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Home



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GCSL - We are here to CONSULT and Serve You!



JACK'S CORNER

Greetings from 30,000 feet in the air between New York's JFK Airport and Miami. It is Mother's Day weekend and I am quickly parachuting into Miami on my way to Panama to see Mom, Grandmom, the siblings, the siblings' lesser 1/2s (except for Elizabeth, of course) and my entertaining nieces and nephews. Yes, I am unashamedly a "mama's boy". Why not? She suffered for nine months while I no doubt kicked about her insides; she did the heavy-breathing-push-yucky-poooh thingie that happens when giving birth; she made me study, go to church, exercise, compete, be nice to my siblings and do all those other things that happen as you go from 9 months to 18 years and she never asked for thanks or, gee whiz, money; she was there during happy and unhappy times always supportive and often dispensing the "tough-love" that only could come from growing up in Brooklyn in a Sicilian family; she often nagged and nudged, usually for all the right reasons, until I did the right thing; she helped my siblings the same way; she loved my father; she takes care of my Grandmom; she is always there for my siblings and my siblings' liliputians; she is one of few people who can drive me crazy and I still come back for more; she is my Mom. Shucks y'all, what can I say, but I love her!

I hope you will like our new monthly column - **Professor Tsih's Tales** - which is written by GCSL's very own and my long-time teacher, Stephen Tsih.

Don't worry, I will be back with something more business-like next month, but until then...

Onwards, upwards and always Momwards



PROFESSOR TSIH'S TALES

Throughout my working career, I have had the fortune of working in three different continents - Asia, Africa and North America. Furthermore, I've worked with people from all cultures and ethnic backgrounds - in particular, Chinese from the mainland, Taiwan, Hong Kong and Singapore. While they're of the same origin, sharing the same history and roots, they are distinctively different culturally and in many aspects of habits and tradition. The way they act, the way they behave and the way they think are different. They may look the same, but they are of different people. Therefore, doing business with Chinese is a difficult experience, and requires a very unique mentality and acumen.

Over the years, I've studied the Chinese business persons extensively and developed the "Ten Commandments of doing business with Chinese". These Ten Commandments are:

1. Make Friends First
2. Know the People
3. Alliance Always Works
4. Find the Needs
5. Politics Affects All
6. Beware of Poor Economies
7. Commodities, Commodities, and Commodities
8. Watch China
9. Watch Japan
10. Watch the Dollar

In the following months, the Professor will share with you his experience and insight in doing business with the Chinese, and explain each of the commandments in detail.

Stay tuned.



GCSL NEWS

SPECIAL ALERT!!!

The Association of Corporate Travel Executives (ACTE) is warning members and all business travelers to limit proprietary information on laptop computers when crossing US borders after an April 21 federal appeals court decision that "gives customs officials the unfettered authority to examine, copy, and seize traveler's laptops - - without reasonable suspicion." The right to search without cause includes cell phones, handheld computers, digital cameras and USB drives.

NEW BUSINESS DEVELOPMENT FACES

I would like to introduce some of the new business development faces at GCSL.

Elie Sfeir, General Manager - Fiduciary Services: Elie has more than 15 years experience working in senior marketing positions in the Middle East, Hong Kong and China. He has a PhD, MBA and BA all with emphasis on business administration and marketing. Elie brings marketing and offshore structuring skills to GCSL as well as fluency in English, French, Arabic and several Middle East dialects.

Stephen Tsih, Director of Business Development - Greater China: Stephen has over 30 years of business and academic experience in Hong Kong, Nigeria, Taiwan, China and the USA. He was an Assistant Dean of the graduate school of business at an USA university and also taught international marketing and management at several other universities. Prior to joining GCSL, he was retained as the lead consultant by Lan Hai Group in Sanya, Hainan Province to start a new hotel management college and brought Ecole Hoteliere de Lausanne as a cooperating partner. Stephen has Bachelor of Science in Marketing and Masters of Business Administration in Financial Services. He is fluent in spoken and written English and Chinese, including Mandarin, Shanghaiese, Cantonese.

Ooi Hoay Beng, Director of Business Development - Asia: Ooi has more than 27 years business experience in Asia having worked for multinational companies such as BHP Steel, Akzo Nobel, Veolia Water, and Metsaliitto Finforest in senior management roles with direct bottom line responsibilities in Malaysia, Taiwan, Singapore, Brunei, Hong Kong and China. He also was senior advisor/consultant to US Filter, Woelco AG, Armstrong Industrial Corp, The Executive Learning Center, Evapco and Pac Environmental Engineering Inc in China and consults on areas ranging from market entry strategies, startups, market penetration and corporate reorganization. Ooi is also an active member of several international and local Chambers of Commerce including the European Chamber of Commerce in Shanghai. He studied Marketing at Monash University, Mt Eliza Business School, Australia and Finance at the University of Michigan. Ooi is fluent in written and spoken English, Chinese and Malay.

GCSL PLATINUM SPONSOR OF INTER PACIFIC BAR ASSOCIATION CONFERENCE

Inspired by the dynamic organizer, Tracy Kwiker (www.pivotalresource.com), and her wild 'n crazy volunteer brother Scott, GCSL was a big hit at the Inter Pacific Bar Association (www.ipba.org) Conference in Los Angeles. Marina, Carlo, Vance, Stephen, Ooi and Jack started strong at the opening cocktail when GCSL sponsored some super synchronized swimming that included the GCSL logo and finished with some dancing and singing at the closing gala at Sony Studio. Lots of new friends, good networking, fun and, of course, wine. The photos say it all!!!



GCSL SILVER SPONSOR OF AMERICAN BAR ASSOCIATION CONFERENCE

No sooner had we packed our suitcases that Carlo, Vance, Marina and Jack joined Carlyle to attend the American Bar Association (www.abanet.org) Real Property, Tax and Trusts & Estates Conference in Washington DC. We would like to give special thanks to the fellas at BCG Valuations (www.bcgvaluations.com) for providing us with those additional tickets to visit the home that Washington Built, i.e. the much talked about and certainly not disappointing Mount Vernon. Even more new friends, good networking, fun and, of course, wine, with the BCG Boys and the Dynamic Duo – Terry & Kathryn of The Insurance Design Center (www.idc-llc.com)!!! Role them photos, please!!!



HANGING WITH SOME FRIENDS OF GCSL

I departed on the 20th April, and it is now the 12th May. Some photos below of GCSL Friends.



AOA 2008

AOA HONG KONG, SEPTEMBER 21 - 23, 2008

The AOA is coming home for one humdinger of a conference at The Mandarin Oriental Hotel in Hong Kong. We are exceedingly pleased to have **David O'Rear, Chief Economist, Hong Kong General Chamber of Commerce** (www.chamber.org.hk) as our Keynote Speaker. David knows the economies of the Greater China Region, and he will be sharing that knowledge with our delegates. We are equally pleased to have an AOA Global Advisory Committee Member **Michael Lintern-Smith, Partner, Robertsons Law Firm** (www.robertsonshk.com), who will give us a closer look at the business and legal developments in Greater China. An AOA Executive Committee Member, **Michael Nelson, Law Firm of Michael Nelson** (www.go-offshore.com), and **Dan Mitchell, Senior Fellow, Cato Institute** (www.cato.org), will enlighten us about some USA taxing matters in the run-up to the always interesting USA Presidential Elections. European tax and structuring matters will also be front and center with an AOA Global Advisory Committee Member and Gold Sponsor **Erich Baier, Managing Director, Bilanz-Data Wirtschaftstreuhand** (www.austrian-taxes.com), and AOA Global Advisory Committee Member **Diana Palombo, Director, The Benedict Partnership** (www.benedict-partnership.co.uk). Banking always is a subject about which we need to know more and **Franck Chen, Associate Director, Barclays Wealth** (www.barclaysasia.com), will provide us with his insights. **Gary Ferraro, President, Guardian Trust Company (Asia)** (www.guardiantrustcompany.com) has confirmed to be Chief Sponsor and Gary will also provide us with an insight to the cutting edge concept of Life Style Investing. Finally, we will hear from a panel of practitioners about the most recent developments in the Seychelles.

Come one, come all to the AOA Hong Kong Returning Home is Oh So Sweet Conference!!!



HONG KONG UPDATE

FIGHTING SPAM AND UNSOLICITED CALLS

In an attempt to control the impossible, Hong Kong has enacted phase two of the Unsolicited Electronic Messages Ordinance ("UEMO") from December 2007.

During the Phase One implementation at June 2007, provisions prohibited:

1. the use of unscrupulous techniques to expand the reach of commercial electronic messages; and
2. fraud and other illicit activities related to the sending of multiple commercial electronic messages.

Senders of commercial electronic messages are now required:

1. to provide clear and accurate sender information in the message;
2. to provide an unsubscribe facility and an unsubscribe facility statement in the message;
3. to honour unsubscribe requests within ten (10) working days after the request has been sent;
4. not to send commercial electronic messages to any telephone or fax number registered in the do-not-call registers starting from the tenth (10) working day of its registration, unless consent has been given by the registered user of the relevant telephone or fax number;
5. not to hide the calling line identification information when sending messages to telephone or fax numbers; and
6. not to send email messages with misleading subject headings.

Regarding point 4. above, the provision of do-not-call registers is an important measure in the UEMO to protect the public from receiving unsolicited commercial electronic messages sent to their telephone or fax numbers. By registering a telephone / fax number to a do-not-call register, the user in effect has opted out from receiving further commercial electronic messages at this telephone / fax number from all senders. Similar registers have been set up by the USA, UK, Australia and India governments.

UEMO is an important prosecution tool for those of us in Hong Kong who are used to recorded messages sent to our cellphones at all hours, clogging up our voicemail machines and email in-boxes. The issue is of course with outside material not covered by legislation in Hong Kong. While the writer can report a drop-off in unsolicited and unwanted cellphone calls and text messages (ironically from everyone OTHER than the phone provider itself), King our IT man is still struggling with GCSL server spam.

For the record, the writer does not require Viagra at \$19.95 a packet.

*Contributed by Cathy Odgers, Group Legal Counsel and Compliance Officer, The GCSL Group of Companies
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CHINA UPDATE

2008 LIST OF COMMODITIES RESTRICTED FOR PROCESSING TRADE

On April 5, 2008, the Ministry of Commerce and General Administration of Customs announced the 2008 List of Commodities Restricted for Processing Trade. In total, 1816 items are on the list with 39 newly added commodities and 598 from the second category released in 2007 while in the first category of 2007, 1853 items were involved. The adjustment aims to optimize China's export structure, to curb the export of high-polluting and high-environment-risking products and to upgrade China's processing trade industry.

FDI SURGED IN 1ST QUARTER

Despite the new corporate income tax law, foreign direct investment ("FDI") in China has continued to grow. In the first 3 months of this year, realized FDI achieved US\$27.41 billion, up 61.26% compared with the same period of last year while the number of newly established foreign enterprises declined to 6949, down 25.26%. This has dispelled the concern that the new corporate income tax policy may hinder FDI. The new tax policy that took effect this year has unified the income tax for domestic and foreign enterprises to 25%, while previously the rate was 33% for the former and 15% for the latter.

CHINA SLASHES STOCK STAMP DUTY FROM 0.3% TO 0.1%

Approved by the State Council, the Ministry of Finance and State Administration of Taxation have decided to cut the stock stamp duty to 0.1% from 0.3% as of April 24, 2008. The stamp duty is levied on both sides of the transaction. The decision is made in the face of China's depressing equities market that has fallen by 46% from its peak time last October. On May 30, 2007, the stamp duty was raised from 0.1% to 0.3% in a bid to cool down domestic sizzling stock market.

WAHAHA CHAIRMAN IN TAX EVASION SCANDAL

Wahaha Vs Danone dispute reached another climax as the head of Wahaha, Zong Qinghou, is now involved in a huge individual income tax evasion investigation in China. Zong is accused of "hiding huge income both at home and abroad, and failing to declare his individual income". Data reveal that during the past ten years, Zong's income mainly falls into three categories. The first category covers his salary including a monthly salary €3000 plus an annual allowance of €100,000 as well as a commission fee of 1% of Joint Ventures' profit. The second category is mainly about overseas income. Zong and his family received around US\$71 million in compensation from the Joint Ventures since 1996 to 2006 via four family members' personal bank accounts in Hong Kong. The stock dividend income from the Joint Ventures belongs to the third category at RMB1billion. In short, Zong's income in the past ten years exceeded RMB1.5billion (approximately US\$213million), which would incur taxes of RMB300million (approximately US\$42.61) based on a 20% tax rate. By last November, Zong had paid RMB200 million (approximately US\$28.41million).

*Contributed by Johnson Chien, General Manager – Fiduciary Services, GCSL Shanghai
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CHINA STEPS UP FOR CREATIVE ENTREPRENEURS

The Chinese Government recently announced it will set up 40 service centers around the country offering advice and funding for entrepreneurs who cannot afford to apply for intellectual property rights ("IPR") protection. This is an indication that China is making an effort to promote IPR awareness. The State Intellectual Property Office indicated that high-tech enterprises will be a high priority under this initiative. Domestic companies and research institutes submitted 5,402 patent applications last year, while foreign enterprises submitted 92,000 applications during the same period. More and more Chinese companies now own intellectual property and are suing each other including foreign companies as they begin to grasp the value of such protection. Companies need to think about their IP strategy before they come to China, not after they run into trouble.

*Contributed by Ooi Hoay Beng, Director of Business Development – Asia, The GCSL Group of Companies
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NEW VISA RESTRICTIONS - DRASTIC IMPACT ON CHINA'S EXPATRIATE COMMUNITY

In the run up to the upcoming 2008 Olympics, China has placed severe restrictions on the availability of visas, both business and tourist, on 33 nationalities. For many of the near quarter million expatriates living and working in the country, the flexibility of the multiple entry visa allowing stays of one year or longer, and the relative ease of obtaining extensions in country or with a quick stop across the border in Hong Kong allowed for the building of successful business and private lives. Under the new rules, stays will be limited to 30 days or less for a single entry and any extension or renewal must be acquired from a Chinese consulate in the applicant's home country. The government has also begun enforcing already existing regulations requiring foreigners not staying in luxury hotels to register with the police. Although the consequences of registration are not clear, the move has rattled many foreigner tenants and their Chinese landlords. As the new rules were introduced with little explanation beyond "security", governments and business organizations are seeking further clarification from China as well as whether the new rules will continue after the Olympics. In the meantime, many long term residents are now facing the possibility of leaving China permanently.

*Contributed by Elie Sfeir, General Manager – Fiduciary Services, GCSL Hong Kong
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CHINA'S SOVEREIGN FUND PUSHES FORWARD DESPITE CONCERNS

China Investment Corporation ("CIC"), the formal name for China's sovereign fund, has been given the green light to increase its overseas investment quota to US\$90 billion, up from US\$66 billion, despite ongoing concerns that the fund and its investments will be politically-driven. Sovereign funds are nothing new – Norway has invested over US\$300 billion in companies globally and is the poster child for transparency – but the recent emergence of several Middle Eastern funds as well as China's monster fund have raised concerns about national security issues for the USA and other Western nations. In particular, CIC's multi-billion dollar investments in some of the world's leading financial institutions (seen as bailouts by some) as well as proposed investments in other sensitive industries have provoked calls by the USA administration and others for significantly higher scrutiny than private funds. The increased attention has caused managers of many of the funds to cry foul, noting that the purpose of the sovereign fund is no different than that of a private fund – to make money. Over the last several months, CIC has undertaken a PR campaign that has included an appearance by the fund's manager on USA news program 60 Minutes and deals with USA based private equity funds to alleviate reporting and regulatory concerns. At the end of the day, CIC has been entrusted with a good percentage of China's foreign exchange and is under pressure from the Beijing to produce financial results. Should the USA continue to pressure multinational companies to shy away from CIC's investments, observers will be very interested to see to where the money will flow.

*Contributed by Jason Gerber, Business Development Executive, GCSL Hong Kong
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SINGAPORE UPDATE

A recent study published by Barclays Wealth claims that Singapore is expected to surpass Hong Kong within 10 years as home to the highest concentration of millionaires in the world. A total of 40.7% of all households, or 436,000, are expected to have new wealth in excess of US\$1 million by 2017. Singapore ranked second with 23% last year, trailing Hong Kong at 26.4%. The opening of previously protected sectors such as financial services and several free-trade agreements have helped Singapore's rise as well as the policy to focus on higher value-added services such as technology.

*Contributed by Lawrence Fong, Managing Director, GCSL Singapore
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INTERNATIONAL UPDATE

CENTER FOR FREEDOM & PROSPERITY STUDY GLOBAL FLAT TAX REVOLUTION: LESSONS FOR POLICY MAKERS (NUMBER 3 IN A SERIES OF ARTICLES)

The pure flat tax system is based on the proposal put forth by Robert Hall and Alvin Rabushka of Stanford University's Hoover Institution. Hall and Rabushka brought the concept of the flat tax to national attention in a 1981 Wall Street Journal article and later in a 1983 book (which has been updated). Casual observers frequently associate flat tax plans with radical simplification, but postcard-sized tax returns are the potential result-not the cause-of the pro-growth components of a flat tax. These positive features include:

- **A Single Flat Rate.** The flat tax has a single rate, and the goal is to bring the rate down as low as possible, usually less than 20 percent. The low, flat rate reduces penalties against productive behavior, such as work, risk taking, and entrepreneurship.
- **Elimination of Special Preferences.** The flat tax eliminates provisions of the tax code that create tax advantages for certain behaviors and activities. Getting rid of deductions, credits, exemptions, and other loopholes promotes growth both by allowing a low tax rate and by removing incentives to misallocate resources merely to reduce tax liability.
- **No Double Taxation.** Flat tax proposals are based on the principle that income should be taxed only one time. This means no death tax, no wealth tax, no capital gains tax, no double taxation of saving, and no double tax on dividends. Eliminating the tax code's bias against capital formation is conducive to job creation and capital formation.
- **Territorial Taxation.** The flat tax is based on the common-sense notion of "territorial taxation," meaning that governments only tax income that is earned inside national borders. Getting rid of "worldwide taxation" simplifies the tax system, promotes international comity, and enables taxpayers and companies to compete on a level playing field around the world.

The flat tax has other selling points, including transparency (it is difficult to swap campaign cash for special tax breaks when the tax system is based on two postcards) and generous personal allowances based on family size. These features are politically important, but the economic benefits of fundamental reform result from the above factors-particularly the low tax rate on productive behavior and the end to tax code biases based on the source of income, use of income, or level of income.

Single-rate tax systems have suddenly become very popular. Up until 1994, the only jurisdictions with flat tax systems were Hong Kong, two other (very obscure) British territories-Jersey and Guernsey, and Jamaica. Today, by contrast, there are 24 flat tax systems. With just a handful of exceptions, the new flat tax jurisdictions are former Soviet Republics or Soviet Bloc nations.² But Iceland's shift to a flat tax in 2007 is a key development since it shows that tax reform is possible in a mature and prosperous democracy.

The shift to flat taxes is dramatic. For decades, critics said a flat tax was unrealistic and that Hong Kong was a special case. They never explained why it was a special case, but supposedly a flat tax could not work anyplace else. They made similar assertions after the Baltic nations adopted flat tax systems, but adapted their arguments to suggest that a flat tax only worked in small jurisdictions. But then when Russia and other large Eastern European nations hopped on the flat tax bandwagon, opponents began to concede that flat tax regimes were feasible, but rationalized that tax reform worked only in transition economies. Now that Iceland has a flat tax, one can only imagine the new excuses that will be used to argue the flat tax does not work or that it is impractical.

If imitation is the highest form of flattery, the flat tax certainly is getting lots of praise. The flat tax revolution is especially remarkable because so many wanted to dismiss it as a fad. Indeed, as recently as 2006, an International Monetary Fund study boldly stated that, "Looking forward, the question is not so much whether more countries will adopt a flat tax as whether those that have will move away from it."³ Yet within months of the IMF study being released, as seen in Table 1, several new nations were part of the flat tax club - and several more nations hopped on the flat tax bandwagon this year. The international bureaucracy's powers of prediction certainly leave much to be desired, both because the study was wrong about whether more nations would adopt flat taxes, but also because the speculation about countries moving in the other direction proved false as well.

*Contributed by Dan Mitchell, Senior Fellow of the Cato Institute and co-founder of the Center for Freedom and Prosperity (www.freedomandprosperity.org)
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DON'T TRUST THE TRUSTEE UNLESS IT IS YOUR PRIVATE TRUST COMPANY ("PTC")

The prospective client's lawyer makes a glowing introduction about me to which the client remarks "My lawyer says you know what you are doing, you have been in the industry for many years, you seem like a good fella and you are a qualified lawyer. All good. But trust you? Hey, Jack, I only just met you!" This is a typical comment by prospective clients. I understand their feelings. Depending on many factors, I often move quickly to a discussion about the private trust company.

A PTC generally can be defined as a trust company directly or indirectly owned by the settlor of a trust and restricts its activities to settling trusts for the benefit of family members. Let's define a settlor as the person who sets up the trust, a trustee as the person to whom the settlor transfers legal title of the assets and the beneficiaries as the people for whom the trustee holds legal title of the assets.

The PTC has been gaining in popularity due to the settlor's (a) desire to maintain greater control over the administration of assets, (b) interest in reducing costs of operating a trust structure which in older jurisdictions are prohibitive and (c) concern that the trustees may not act in the best interests of beneficiaries, particularly when the trustee is a part of a global banking group.

Several jurisdictions have either enacted specific legislation or, by the very nature of their legislation, allow for PTCs.

Anguilla: The Anguilla Trust Companies and Offshore Banking Act has specifically provided for granting of a restricted trust license. Unlike many other jurisdictions, the Anguilla PTC is a *licensed trust company* which is regulated by the Anguilla Financial Services Commission. Advantages include:

1. Statutory protections under the Act.
2. Greater credibility than an unregulated company simply acting as a corporate trustee.
3. Established through the incorporation of a totally tax-free Anguilla domestic company, which allows for corporate directors and shareholders to maintain confidentiality.
4. The settlor can be a shareholder and director of the company as well as a beneficiary of the trust for which the company is the trustee.
5. The settlor may establish any number of trusts for his benefit or that of his family.
6. Paid-up capital requirement can be discussed with the Commission.
7. Administration of the assets of the trust can be executed by the trust company.

Belize: The Belize Trusts Act does not specifically require a trustee to be licensed. As such, a settlor may form a Belize International Business Company to act as a PTC and proceed to settle a trust for his benefit, that of his family or for any other person. However, the recently enacted Trusts (Amendment) Act requires that the trustee must appoint a trust agent, which must be resident in Belize, willing to accept service of process on behalf of the trustee and must be in possession of a trust license issued by the Belize International Financial Services Commission.

Singapore: The Singapore Trust Companies (Exemptions) Regulations provides for an exemption to licensing where the PTC is a Singapore company formed to act as trustee only to a trust where every settlor is a "connected person" with respect to any other settlor of any other trust administered by the PTC, and every beneficiary of a trust is a "connected person" with respect to the settlor of that trust. Despite this exemption, a PTC must still outsource its anti-money laundering requirements to a licensed trust company.

Conclusion: Anguilla, Belize and Singapore provide some interesting twists on the time-honored legal concept of a trust. Regardless of the jurisdiction, the PTC balances the need for continuing influence over the administration and management of the assets by the settlor and the legal soundness of the trust for which the company is trustee.

*Contributed by Jack W. Flader, Jr., CEO & Group Managing Director, The GCSL Group of Companies
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OFFSHORE UPDATE

ANGUILLA: MINIMUM MARGIN OF SOLVENCY FOR INSURERS

The Financial Services Commission ("the Commission") in Anguilla, which is the island's regulatory body, has issued recently, a series of guidelines to insurance managers under section 48 of the Financial Services Commission Act 2003. This section grants the Commission the power to issue guidelines to licensees in the operation of their business. This article, which deals with the minimum margin of solvency for insurers which of course insurance managers must ensure the insurers for which they provide management services for comply with, is the second in a three set series which looks at these guidelines. Frequent readers of this newsletter would know that GCSL Anguilla holds an insurance manager's licence under the Insurance Act 2004 (the Act) in the name of Global Insurance Managers (Anguilla) Limited and thus these guidelines are particularly pertinent to the GCSL group.

The amount by which an insurer's assets must exceed its liabilities shall be referred to as the minimum margin of solvency.

1. In the case of an insurer other than an insurer carrying on long-term business, the minimum margin of solvency shall be the greater of the minimum amount of paid up capital as prescribed in Section 3(1) of the Act or:
 - (a) Where the Net Retained Annual Premium (NRAP) of the insurer does not exceed US\$5,000,000, 20% of Net Retained Annual Premium;
 - (b) Where the Net Retained Annual Premium of the insurer exceeds US\$5,000,000, US\$1,000,000 plus 10% of the amount by which Net Retained Annual Premium exceeds US\$5,000,000.
2. In the case of an insurer carrying on long-term business the minimum margin of solvency shall be at least the minimum amount of paid up capital as prescribed in Section 3(1) of the Act.
3. In the case of an insurer carrying on long-term business and other business the minimum margin of solvency shall be the aggregate of the amounts required by subsections (1) and (2) in respect of both categories of business.

In subsection (1) above the expression "net retained annual premium" means the gross premium income earned in respect of general business during any financial year of the insurer reduced by any premiums paid by the insurer for approved reinsurance during such financial year.

GCSL Anguilla welcomes the issuance of these clarificatory guidelines and looks forward to complying with them while working with licensed captive and other insurance companies to develop Anguilla as a reputable insurance domicile.

*Contributed by Carlyle Rogers, Managing Director, GCSL Anguilla
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BELIZE: THE ROLE OF THE PROTECTOR

In Belize, Section 16 of the Trusts Act allows for the trust instrument to provide for the office of Protector. The role of Protector is a tried and tested element of the Offshore Trust industry. It is also very clear, in no uncertain terms, as to the basic powers of the Protector. Section 16(2) shows that the Protector has the power "...to remove a trustee and to appoint a new or additional trustee." That is the main function of the Protector, but in fact there are other powers that can be conferred on the Protector, by the terms of the trust.

The law is very clear that a Protector may also be a trustee, or may even be the settlor or beneficiary, of a trust. When exercising his powers as a Protector, that individual is not treated in the same manner as a trustee. The law is also abundantly clear that in the exercise of the office of Protector, the individual owes a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust is created.

There can even be a committee of Protectors, and they operate by simple majority vote, ensuring that a decision is always completed by the committee. Also nice to note is the provision of Section 23(3) which protects the trust property from creditors. This is good as it protects the property from any financial impropriety by the Protector.

Does this sound all too familiar? Some of you seasoned practitioners have used this office as the proper go-between for the client. What we are now seeing, however, is that a number of "professional" trustees are telling potential clients that it is not necessary for them to have a Protector. I personally find this rather disturbing for the simple reason that trustees do this because they do not want anything operating like the sword of Damocles, fettering or monitoring their activities, so that if they decide to bill for arguably exorbitant fees, there is only recourse to the court to redress the same. A Protector might not be able to stop the first bill, but firing that trustee will put an end to an endless onslaught upon the trust property, which is where the payment ultimately comes from.

This whole scenario comes back to a phrase which one of my best intermediaries uses: "Don't trust the Trustee." It is something that I personally advocate. I firmly believe that absolute power corrupts absolutely, and, not that my intent is to steal anyone's money, but even if there were such an intent resident within my being, it would be at the very least severely tempered by the knowledge that any attempt would result in my removal from the post of trustee, thereby killing the goose that would lay the golden egg. Those are words to live by, never trusting the trustee. It never hurts to have a little insurance, and the Protector provides for that. You betta Belize it...

*Contributed by Carlo Mason, Managing Director, GCSL Belize
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COOK ISLANDS: UNIT TITLES ACT 2005 - INVESTMENT MADE EASIER

As part of its efforts to increase foreign investment, the Cook Islands have embarked on changes to its land tenure system, in an effort to facilitate this process.

While the Cook Islands Unit Titles Act 2005 (the "Act") was based on similar laws in New Zealand and Fiji, a significant difference is that it provides that stratum estates in leasehold (as unit titles are more technically called) can only be on leasehold land. In New Zealand and in Fiji, as well as being on leasehold land, they can be established on freehold land as well. The Act is also substantially different in its detail, particularly insofar as landowners' rights are concerned, from its New Zealand and Fiji equivalents in that it preserves the attributes of the Cook Islands land tenure

system.

The Act does not alter or remove the fundamental basis of Cook Islands land law set out in the Cook Islands Act 1915. There are various types of land tenure in the Cook Islands other than leases. We have customary interests, freehold interests, occupation rights, and land acquired by vesting orders, the latter two amounting in effect to freehold. However, leasing is increasingly the tenure of choice for landowners and land users alike, because of the advantages that leasing offers both parties. Leases offer landowners the ability to seek payments for goodwill and rent, and to enforce through court action or forfeiture, the provisions of the lease. A lease must also come to an end after a maximum 60 years. Specific provisions of interest in the Act include:

- Section 3 provides that the owner of an estate as lessee of a parcel of land may, if the terms of the lease expressly so permit, subdivide all or part of that parcel into unit titles. This requires that unit titles can only be established on a leasehold interest in land, if the terms of the lease expressly permit it. A new lease or a variation to a new lease has to be agreed on with landowners in every case, before any unit title development can occur.
- Section 5(1)(e) states that the High Court shall not approve a unit plan unless the Court is satisfied, through the Leases Approval Tribunal that the landowners understand the nature and extent of the development.
- Sections 19, 20(1) and 20(2) of the Act require the approval of the Leases Approval Tribunal to any dealing with the area within a unit title development known as a common area. Such areas comprise recreation areas, driveways, etc. that all unit holders have access to.
- Section 23 provides that the establishment of unit titles does not affect the landowner's underlying freehold title in the land. Section 28 was inserted to preserve the rights of landowners to forfeit (cancel) a lease in the event of a breach of that lease by the lessee. Reasonable notice must be given except in the case of forfeiture for non-payment of rent, in which case no notice of the forfeiture is required. If the lessee wishes to seek relief against the forfeiture, it is the lessee who must apply to the High Court for relief to be granted.
- Section 25 of the Act requires the approval of landowners and of the Tribunal to an assignment or transfer of a unit title. The Tribunal's function in regard to that assignment or transfer would be the same as is the case with leases, namely to ensure that the landowners have in fact consented to the assignment or transfer. If the landowners have a right of first refusal in respect of a unit being sold, the function of the Tribunal will also be to ensure that the landowners have been given the opportunity to exercise that right.
- Section 48 of the Act gives the Tribunal as well as the High Court, jurisdiction in respect of redevelopment plans.
- Section 49 requires the approval of the Leases Approval Tribunal and the High Court to the cancellation of a unit plan and also sets out in detail, the matters for the Court to consider in relation to the cancellation of a unit plan. The landowners also have by virtue of their freehold interest in the land, the right under section 49(4)(c) to be heard in respect of an application to cancel a unit plan.
- Section 50 is in respect of reconstruction, in accordance with the original plan, of units damaged or destroyed. The interests of landowners insofar as their rent is concerned is protected by the Tribunal, and also by the High Court under section 50(5)(b). In addition, the Court has a discretion under section 50(6) whether to approve reconstruction or not and so the interests of landowners can be made known to the Tribunal and to the Court and taken into account.

Ownership of property in the Cook Islands, does not itself entitle a foreigner to live in the Cook Islands. Any non-Cook Islander or Permanent Resident, whether that person owns property in the Cook Islands, requires a residence permit approval from Immigration before that person can reside here.

Any non Cook Islander who acquires a unit title as an investment with the object of pecuniary gain will require the approval of the Business Trade Investment Board under its existing legislation.

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Special thanks to John McFadzien, LLB, an attorney in the Cook Islands, for his assistance.

SAMOA: RIGHTY OR LEFTY?

These are interesting times in the Isles of Smiles. Government recently enacted legislation that has the local residents up in arms, namely switching the side of the road that we drive on. In Samoa, we follow the lead of the USA and drive on the right hand side of the road. But come July 2009, we will all be driving on the left hand side of the road. Crazy or what!!! As you can imagine, with 17,000 Left Hand Drive vehicles on the roads, that now need to drive on the other side of the road: - yep there are going to be plenty of accidents. This is true balance and good planning by anyone's standards. It has been likened to all people turning about face and walking backwards from here on out in Samoa.

Already there have been protest rallies, but clearly falling on deaf ears in the hall of Parliament. It means that people can now order only Right Hand Drive vehicles to drive. The business community is dead against the switch, particularly for those in the rental car business who now have to think about ordering Right Hand Drive's to replace their current fleet.

Since the Government announced the impending switch several months ago, our local newspaper has been bombarded with resistance from the local community. From the Government's point of view, switching to RHD will help the rural community who can't afford to buy LHD's from the USA, and instead will be able to buy cars from New Zealand that apparently are supposed to be cheaper. In response, people are saying that Japanese-made vehicles from New Zealand are not suited to the roads of Samoa and will become a dumping ground for cheap used vehicles. Secondly, Samoan families in New Zealand cannot afford to buy cars in the first place as they are already struggling to make ends meet. For a society that depends largely on overseas remittances for survival, it will mean another burden will be placed on the Samoa people overseas to decide whether to send money for food and the usual bills, or whether to buy a car and sent it over and the families in Samoa don't eat until the car is paid off.

There is a lot of humor and in the weeks to come it will be an exciting time, especially in regards to passengers getting off the bus in the middle of the road and people learning how to drive on the wrong side of the road. Like a contemporary Samoa Philosophy goes, "The decision to change from left hand to right hand might be a decision in the wrong hands".

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**TIDBITS**

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

OUR MONTHLY QUOTE THAT MADE US SMILE

The difference between genius and stupidity is that genius has its limits. - Albert Einstein

DUH...THE ANSWER IS FOREIGN ADULT SITES...YEAH, RIGHT!

We recently read about the Japanese bureaucrat who was suspended for three months and demoted because he was visited adult porn sites for three hours each day while supposedly toiling away for the construction division of his city. His supervisors remained puzzled as to why he continued surfing these site despite warnings. Pure genius!!! It is Japan so he either (a) has a boring job, which is a likely reason given his employment in the construction division of the city with all those wild 'n crazy engineers; (b) has a sincere appreciation for art, particularly when the canvas takes the form of slinky female bodies; or (c) was lured by horrible foreigners developing such sites to pervert this innocent and unsuspecting Japanese gentleman. Duh, the supervisor seemed to think it must be the "foreign" sites that led this angel astray. Yeah, right!

THE UGLY TALENT AGENCY

Yes, you read it here. Ugly NY opened last year and now has 300 models/actors the primary attribute of whom is, as written by some obviously blind journalist "a certain in-articuable something that catches and holds your eye." We saw a few of the photos. Listen it ain't "in-articuable". These people are UGLY. Genius...where do you think they got the name!?

TAVERN TAX...YEAH BABY...AND WHO SAID CPAS AND TAXES WER BORING!?

We were impressed when reading about a 30 year old New Jersey CPA who set up shop at a local bar to prepare tax returns for yuppies seeking a more pleasing way to complete the incredibly painful process of navigating the complexities of the dreaded USA tax return. This budding entrepreneur hangs a shingle - Tavern Tax - cranks up the Rolling Stones and starts pouring beer for the nervous, weary-eyed USA citizens/residents who no doubt find the liquid relief to be a soothing way to handle something that makes a visit to the dentist seem like a walk in the park. More to the point, we think these people may have a defense in the event the tax man disagrees with their calculations. That is, my preparer was drunk, I was drunk and the Rolling Stones are to blame!!!

LOCK 'EM DOWN, PLEASE

Those wild 'n crazy politicians in Indonesia pulled another genius move recently when they deigned the best way to curb prostitution was to require masseuses to wear padlocks on their pants while performing their rub-rub for male patrons. Yup, we are not making a joke. Padlocks!!! The State Minister for Women's Empowerment was quoted as saying "It is not the right way to prevent promiscuity. It insults women as if they are the ones in the wrong." Hey, c'mon now. It insults the male patrons...don't ya think they would be willing to pay for the key!!!!???

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