.
- iv. The case goes to trial and the court hands down judgement or parties otherwise arrive at a settlement.

Note that unlike in the potential infringement situation described earlier, here the rights holder will not likely want to send the infringer a cease and desist letter before the above actions are taken. This is because the rights holder will not want to give the infringer advance notice of his intention to pursue a claim against him.

**EXAMPLE:** A drug company holding a patent for a particular diabetes medication discovers that a secret, unauthorized factory is producing the drug and decides to take legal action to stop the factory's production. In this situation the patent holder will not likely want to send a cease and desist letter to the factory owner as it might cause the factory owner to stop production at its present location and start production elsewhere.

Below are the respective criminal penalties applicable to trademark, patent and copyright infringement in normal situations.

#### Trademark Infringement Penalties:

	<u>Not registered in Thailand but registered overseas</u>	<u>Registered in Thailand</u>	<u>Registered in Thailand and 2nd offence within 5 years</u>
Fines applicable (import, production or sale)	up to 6,000 baht	up to 400,000 baht	up to 800,000 baht
Imprisonment applicable (import, production or sale)	up to 3 years	up to 4 years	up to 8 years

#### Patent Infringement Penalties:

	<u>Not registered in Thailand</u>	<u>Registered in Thailand</u>
Fines applicable (import, Manufacture, sale or use)	none	up to 400,000 baht
Imprisonment applicable (import, production or sale)	none	up to 2 years

#### Copyright Infringement Penalties:

	Fines applicable	Imprisonment applicable
Infringement with Commercial Purpose (reproduction or adaptation and communication to public)	from 100,000 baht to 800,000 baht	from 6 months to 4 years imprisonment
Infringement with No Commercial Purpose (reproduction or adaptation and communication to public)	up to 200,000 baht	N/A

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## CENTER FOR FREEDOM & PROSPERITY STUDY

### THE GLOBAL FLAT TAX REVOLUTION: LESSONS FOR POLICY MAKERS (NUMBER 1 IN A SERIES OF ARTICLES)

Thanks largely to tax competition, governments are dramatically improving tax policy. Over the past 30 years, tax rates on productive activity have been sharply reduced. Personal and corporate income tax rates have been slashed. Capital gains tax rates, wealth taxes, and death taxes have been lowered or eliminated. These pro-growth reforms have boosted the global economy, lowered poverty, and improved living standards.

Perhaps the most exciting development, though, is the flat tax revolution. The number will probably be higher by the time you are reading this, but as this article went to press, 24 nations have adopted some form of single-rate tax regime. These reforms have generated impressive results, including faster growth, more jobs, and increased competitiveness. While politicians generally are most concerned about losing tax revenue, they should not worry. Flat tax systems oftentimes generate higher tax revenues because of more income and better compliance.

The economic consequences of tax reform are positive, but the political implications also are profound. Governments are deciding - in part because labor and capital can cross national borders to escape punitive tax rates - that it no longer makes sense to discriminate against highly-productive taxpayers. Thanks to tax competition, expect the number of flat tax countries to continue to grow.

Contributed by Dan Mitchell, Senior Fellow of the Cato Institute and co-founder of the Center for Freedom and Prosperity ([www.freedomandprosperity.org](http://www.freedomandprosperity.org)).  
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## CHINA UPDATE

### SOTHEBY'S WINS CHINA TRADEMARK CASE

Sotheby's has triumphed in a rare Chinese trademark infringement court case against Sichuan Su Fu Bi Auction Company, which uses the same simplified Chinese characters in its name as the fancy international auction house. The Beijing court designated Sotheby's name as "well-known" and protected despite the fact that its name in Chinese simplified characters has not yet been approved as a trademark in China. The Chinese firm is appealing the decision.

### BYE-BYE "ONE CHILD POLICY"?

The Financial Times reported that China is considering altering its "one-child policy" citing comments from Zhao Baige, family planning vice minister, a senior official from the National Population and Family Planning Commission. The policy, which is quite controversial in the international community, claims to have prevented 400 million births since its implementation in the late 1970s. At present, approximately 40% of Chinese are allowed to have two or more children - including urban dwellers who are themselves only children and rural inhabitants whose first child is a girl.

### END OF ANTI-DUMPING TARIFF ON KOREAN FIBER

China has ended a five-year anti-dumping tariff on Korean polyester chips and polyester fibers, effective from February 3, 2008. The anti-dumping measure expires naturally as no one has filed an appeal since relevant announcement was made on August 3, 2007.

### CPI HITS 11-YEAR HIGH OF 7.1% IN JANUARY

China's CPI reached 7.1% in January, the highest in 11 years. Three factors are worthy attention. In January just before the traditional Lunar New Year, food prices surged by 18.2% with pork and poultry prices rising by 58.8% and 41.2%, respectively. Another factor was the severe snowstorm disaster in central and south China which destroyed crops and disrupted transport on a large scale. Undoubtedly, the 3 year high producer price index of 6.1% in January also drove up the CPI. In view of the surging CPI, experts predict that the central bank will raise interest rate once again in first quarter of 2008 and that China will continue to implement austerity measures.

### NEW INDIVIDUAL INCOME TAX THRESHHOLD

China has raised individual income tax threshold from 1600RMB(US\$224) to RMB2000(US\$279), effective as of March 1st, 2008. People who derive income from contractual operations and contract to lease business are also entitled to the amended tax threshold. For those who have housing in China but work overseas or live overseas but earn income in China, the individual income tax cut point will be unchanged at RMB4800 (US\$671). Back in 1980, China passed Individual Income Tax Law of People's Republic of China, which embodies the establishment of individual income tax system in China. At then the tax cutoff point was 800RMB (US\$119). Based on basic living costs, the threshold was raised from RMB 800 to RMB 1600 in 2006.

### CHINA WITHHOLDING TAX ON DIVIDEND

In GCSL's December 2007 newsletter, China's withholding tax (WHT) on dividend was briefly mentioned. Now, according to the latest regulation issued by State Administration of Taxation, the picture is clear. For Foreign Investment Enterprises to remit dividends, after paying and clearing all relevant taxes in China, a 10% withholding tax rate will be applied. For those foreign investors from countries with double tax treaties or agreements with China, the treaty or agreement will continue to apply. (The double tax treaty or agreement schedule is listed below.)

In the past, many multinational companies (MNCs) for tax planning purposes used simple offshore companies to invest in China. Now, with the new regulation, the MNCs should be aware of the different withholding rates that will be imposed. Many professionals have suggested changing their clients' holding companies to a jurisdiction that has a double tax treaty or agreement with China, such as Hong Kong. However, changing the investor status of a WFOE or JV is quite tedious. Therefore, the question will be if it is necessary to change. MNCs should consider the following:

- If the investment is solely to gain the proceeds from China and later repatriate to the home country.
- If the source of proceeds of the WFOE or JV is 100% from within China. Especially, for those MNCs with factories in China.
- If the WFOE or JV is considered as a profit or cost center of the entire MNCs' corporate structure.
- If the MNCs have a separate holding and trading offshore entity.

0%	Georgia (if the beneficial owner directly holds at least 50% of the capital of the company paying the dividends and has invested more than 2 million Euro in the capital of the company paying the dividends)
5%	Kuwait, Mongolia, Mauritius, Slovenia, Jamaica, Yugoslavia, Sudan, Laos, South Africa, Croatia, Macedonia, Seychelles, Barbados, Oman, Bahrain and Saudi Arabia
5%(if the beneficial owner directly holds at least 10% of the capital of the company paying the dividends)	Venezuela, Georgia( the invested amount over 100 thousand Euros)(According to the agreement with above contracting states, if the beneficial owner holds directly less than 10% of the capital of the company paying the dividends, the dividend tax rate is 10%)
5%(if the beneficial owner directly holds at least 25% of the capital of the company paying the dividends)	Luxemburg, South Korea, Ukraine, Armenia, Iceland, Lithuanian, Latvia, Estonia, Ireland, Moldova, Cuba, Trinidad and Tobago Hong Kong and Singapore
7%( if the beneficial owner holds at least 25% of the capital of the company paying the dividends)	U.A.U
8%	Austria ( if the beneficial owner directly holds less than 25% of the capital of the company paying the dividends, the tax rate is 10%)
10%	Egypt, Tunis, Mexico
10%( if the beneficial owner directly holds at least 10% of the capital of the company paying the dividends)	Japan, America, France, United Kingdom, Belgium, Germany, Malaysia, Denmark, Finland, Sweden, Italy, Holland, Czech, Poland, Bulgaria, Pakistan, Swiss, Cyprus, Spain, Romania, Austria, Hungary, Malta, Russia, India, White Russia, Israel, Vietnam, Turkey, Uzbekistan, Portugal, Bengal, Kazakhstan, Indonesia, Iran, Kirghizia, Sri Lanka, Albania, Azerbaijan, Morocco and Macao, Canada and Philippines. (According to the agreements with above states, if the beneficial owner holds directly less than 10% of the capital of the company paying the dividends, the tax rate is 15%)
15%(if the beneficial owner directly holds at least 25% of the company paying the dividends)	Norway, New Zealand, Brazil and Papua New Zealand Thailand ( if the beneficial owner directly holds less than 25% of the capital of the company paying the dividends, the tax rate is 20%)

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## SINGAPORE UPDATE

### ESTATE DUTY ABOLISHED

I am currently serving my final stint in of military service for Singapore. Despite doing my civic duty, I thought it important to point out some of the exciting changes in the Singapore Budget. As a start, a major change is set to bring the republic on par with Hong Kong in the realm of Estate Planning.

Wealthy people aside, fund managers and the financial sector have welcomed the Singapore's decision at last Friday's Budget sitting to remove the Estate Duty with immediate effect. The abolition of the "Heaven's Gates Tax" was implemented to attract the super rich not only to invest in Singapore, but also relocate here.

Up to now, estate duty affects those with properties worth over S\$9 million as well as those with over S\$600,000 in non-property based assets like cash, stocks and even expensive cars and watches. Executors, Administrators and Beneficiaries of the deceased must also bear the annoyance of having the Estate Duty Commissioner carry out checks on whether the estate should be taxed. However, this will not end with immediate effect.

Finance Minister, Mr. Tharman Shanmugaratnam, revealed at the Budget 2008 that on average, Singapore collected about S\$75 million per year

from estate duty. However, experts think its removal could potentially bring in funds worth 1,000 times that amount.

In addition, wealth managers said the announcement of a new tax incentive scheme for family-owned investment holding companies is more significant. The scheme will allow such companies to enjoy the same scope of exemptions that individuals currently enjoy on Singapore and foreign-sourced investment income.

This is because rich Singapore family enterprises which have been investing their money overseas to avoid paying taxes, like the estate duty, may now relocate their funds back home to be managed here.

Bring it on!

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## OFFSHORE UPDATE

### **ANGUILLA: THE LIMITED PARTNERSHIP - AN ALTERNATIVE TO THE IBC, LLC OR DOMESTIC COMPANY**

When it comes to offshore structures, the first thoughts that come to one's minds are the IBC, the ultimate offshore company, or the LLC, limited liability company, which is most often used by USA persons. On rare occasions the more astute offshore client or service providers would mention the use of a domestic company, in a truly zero-tax jurisdiction like Anguilla. However, such companies suffer from the fact that the directors and shareholders are disclosed publicly.

A little known structure is the limited partnership or LP which provides many of the features of the IBC, and through its partnership agreement, can be useful in any circumstance. While the most prominent disadvantage of the LP is the fact that at least one partner, the general partner, is not afforded limited liability protection in the event of creditor action, it is still a good structure for the conduct of sound business.

Anguilla enacted the Limited Partnership Act ("the Act") in 2000 along with several other pieces of legislation discussed in previous newsletters. Under the Act, an LP must have at least one general partner and one limited partner. The Act, however, does not restrict the number of either type of partner thus allowing for the use of a large number of persons to hold partnership interests in an LP. Any one partner can be both a general partner and a limited partner at the same time. The heart of a LP is the partnership agreement which can be structured in such a way to satisfy any condition or circumstance that the partners agree upon unless such features of the agreement conflict with the Act, the Partnership Act or any other law in effect in Anguilla. This agreement is to the LP what the by-laws are to the IBC. It governs everything from the day to the day workings of the LP to the manner in which partners enter and leave the partnership. To this effect, it supersedes the terms of the Act on these matters unless it is silent on them.

It is important to note that the rules of common law and equity as modified by the Act also apply to a LP unless they are expressly excluded by the Act.

The formation of a LP is similar to that of an IBC except that the name of the general partner is publicly disclosed. The names of the limited partners are not thus affording them the same degree of privacy as shareholders and directors of an IBC. It is interesting to note that a corporate entity can be the general partner of a LP.

Any changes made to the information submitted to the Registrar of Companies at the time the LP is registered, must be made known in writing to the Registrar and each year a LP must file an annual return in the same manner as an IBC or LLC.

The registered agent/registered office must maintain a register of partners, both limited and general, as well as a record of their contributions to the capital of the LP. In addition, a copy of the partnership agreement, and all amendments thereof, must also be maintained by the agent/office.

Each LP formed in Anguilla must be registered under the Act with the Registrar of Companies in the same manner as an IBC, LLC or Anguilla domestic company. The words "Limited Partnership" or the letters "L.P." must be part of the name of each limited partnership and a limited partnership cannot have a name which is already in use. Where a LP is formed in Anguilla and it is not registered under the Act, then each partner is deemed by the Act to be a general partner. Just like an IBC or LLC, a LP must have a registered agent and a registered office. GCSL Anguilla can provide this service since it is licensed to do so under the laws of Anguilla and thus we stand ready to assist clients in they so choose to use this corporate entity in their international business structuring or tax planning dealings.

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### **BELIZE: COMPLY THEN COMPLAIN...THE COMPANY POLICY**

Just last week I happened to have discussion with someone desirous of entering into a professional intermediary relationship with GCSL Belize, and do some possibly lucrative business with us. However, while he had no qualms about entering into such an arrangement, he did pose to me a rather interesting question: Is it totally necessary for him to provide us with information on the client, as some of his colleagues in the same line of work as he, i.e., company formation services, were apparently interacting with other Belize registered agents that did not require any due diligence on the prospective end user.

I am a simple man, by anyone's imagination. I believe that where there is a law, until that law is repealed, unless there is a personally moral reason for defying that law, such as slave laws 150 years ago, there is every obligation on every person to ensure that we adhere to the law. That said, let us look at the laws of Belize at this present time.

Belize, in 2007, made some changes to the law in relation to due diligence requirements on the part of the service provider, i.e. Regulations to the International Financial Services Commission Act, specifically, the Trust and Company Service Providers (Best Practice) Regulations 2007. In this piece of legislation, in a nutshell, the Basel Committee's Due Diligence Paper, published in 2001, which effectively helped set the standard for the onerous due diligence requirements to which banks now subject their clients, was imposed upon the licensed trust companies and licensed

registered agents in Belize.

We all know too well how banks can be rather stifling in their pursuit of information on their clients, and how they seek to extricate such information out of them. I have wonderful relationships with the banks with which I work, by the way, and they tend to be rather apologetic while they ask for the required information.

Let those persons out there be advised that any registered agent who does not request due diligence is not following the law, and if he is not doing that, then chances are that he cannot be trusted. It is one thing to enjoy the benefits of that non-disclosure now, but in the event something goes wrong, then all who are involved in the creation, purchase and usage of that company, are bound to find themselves in trouble. Many times, though not all the time, the person who is unwilling to provide information has too much to hide for it to be a legitimate transaction, and in this day and age of Big Brother looking over everyone's shoulder, there is too much at stake to risk having that sort of client. The money might be good, but I have my doubts about the quality of the transaction. I may be wrong, but I have seen too many instances where this happens, for me to ignore it.

Now I know that this particular individual was not trying to approach me to act in any way unlawful, but he wanted simply to know why it was GCSL Belize would ask for that sort of information when other service providers did not require it. My simple answer to him was that we abide by the law. Sometimes we think the lawmakers don't think further than their nose hole, as my goodly mother would say. Our company policy is to comply, then complain.

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### **COOK ISLANDS: BUSINESS BANKING AT YOUR FINGERTIPS**

Doing banking business from the Cook Islands has never been easier. For the last few years the Cook Islands branch of ANZ, with total assets of AUD 177 billion (and one of the world's 100 largest banks), has steadily improved its services to cater for the ever growing offshore financial services regime of the Cook Islands. It has not been an easy road, but ANZ has succeeded in bringing the Cook Islands to the forefront of banking in the world with the provision of cutting edge services to offshore customers.

ANZ has introduced an e-BIZ solution specifically for the Cook Islands offshore sector – which is a first. Finally, they have succeeded in providing international clients who utilize the Cook Islands offshore centre with the freedom to manage their business banking anytime and anywhere via the Internet. They stand alone in the provision of this service to offshore clients.

For clients looking for services that are tailored to their unique requirements, then we are able to offer banking services with Capital Security Bank Limited in the Cook Islands, a boutique private bank that is steadily gaining a reputation for its delivery of service. Add the fact that CSB can offer reasonable rates with minimal banking fees makes it worthy of consideration as a banking alternative for those seeking personal service.

From an offshore point of view, if you were to incorporate a Cook Islands international company or set up a Cook Islands international trust, we can have an account opened with the ANZ or CSB within a couple of weeks of receiving all necessary documentation. The usual due diligence requirements of certified passport copies and evidence of residence via utility bills remain, but the process is now streamlined such that two weeks for the opening of an account is considered slow.

ANZ e-BIZ runs on the secure ANZ network, which has a host of built in security features including SSL 128 bit encryption. Importantly, to access ANZ e-BIZ, you must have a unique Customer Registration Number and password.

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### **SAMOA: JACK & PUAI WORKING HARD AND SIFA IS ON THE PROMOTION ROAD**

In February, GCSL Samoa welcomed Jack W. Flader Jr, our CEO and Group Managing Director, together with Puai Wichman our Managing Director for Samoa and the Cook Islands. It was a brief visit in time for them to view our new premises and to meet our new staff member, Ms. Salometaioa Peteli. Salome previously worked at the Registrar's Office and we welcome her savoir-faire and experience in the registration of IBCs. A dinner was hosted by the Governor of the Central Bank and SIFA at Sails Restaurant - a night I'm sure Jack and Puai enjoyed.

A delegation from the Registrar's Office is getting geared for their annual promotional tour of Hong Kong, during the famous Hong Kong 7's (25th to 28th March 2008). Before that, however, the delegation will be heading to Dubai to attend the Dubai Asia Offshore Association (AOA) Conference from 16th to 18th March 2008.

Since 1988, SIFA has been consistently touring the Asian region, promoting Samoa as a preferred jurisdiction for offshore activities. Apart from the advantages of attending the AOA conferences, the Hong Kong 7's has always provided the platform for SIFA to promote Samoa given the popularity of the sport worldwide. At the same time, it allows SIFA to meet and update the principals of all its licensed trustee companies on any new developments in Samoa.

In the pipeline are proposed laws regarding the establishment of Mutual Funds in Samoa as well as the tightening up of the secrecy provisions under Samoa law.

Part of SIFA's approach obviously is to increase offshore activities in the jurisdiction. Their approach is to reinforce a well-established jurisdiction with much to offer potential investors. Well noted are some of these advantages:

1. Our different time zone where companies can be registered a day behind the Asian time-zone.
2. Our diplomatic ties with the Embassy of the People's Republic of China, allowing for the legalization of corporate documents in a timely manner.
3. The ability of the Registrar's office to register dual language (English/Simplified Chinese) names, printed on dual language Certificates of Registration.

Samoa has much more to offer and you will find these in SIFA's newly produced dual language informational brochure available for distribution

during the tour. Should anyone require copies ahead of time, GCSL (Samoa) can provide a few copies through our Samoa office or alternatively contact GCSL Hong Kong.

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## TIDBITS

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

### OUR MONTHLY QUOTE THAT MADE US SMILE

There's no reason to become alarmed, and we hope you'll enjoy the rest of your flight. By the way, is there anyone on board who knows how to fly a plane? - The seriously funny movie, *Airplane*

### CONFIDENCE IN GOVERNMENT

We recently learned from our friends at The Sovereign Society ([www.sovereignsociety.com](http://www.sovereignsociety.com)) of some government "oops" regarding passports. We thought our readers might like to see where their tax \$£€ are wasted.

- About 60,000 valid Finnish passports are missing, many of them believed to be stolen.
- An estimated 10,000 British passports were issued after fraudulent applications in the space of a year.
- An armed gang stole 9,000 blank French passports in Paris.
- More than 2,500 blank Mexican passports were taken from a contract courier service in Mexico City.
- The Ministry of the Interior reported about 2,500 Russian passports missing.
- In Thailand, authorities have seized more than 1,000 fake passports.

### BUY THE S&P 500 IN 2008...SO SAYS THE SPORTS ILLUSTRATED SWIMSUIT RAG

We are buying the S&P 500 index this year purely based on the expert analysis done by some connoisseur of curves with too much time on his hands as he demonstrated that the S&P 500 during the last 30 years rallied for a 13.9% gain, on average, when a Yank was the poster gal on the front cover of the Sports Illustrated Swimsuit Issue. The Yankee Doodle Dandy Gals only scored one negative year. The overall average was only 10.5% and non-Yank years averaged only 7.2%. Given the "success" of most fund managers, we reckon it is worthwhile to take a punt on the Sports Illustrated Swimsuit Index as it is featuring a Yank in 2008. A bull market in the offing...either way, the photo is PHAT!!! Yeah, baby!!!

### I DON'T?

We recently read that a Mexico City Congressman has proposed that grooms or brides who fail to say "I do" at the last second will have to pay for the expenses of the other party. We understand that Mexican weddings are big social events with a lot of dosh being splashed about, primarily by the bride's family, and 500+ guests in attendance....sounds like Hong Kong to us!!! Ouch...perhaps one should say "I don't" a lot earlier in the process...after all, 3 out of 10 marriages in Mexico City end in divorce!!!

### SUPER LAWYER!!!

We understand that a New York lawyer claimed to work as a full-time employee of five Long Island school districts as legal counsel, which means he clocked up 1,286 days in one calendar year. Ah, yes, he also worked as "Of Counsel" to a New York law firm. Super lawyer? Honest error? Full on fraud? The FBI will let us know soon...ouch!!!

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