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Home



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JACK'S CORNER

Greetings from 30,000 feet in the air between London and Hong Kong after five weeks on the trip including attendance at the birthday parties of our good friend, Marshall Langer. For entertainment value during the flight, I decided to read a new Bill proposed by Senators Levin, Coleman and Obama - the short title of which is the **Incorporation Transparency and Law Enforcement Assistance Act**, which was introduced by Senator Levin to the USA Senate on May 1, 2008, and seeks to amend Subtitle A of title XX of the Homeland Security Act of 2002. This is a great Bill for the offshore company formation industry as it seeks to bring the USA **FINALLY** into line with international standards, an objective of the Financial Action Task Force dating back to July 2006. Many a cynic, including yours truly, doubts this Bill will ever become an Act, at least in its current form. This reflects the fact that the Bill would very likely adversely impact the coffers of States like Delaware as many a non-USA person engaging in legitimate (and illegitimate) business would no longer view the various States of the USA as sufficiently attractive to subject themselves voluntarily to the legal jurisdiction of the USA. In testimony given by Delaware's Assistant Secretary of State to the Senate Permanent Sub-Committee on Investigations, Committee on Homeland Security and Governmental Affairs (the "Sub-Committee") on November 14, 2006, we learn of the compelling numbers behind that State's reasons for opposing the Bill:

1. 61% of Fortune 500 companies incorporated in Delaware.
2. In 2005, 73% of all the companies that completed initial public offerings on USA exchanges were incorporated in Delaware.
3. More than half of all publicly traded companies in the USA are incorporated in Delaware.
4. In 2005, more than 133,000 new, non-publicly traded entities were formed in Delaware, which had 753,684 active entities registered in Delaware by the end of that year.

Having said that, the Bill is worthy of analysis, which I have attempted to do briefly in the following paragraphs, if not for any other reason than to understand the thinking of some very powerful men, including one who just might sit in the Oval Office next year.

FINDINGS: Section 2 as well as press releases issued by the Sub-Committee detail the Findings, which will come as no shock to industry professionals, but they make for powerful reasons to improve transparency of USA corporations and limited liability companies ("LLCs").

- Two million corporations and LLCs formed in the various States of USA each year.
- The States do not require the disclosure of virtually any or in some instances any information, including beneficial ownership, to either the State or the company formation agent handling the formation.
- Dozens of Internet websites highlight the anonymity of beneficial owners allowed under the incorporation practices of some States, point to those practices as a reason to incorporate in those States, and list those States together with offshore jurisdictions as preferred locations for the formation of new corporations, essentially providing an open invitation to criminals and other wrongdoers to form entities within the USA.
- Immigration and Customs Enforcement ("ICE") reported that a Nevada-based corporation received more than 3,700 suspicious wire transfers totaling US\$81 million over 2 years. The case was not prosecuted, however, because ICE was unable to identify the corporation's owners.
- The Financial Crimes Enforcement Network found that, between April 1996 and January 2004, financial institutions filed 397 suspicious activity reports, involving a total of almost US\$4 billion, USA shell companies, East European countries, and USA bank accounts.
- The Federal Bureau of Investigation ("FBI") reported that USA shell companies are being used to launder as much as US\$36 billion from the former Soviet Union. The FBI also reported that they have 103 open cases investigating stock market manipulation, most of which involve USA shell companies.
- The Internal Revenue Service ("IRS") described a scheme involving three individuals who set up USA shell companies to conceal nearly US\$9 million in taxable income in secret accounts in the Turks and Caicos Islands and other foreign countries.
- The Department of Justice ("DOJ") reported that Russian officials used shell companies in Pennsylvania and Delaware to unlawfully divert US\$15 million in international aid intended to upgrade the safety of former Soviet nuclear power plants.
- The Department of Homeland Security ("DHS") Secretary Michael Chertoff wrote to Senator Levin that "In countless investigations, where the criminal targets utilize shell corporations, the lack of law enforcement's ability to gain access to true beneficial ownership information slows, confuses or impedes the efforts by investigators to follow criminal proceeds."

PURPOSE: The Preamble clearly states the Purpose as "To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent wrongdoers from exploiting United States corporations for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations, **and for other purposes.**" The highlighted language is my doing as I find such catch-all phrases quite frightening. Given the conduct of the USA government in

recent years, one's mind may understandably wonder about all sorts of legitimate activities being subjected to illegitimate scrutiny based on this language.

BENEFICIAL OWNERSHIP DEFINED: Section 3(e)(1) defines beneficial ownership as "...an individual who has a level of control over, or entitlement to, the funds or assets of a corporation or limited liability company that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the corporation or limited liability company." Notwithstanding the Exemptions, which are discussed below, this definition is a noble attempt to define the virtually impossible. I know many a corporate executive who has such control. Yet these corporate executives do not have any ownership in the corporation and the corporation cannot avail of the Exemptions. Sorry, folks, but this definition requires some work and it would probably be useful for the good Senators to call upon experienced practitioners for assistance.

REQUIRED INFORMATION – BENEFICIAL OWNERS: Section 3(a)(1) requires that any State receiving funding from the DHS will obtain by fiscal year 2011 (October) a list of the identity and address of each beneficial owner of each corporation or LLC formed under its laws, identity and address of each beneficial owner of any entity through which the beneficial owner exercises control over the corporation or LLC formed under its laws, ensure this information is updated annually, maintain this information for five years after termination of the corporation or LLC and provide such information upon receipt of "...a civil or criminal subpoena or summons from a State agency, Federal agency, or congressional committee or sub-committee requesting such information; or (ii) a written request made by a Federal agency on behalf of another country under an international treaty, agreement, or convention..." This requirement goes beyond that of most offshore jurisdictions in that the beneficial ownership, not simply director/manager or shareholder/member, information is to be lodged with the State. Most offshore jurisdictions have a voluntary disclosure system of directors/managers and shareholders/members (Anguilla, Belize, Nevis, Cook Islands, Samoa), and many jurisdictions have mandatory disclosure of such information (Hong Kong and Singapore). I am not aware of any jurisdiction that goes this far even when one considers the Bill's flawed definition of beneficial owner. Similar language in relation to non-USA beneficial owners is found in Section 3(a)(2).

PENALTIES FOR FALSE INFORMATION: Section 3(b) provides for civil penalties of not more than US\$10,000, fines under Title 18 of the USA Code and criminal penalties of imprisonment of not more than 3 years for persons who knowingly provide false beneficial ownership information or intentionally fail to provide required beneficial ownership information to a State. The US\$10,000 is meaningless, the fines are extensive and, ouch, one day let alone 3 years in jail is more than sufficient to ensure persons will never "knowingly" or "intentionally fail" to provide such information.

EXEMPTIONS: Section 3(e)(2) provides for exemptions for publicly traded corporations and the corporations and LLCs they form as such entities are regulated by the Securities and Exchange Commission ("SEC"); any business concern formed by a State, under an interstate compact between 2 or more States, by a department or agency of the United States, or under the laws of the United States; and any business concern which a State has determined in writing should be exempt because requiring beneficial ownership information would not serve the **public interest** and would not assist law enforcement. Although the track record of the SEC in terms of regulation is spotty, the drafters had no choice but to include this exemption given the number of beneficial owners and frequency of changing the same in publicly traded companies. Yes, I highlighted language again because I often wonder whether or not government officials in the USA act in the public interest or for that matter even have a clue as to the meaning of the same.

OTHER SECTIONS: Section 3(c) authorizes the States to use DHS funds to meet the requirements of the Bill, "...including by funding measures to assess, plan, develop, test, or implement relevant policies, procedures, or system modifications." Section 3(d) requires the Government Accountability Office ("GAO") to prepare a report by June 1, 2012 identifying which States are not in compliance with recommendations as to measures necessary to achieve compliance. Sorry, but I see a lot of USA tax dollars going towards meaningless studies and reports from clever firms that seek to eat the pork in this Bill. Section 4 requires the Secretary of the Treasury in consultation with other agencies of the Federal government to issue a final rule, not later than 270 days after enactment of the Bill, requiring company formation agents to establish anti-money laundering programs. This section begs the question as to why such formation agents are not currently and have never been required to establish such programs? Finally, Section 5 requires the GAO to complete a study, within one year of enactment of the Bill, of State beneficial ownership information requirements for in-state partnerships, trusts or other legal entities. This section begs the question as to why these entities are not included in this Bill?

Funny thing about the law is it swings from one extreme to another rather than resting somewhere in the middle where it makes sense. Better thing is if the Bill is enacted in its current draft or something similar, then the USA will have to play by the rules, which can only be good for offshore jurisdictions!

Onwards and upwards...



PROFESSOR TSIH'S TALES

Commandment 1 Know the people

The great Chinese strategist wrote in his book "The Art of War": *'Know your enemy, know yourself, and you'll win a hundred battles'* In the first commandment "know the people", the implications are in fact more complicated than it indicates. It includes not only just knowing your 'enemy', but also yourself - from the broader scope of knowing the core competence of your organization to the narrower knowledge of the strengths (and weaknesses) of your employees.

Sun Tzu Says: If we know that our troops are capable of striking the enemy, but do not know that he is invulnerable to attack, our chance of victory is but half.

Translation to modern business environment Lacking intelligence, i.e. information about the business environment and especially about your competitors, it is practically impossible to maintain a successful operation in the marketplace. Indeed, despite the strengths of your team of employees, it is impossible to penetrate your competitors' defensive line. And, even if it were successful, the cost would be incredibly high. And therefore, the victory is only half.

Solution: Managers should be disciplined to scan the business/market environment regularly for changes, or adjustments, or new laws etc. Market research is not a task done on special occasions, it should be done regularly, even if it is just to update on certain known data.

Sun Tzu Says: If we know that the enemy is vulnerable to attack but do not know that our troops are incapable of striking him, our chance of victory is again but half.

Translation to modern business environment Bluntly speaking, in most cases, organizations are not aware of the strengths of their respective employees. While most organizations recognize that human resources is perhaps the single most scarce and important resource of all, many fail to maintain what they have and allow their most important resources to decay.

Solution: Training, regular training and more training. That is why in today's competitive global business environment, the organization that is willing to invest in its employees' regular "maintenance" is the only organization that will succeed.

Sun Tzu Says: If we know that the enemy can be attacked and that our troops are capable of attacking him, but do not realize that the conformation of the ground makes fighting impracticable, our chance of victory is once again but half. Therefore, when those experienced in war move, they are never bewildered; when they act, they are never at a loss. Thus they say: Know the enemy and know yourself, and your victory will never be endangered; know the weather and know the ground, and your victory will then be complete. The key to military operations lies in cautiously studying the enemy's designs. Your forces in the main direction against the enemy and from a distance of a thousand *li* you can kill his general. This is called the ability to achieve one's aim in an artful and ingenious manner.

Translation to modern business environment: Even if an organization knows the strengths and weaknesses of the competitors as well as their own, the lack of knowledge of the terrain (the battleground, referring to the conditions of the market place, includes the legal, political, socio-economical and cultural environments), will hamper success.

Solution: Most people are seeking a custom-made solution where they can simply plug into a system and life will be wonderful forever and ever. Alas, that's not how it works. The solution lies within you. If one pays attention to the skills required to know the people, one realizes that they're the simplest of the simplest - common sense. What makes it work is the discipline that drives the consistency. The solution, therefore, is to develop the discipline (making it a habit, not the military rigid kind of discipline) to get to know the people, disregarding the usefulness today, and file it to the RAM in your brain.



GCSL NEWS

GCSL GROUP CELEBRATES TWO YEARS!

On June 1, 2008, The GCSL Group of Companies celebrated two full years of operations. We are now 8 offices with nearly 50 people more than 5,000 structures and, well, a lot more of the same to come as we continue our Professional, Confidential, Trustworthy and Friendly Consultation and Service to our clients!!! GCSL Hong Kong, where it all started, had a quick glass of champagne to celebrate the same.



THE LADIES OF GCSL BELIZE SHOWING OFF THEIR NEW COLORS...OF ONE CLOTH, YOU MIGHT SAY!

These ladies are all THAT!!!



GCSL SHINES IN PANAMA AT THE SOVEREIGN SOCIETY CONFERENCE

Jack, Vance and Carlo made a good showing in Panama and Sovereign Society members responded. Photos tell it all.



HANGING WITH SOME ITPA FRIENDS OF GCSL IN CYPRUS

Many thanks to Peter of **Total Serve Management** (www.totalservecy.com) and Christodoulos of **Christodoulos G. Vassiliades & Co.** (www.vasslaw.com) for their wonderful parties that truly demonstrated the lively personalities of the Cypriot people!!!



HAPPY BIRTHDAY MARINA!!!

Jack and Marina celebrated with the good people at **Pierre** (www.mandarinoriental.com/hotel/514000237.asp) of the Mandarin Hotel in Hong Kong. Excellent food, wonderful wines and interesting conversation made the evening all that!! We also met up with Pierre at his hip London kitchen known as **Sketch** (www.sketch.uk.com)...a must visit...let us know and we will make the introduction!!! Pierre is a genius and his people are the most excellent at their crafts!!!



HAPPY BIRTHDAY MARSHALL!!!

Jack and Marina popped over to London (three days after returning to Hong Kong from Athens) to attend Marshall Langer's 80th birthday parties. We had a blast with some good people and we look forward to attending even more of his birthdays in the future. Special thanks to Carol, Stephen and Ingrid for hosting the respective events!

ANNUAL COMPLIANCE VISIT TO GCSL SAMOA AND GCSL COOK ISLANDS

Last month I was lucky enough to be hosted by the GCSL Samoa girls and GCSL Cook Islands team. The purpose of my visit was to complete my annual compliance audit to ensure that our offices are complying with GCSL Group standards in terms of due diligence which equals or in some cases, is more than that demanded pursuant to each jurisdiction's local law. I also conduct random file reviews to ensure our paperwork is ship-shape and make recommendations to the offices of improvements in standardising our processes. In both countries I visited the offices of the Regulator. Thanks to FSC Commissioner Lorraine Allen from the Cook Islands and Erna Vaai and her team in SIFA Samoa for their warm welcomes.

Both Islands are undergoing radical political times.

The Cook Islands, one of the few places in the world where you don't need to wear a helmet while riding a scooter, was trying to force upon its people changes in law which would require locals and tourists to wear helmets. Fearing that (like in the rest of the world) the Government would not stop at just helmets, Cook Islanders rallied against the proposed changes, including fending off nosy ex-expats who wrote to papers suggesting (now they have left the Cooks) that it is a good idea. Although it is a good idea to wear a helmet, the Cook Islands people upheld their right to choose and the legislation appears to have disappeared. The highlight was standing outside the GCSL Cook Islands' office on a Friday with a rooster crowing at my feet watching hundreds of locals drive by on their scooters without helmets... true democracy in action.

In Samoa, the big issue of the moment is on what side of the road should people drive. Having worked in the British Virgin Islands and survived (I

don't know how) driving an American-drive car on a British sided road, I can see this issue in its entirety. The majority of cars (18,000 to 1,000) in Samoa are American-drive and they currently drive on the American side of the road, which is insanely sensible, if not as a "British" drive person I require a brain adjustment when I drive a rental car there. Proposed changes were to move the American-drive cars to the British side (right) of the road, like the BVI. Buses of course would become dangerous unless changed as children would be getting off the bus on to the road rather than the roadside. Legislators argue that cars would become cheaper as they could import from New Zealand and Australia rather than the USA and therefore phase out left hand drive cars. Despite some 40,000 people (out of a total population of 200,000) signing the protest forms and the general consensus being that the changes are silly and will lead to economic hardship due to the decline in value of the 18,000 left hand drive cars still on the Island, the Government appears not to be listening to the People and will go ahead with the changes. Samoans will no doubt take their anger out at the ballot box.

Many thanks to Puai, Tai, Laura, Fono, Salome and Emilie for making me feel welcome. It is always a pleasure visiting you all despite the many hours of going square eyed at looking over bits of paper. And we praise the heavens there was still time to sit on Puai's private beach and enjoy a few bottles of duty free. Surely the most wonderful setting of any GCSL MD's home.

And special thanks to Tai for delaying the delivery of her new baby just one more Friday night!

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

NO SEX, PLEASE, WE ARE TOO BUSY

The annual Durex survey of sexual satisfaction placed Hong Kong at the bottom of the world charts on achieving orgasm. Only 41% of men and 8% of women in Hong Kong said they achieve orgasm while world averages are 63% and 32% respectively.

LUXEMBOURG LOWERS TAXES

The Luxembourg Prime Minister recently announced that the "capital duty" on incorporation which is today 0.5% on capital contribution will be abolished in 2009. Furthermore, the aggregate tax rate on commercial income will be reduced from 29.63% to 25.5%. The time frame has not been set. Hong Kong has a double taxation agreement with Luxembourg, which might make this news more interesting for international planners keen to use both jurisdictions.

*Contributed by Elie Sfeir, General Manager – Fiduciary Services, GCSL Hong Kong
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MACAU UPDATE

LAS VEGAS JURY AWARDS US\$43.8 MILLION TO HONG KONG BUSINESSMAN FOR MACAU CASINO LICENSING ROLE

Although the award was exact, the facts of the story sound more like a John Grisham/Ian Fleming collaboration. Richard Suen, a Hong Kong based businessman, claimed that the Las Vegas Sands Corporation, owner of the Sands and Venetian properties in Macau, owed him fees for helping the company secure one of the coveted Macau casino licenses. In interviews after the verdict was delivered, jury members commented that few of the witnesses, including the complainant, provided much credible testimony. However, after nearly ten hours of deliberation, the jury determined that Suen's efforts played a role in Macau awarding a sub-concession to the Sands. Suen claimed to have an agreement with the Sands that would have paid him US\$5 million plus 2% of the net profits from the company's two Macau based casinos and jurors found that Suen had arranged several meetings with Beijing officials that eventually led to the opening of the casinos. One of the Sands own senior executives admitted Suen was owed something for his role. Originally, and in partnership with Hong Kong based Galaxy entertainment, the Sands was awarded one of only three gaming licenses issued by the Macau government. Unable to settle on a contract, the two companies dissolved their partnership and the Sands was soon after awarded a separate sub-concession. The company has gone on to become the dominant USA player in Macau. The case is interesting in that the USA jury made the award based on the value of Suen's introduction of Sands' executives to leaders in Beijing, even though Macau is technically an autonomous government. Further, the case highlights the ambiguities of the licensing award process. On the positive side, the case does validate the true value of local expertise in developing business in Asia.

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

RMB70B RECONSTRUCTION FUND ALLOCATED

May 12, 2008 is a day all Chinese and the world will not likely forget. A deadly 8.0 in magnitude earthquake struck in Wenchuan County, Sichuan Province, Southwest of China. The Chinese central government has allocated total RMB70 billion (approximately US\$10.14 billion) as reconstruction funds this year for the quake-hit regions. The funds will be mainly used for infrastructure rebuilding, disease prevention, agriculture subsidies and building temporary homes for quake victims. The post-quake reconstruction is expected to take three years and more funds will be arranged in the following two years.

NEW ZEALAND-China Free Trade Agreement

After fifteen rounds of negotiations in the span of three years, the Free Trade Agreement between New Zealand and China ("NZ-China FTA") was finally signed on the April 7, 2008 in Beijing. The NZ-China FTA is the first ever free trade agreement that China has entered with a developed country. The NZ-China FTA focuses on trading in goods and services, improvements on the business environment and promotion of the cooperation between the two countries. The NZ-China FTA is similar to the arrangement that Hong Kong and Macau has with China, albeit slightly less favorable. For instance, based on Chinese foreign investment industry guidelines, "advertising agent" is under "limited" section. With the NZ-China FTA arrangement, "the NZ service suppliers are permitted to establish advertising enterprises in China only in the form of joint ventures with foreign investment no more than 49%. Within two years after China's accession, foreign majority ownership will be permitted and within four years after China's accession, wholly foreign-owned subsidiaries will be permitted." In addition, the full free trade concept on all the commodities and goods that are listed in the NZ-China FTA will still take some years to be fully accomplished.

CPI SURGE IGNITES BANK RESERVE RATIO INCREASE

The Consumer Price Index (CPI), a key indicator of inflation, reached an 11 year high of 8.5% in April. As soon as the figure was released, the People's Bank of China announced on May 12 a raise of the bank reserve requirement ratio again by 0.5% to 16.5% effective May 20. This is the fourth administrative intervention in 2008. As usual, the adjustment aims at strengthening liquidity management in the banking industry, steering bank credits to grow reasonably as well as checking in inflation. Of particular interest, gasoline prices in China have not yet changed even though the current oil price reached US\$135 per barrel. One wonders how far the Chinese government will or can go?

CHINA IS SEEKING OVERSEAS INVESTMENT MANAGERS FOR PENSION FUND

The National Council for Social Security Fund ("NSSF") is seeking overseas investment managers for China's US\$74 billion national pension fund with US\$14.9 billion, or 20% of NSSF's assets, to be invested abroad. The investment is targeting Asia excluding Japan, emerging markets, Europe and global equities. The applicants must have at least 6 years of management experiences as of March 31, 2008 and at least US\$5 billion or its equivalent in assets under management. In addition, the fund houses must be established and registered in foreign countries or regions with sound law and financial supervision systems that have signed a memorandum of understanding with China's securities watchdog. Back in 2006, NSSF approved 10 such managers among 106 applications from 84 well know fund houses.

Contributed by Johnson Chien, General Manager – Fiduciary Services, GCSL Shanghai
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CHINA'S NEW BANKING RULES

China has announced a draft of new rules for the acquisition by local commercial banks of domestic and offshore financial companies. However, the announcement by the China Regulatory Banking Commission ("CBRC") did not specify details of when the regulations would take effect. The new regulations are expected to make it much easier for banks to expand into industries such as insurance, leasing and other financial services industries. Under existing rules banks are not allowed to invest in non-bank financial institutions unless specifically approved by the state. The new rules would allow banks to purchase overseas companies with approval only from CBRC. Several banks like China Construction Bank and Industrial Commercial Bank of China have expressed interest in setting up insurance ventures.

CHINA PARTNERSHIP ENTERPRISE LAW

Private equity and venture capital funds already operating in China are now able to use private limited partnerships as an alternative investment vehicle. The Partnership Enterprise Law was amended in August 2006 and came into effect on June 1, 2007 and allowed for the formation of limited liability partnerships in China. This corresponds with typical USA structures of a venture capital fund, which provides for general partners, who manage the business and limited partners who only provide capital and take a share of the profits. While general partners are liable for the partnership's debts, the liability of limited partners only covers the capital contributions they made. Partnerships are also exempt from paying income tax. Instead, partners report their share of profit or loss in the company on an individual basis and are taxed as personal income. The partnership law covers only domestic partnerships, although article 108 states that the State Council will promulgate measures governing foreign invested partnerships. The Ministry of Commerce ("MOFCOM") then created a draft of the Foreign Investment Partnership Regulations in January last year. This will allow foreign firms the option to use the limited liability partnership model for funding in China in the near future. Many foreign private equity players are keen to set up joint venture funds with local firms and are comfortable with holding RMB denominated assets. However, the change in the merger and acquisition rules in August 2006 makes it harder for foreigners to invest in Chinese firms through offshore holding entities for purpose of subsequent overseas listing. At the moment it is easier for domestic funds to get deals approved. However, there are two kinds of onshore funds, those that are purely domestic and those that has foreign investors although they are formed under Chinese law. Investments by pure domestic funds don't require MOFCOM approval while the other requires approval as they are still considered "foreign" in many respects.

Contributed by Ooi Hoay Beng, Director of Business Development – Asia, The GCSL Group of Companies
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SINGAPORE UPDATE

SQUEAKY CLEAN

The Republic's reputation of being a super clean jurisdiction got another boost recently.

In a recent study carried out by Ernst & Young, entitled "Corruption or compliance - weighing the costs : the 10th global fraud survey", it was found that Singapore companies have experienced a much lower level of corruption or bribery in the past two years than companies elsewhere. The study

covered almost 1,200 senior executives of large organizations worldwide - 27 of whom were from Singapore – between November 2007 to February 2008.

89% of the Singapore respondents said that they had not experienced a bribery or corruption incident in the past two years, compared with 65% of global respondents. This was attributed to the fact that laws and regulations against bribery and corruption are strongly enforced in Singapore and that internal control measures to check corruption or bribery are effective. 85% of respondents in Singapore responded that laws and regulations against bribery and corruption in the Island republic are enforced “very strongly” or “extremely strongly”, compared with just 40% of global respondents.

52% of Singapore respondents believed that internal audits at their companies are effective in detecting bribery or corrupt practices, compared with just 26% global respondents. Two-thirds of Singapore respondents also feel that there are specific procedures when dealing with government officials to mitigate the risk of corruption, compared with 43% of global respondents.

Singapore respondents identified compliance-focused internal audits and a whistleblower communications channel as effective ways to minimize fraud or corruption. 60% of respondents here also said that they either “always” or “very frequently” consider bribery or anti-corruption risk pre and post-acquisition, compared with 47% and 29% of global respondents pre and post-acquisition. On a global level, the respondents felt that corruption remains a significant problem for business. More than one-third rated that corrupt business practices is becoming worse – making it a challenge for executives and directors to meet compliance obligations.

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 4 IN A SERIES OF ARTICLES)

The durability of the flat tax is just one of several noteworthy observations about the flat tax revolution.

- **Nations are choosing low-rate flat taxes.** With the exception of Iceland, every flat tax adopted this decade has a tax rate of less than 20 percent. This is important since the economic benefits of a flat tax are directly linked to the reduction in marginal tax rates on productive behavior. In the mid-1990s, the Baltic flat taxes had rates ranging between 25 percent and 33 percent. While these rates were much better than the confiscatory levies imposed by Western European nations, flat-tax rates above 25 percent are more likely to discourage work, saving, and investment than rates below 20 percent.
- **Tax rates are dropping.** Not only are new flat tax nations choosing low rates, nations that already have flat tax systems are reducing their rates. Estonia has dropped its rate from 26 percent to 21 percent, and the rate is scheduled to fall to 18 percent by 2011. Lithuania's rate has fallen from 33 percent to 24 percent. Macedonia's flat tax was just implemented at the low rate of 12 percent, but it already has dropped to 10 percent. Montenegro's flat tax rate, meanwhile, will fall to 9 percent in 2010-giving it the lowest flat tax rate in the world.
- **More nations are considering the flat tax.** The Czech Republic and Bulgaria are among the nations that just adopted the flat tax. Mauritius also just joined the flat tax club. Single-rate tax systems currently are being discussed in Poland and Hungary. There is even a growing interest in flat tax systems in Western Europe - a debate that presumably will intensify because of tax competition.
- **No nation has returned to a so-called progressive tax.** Notwithstanding faulty analysis from the IMF, the flat tax seems to be remarkably resilient. None of the flat tax nations have returned to a discriminatory rate structure. The most recent threats to single-rate regimes came in Russia, where lawmakers overwhelmingly rejected a scheme to create a progressive system with a top rate of 30 percent. More impressive, Slovakian voters in 2006 elected a coalition of socialists and nationalists, leading many to conclude that this did not bode well for the flat tax implemented by the outgoing government. Yet Slovakia's new leaders decided not to tinker with the goose that was laying golden eggs and the flat tax seems securely enshrined.

While the flat tax has become very trendy, it is not a cure-all for every economic ill. To maximize the economic benefits of tax reform, a nation should have the rule-of-law, property rights, sound money, limited government, and low levels of regulation. In such an environment, a flat tax ensures that the tax code will not be an obstacle to growth. In a nation such as Russia, however, a flat tax is going to have only limited success because people worried about arbitrary expropriation by the government are unlikely to feel confident about investing in the nation's future. Likewise, the flat tax created for Iraq in 2004 is almost irrelevant to that country's economic prospects because of ongoing turmoil.

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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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 guidelines in respect of allowable assets and limits for the purpose of calculating the margin of solvency for insurers, is the third and final one 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 in the name of Global Insurance Managers (Anguilla) Limited and thus these guidelines are particularly pertinent to the GCSL group.

At a minimum, insurers must ensure that their assets and liabilities are appropriately matched to ensure that they are able to meet claims and other obligations as they fall due. In considering whether insurers have such appropriate matching, the Commission will consider whether their asset portfolios are adequately liquid and diversified, and appropriately valued.

Notwithstanding the general allowance of the assets listed below, the Commission may require an insurer to further diversify or restrict/discount its assets for the purpose of calculating its margin of solvency.

The following assets and percentages will generally be considered allowable for solvency purposes:

1. Cash in hand and on deposit with regulated financial institutions in Anguilla, the United Kingdom and its overseas territories, and other [Organisation for Economic Co-operation and Development countries](#).
2. Irrevocable letters of credit issued by regulated financial institutions in the territories identified in Item 1.
3. Debt securities issued or guaranteed by the governments of the territories identified in Item 1.
4. Fully secured performing commercial loans, where the underlying security meets the conditions in Items 1 - 3.
5. Premiums receivable and accounts receivable net of provision for bad or doubtful debts not more than six months overdue.
6. Reinsurance balances receivable net of provision for bad or doubtful debts not more than six months overdue.
7. 90% of the cost or auditor's value of real estate, to a maximum of 20% of total solvency requirement (total liabilities plus the minimum margin of solvency; see guidance notes on minimum margin of solvency for insurers).
8. 90% of the value of securities (including funds and indices), other than the securities identified in Item 3, traded on a recognised securities exchange with an investment grade rating or issued or guaranteed by an entity with an investment grade rating. An investment grade rating is a Standard & Poor's, or its equivalent, rating of BBB or above.
9. 90% of fully secured performing commercial loans, where the underlying security meets the conditions in Item 8.
10. 75% of performing loans granted on commercial terms to an insurer's affiliate, other than loans in Items 4 and 9. These loans should account for no more than 50% of the insurer's total solvency requirement if there are 125% secured by trade receivables, securities and/or inventories at current market value, or 66% of the insurer's total solvency requirement if 150% secured by trade receivables, inventories and/or marketable securities at current market value.
11. 70% of the value of all securities, other than those in Item 8, traded on one of more recognised securities exchange. The Commission reserves the right to further discount or disallow these securities.

An insurer may satisfy up to 100% of its solvency requirement with the assets detailed in Items 1 - 4 (individually) or a mutual fund that is invested in 10 or more securities which are traded on one or more recognised securities exchange. All other assets, unless specifically stated, will be recognised up to a maximum of 25% of the insurer's solvency requirement.

Assets not included in the above list are not, by reason of such non-inclusion, disallowed but it is recommended that an insurer holding or intending to hold assets other than those listed and wishing those assets to be considered allowable for purposes of calculating its margin of solvency should seek guidance from the Commission.

For purposes of these guidelines member exchanges of the [World Federation of Exchanges](#) along with the following exchanges are deemed recognised securities exchanges:

The Australian Stock Exchange	The Barbados Stock Exchange
The Cayman Islands Stock Exchange	The Copenhagen Stock Exchange
The Eastern Caribbean Securities Exchange	The Helsinki Stock Exchange
The Iceland Stock Exchange	The Johannesburg Stock Exchange
The Kuala Lumpur Stock Exchange	The Rio De Janeiro Stock Exchange
The Sao Paulo Stock Exchange	The Stockholm Stock Exchange

Any duly licensed securities exchange in the following countries:

Austria	Belgium	Canada	France	Germany
Guernsey	Italy	Luxembourg	Netherlands	Norway
Portugal	Spain	UK	USA	

The Financial Services Commission will consider requests from insurers for recognition of securities exchanges not listed above.

GCSL Anguilla welcomes the issuance of these Guidelines and stands ready to assist clients in understanding them and furthering the development of the insurance industry in Anguilla.

*Contributed by Carlyle Rogers, Managing Director, GCSL Anguilla
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BELIZE: APPLICATION TO THE IFSC FOR LICENSES

The procedure for applying to the International Financial Services Commission (the "IFSC") for a license has been modified. In June of 2007, the law covering the types of licenses that can be granted by the IFSC was changed. The IFSC can now grant the following licenses:

1. Formation or management of international business companies or other offshore companies
2. Trust formation and management of offshore trusts and provision of trustee services
3. International asset protection and management
4. Money transmission services
5. Payment processing services
6. Trading in foreign exchange
7. Trading in financial and commodity-based derivative instruments and other securities (e.g., futures, options, interest rates, foreign exchange instruments, shares, stock, contracts for differences etc.)
8. Money brokering
9. Money lending and pawning
10. Money exchange
11. Safe custody services
12. Accounting services
13. Brokerage, consultancy or advisory services in any of the above services

The previous licensing regulations in Belize were repealed by the same law establishing these additional licenses. Whereas previously the

applicant could have applied to the IFSC directly, that has also changed. The applicant **MUST** now use an already registered license holder with the IFSC to make the application on his or her behalf. The license holder will submit the application, while the applicant will supply the relevant information for the purpose of completing the application form. Also, the applicant (and any proposed/actual directors of the applicant, if it is a company) must fill out a biographical affidavit, outlining their activity in the last 10 or so years. This affidavit is supplied by the same legislation.

As before, only barristers, solicitors, attorneys-at-law, accountants possessing a current practicing certificate in accordance with the Accountancy Profession Act, as well as any other person designated as fit and proper for the purpose of being a license holder, can in fact make the application to the IFSC. Now, however, a company which is registered under the local Companies Act, and is also a financial institution within the meaning of the Banks and Financial Institutions Act (Cap.263 of the Laws of Belize, Revised Edition 2000), is eligible to make the application for the issuance of a license from the IFSC. Also eligible is "any other company or corporate entity that has management with the requisite knowledge and expertise of the business to be carried on and has at least one director resident in Belize."

It also must be noted that no license will be granted under the new Regulations unless the applicant has satisfied the requirement of exhibiting "...fully paid-up and unimpaired capital...in respect of the service or activity for which the license is being applied..." Also worthy of note is the fact that the penalty for giving false, untrue or misleading information to the IFSC is the commission of an offence, and summary conviction being liable to a fine not exceeding US\$5,000.

For some persons that might not be too much to sacrifice, as it might only signify a few bottles of really expensive wine, as Jack would state, but there is also the fact that one can be liable to one year imprisonment. While it has improved under my friend Mr. John Woods' patronage, spending even a night at Her Majesty's Pleasure at what we call "Ramada Hattieville" (Hattieville being the area where the prison is located) is no pleasurable experience at all!! I also know that most if not all the regulatory counterparts of the IFSC, worldwide, would be immediately informed of the person's "pendant" for supplying misinformation, which of course would blight any chance of doing business in any other jurisdiction, leading to a global blacklisting.

Finally, be advised that the application for international insurance services is to be made to the IFSC under the International Insurance Act and corresponding Regulations. The same applies in relation to the license for international collective investment schemes (like Mutual Funds), but of course under the Mutual Funds Act and corresponding Regulations. International Banking application is to be made to the Central Bank of Belize, and Online Gaming is to be applied for with the Gaming Control Board.

We at GCSL Belize can assist you in making these applications a reality. We know that there are people still interested in doing mutual funds under Belize law. We also know that there are persons who desire to apply for mutual funds under Belize law, and we can assist in that regard.

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COOK ISLANDS: PREFERRED SITUS FOR BVI UNIT TRUSTS

The Cook Islands has long been known for the asset protection features within its trust laws. It has many features which make it stand apart from other like legislations and jurisdictions looking to compete in the trust arena. With a history of trust law that dates back to the 1980s, the Cook Islands have what many jurisdictions yearn for – settled law.

The jurisdiction boasts experience, stability and legal precedence. These qualities are often expounded, but what really sets the jurisdiction apart, in my humble opinion, is the level of trustee services that you get by coming to the Cook Islands. On that level alone, and from personal experience in dealing with other jurisdictions over the last 15 years, the Cook Islands stands alone and can confidently say that it has no peers in the area of high quality responsive service.

Indeed many practitioners choose the Cook Islands, not for any of its asset protection features, nor its settled precedence, but simply because, they can ring their trustee and get an answer! If you do not get an answer from your trustee, then its time to think "Cook Islands".

And so it is not surprising to hear that there is a steady migration of Unit Trusts to the Cook Islands from the BVI. Apart from the above pull factors, one feature that attracts these trusts is the ability to set up a Cook Islands corporation to act as a private trustee of the trust. Section 7 (3) of the International Companies Act 1981-82 specifically empowers the use of a private trustee company ("PTC"), so long as such PTC is not trustee of more than three trusts.

There are many reasons why the use of a PTC is attractive. Having your own PTC gives a certain element of "control" either through ownership or as director of the PTC. But there are laden dangers for the inexperienced who take this route. One needs to be careful that the quest for 'control' does not compromise the PTC from any attack by a creditor. This is where the experience of practitioners in the Cook Islands come to the fore.

GCSL Cook Islands is offering special rates to Trusts that are looking to migrate. Drop us a line and we would be happy to give you a quote.

*Contributed by Puai Wichman, Managing Director, GCSL Cook Islands
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SAMOA: MOVING FORWARD WITH NEW LEGISLATION AND INNOVATIVE PRICING

Below, I have briefly discussed two recent developments from the Registrar with the enactment of the "Electronic Transactions Act 2008" and the "International Mutual Regulations 2008" (Fees and Forms).

The Electronic Transactions Act 2008 is to facilitate the use of electronic transactions including the legal requirements to electronic records as well as the communication of electronic records thereof in the formation of contracts.

As for the International Mutual Regulations 2008, the Registrar has finalized the fees payable, required for application to the Mutual Fund, the granting of registration, recognition or licence and including the Annual Renewal Fees. GCSL (Samoa) can provide the necessary forms required, detailing the requisites for Mutual Funds.

Please visit www.sifa.ws for more information.

Finally, we are pleased to announce that we will continue our Samoa special on the establishment of LLC's at US\$99 (+ courier). Take advantage of this special as it cannot be beaten anywhere else in the world. An LLC is an ideal vehicle to use, either on its own, or as part of a trust structure. We can help you right here in Samoa. We are also offering specials on the establishment of a Samoa LLC with a Cook Islands Trust. Just drop an email to Puai Wichman at puai@gcsll.info or Laura Fepuleai at laura@gcsll.info.

Also, it should be known that we can offer incredible packages for companies wanting to re-domicile from other jurisdictions. If you think the BVI is getting too pricey, give us a call and we can discuss bulk transfers of companies to Samoa at incredible rates - we can beat ANY price that you are

currently being charged. Talk to us.

Contributed by Laura Fepuleai, Manager, GCSL Samoa
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TIDBITS

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

OUR MONTHLY QUOTE THAT MADE US SMILE

An optimist thinks that this is the best of all possible worlds. A pessimist fears that this is so. - *Plato and a Platypus walk into a bar*, Cathcart & Klein

WHERE WERE THOSE EXAMINERS WHEN WE WENT TO SCHOOL?

We recently read in disbelief that 12,000 lucky British teens were offered the ultimate opportunity - all the answers to their GCSE music exam on the back of the exam paper. The examination board confirmed that a "printing error" resulted in the ultimate prize for the aspiring musicians... oh my!!! We were further baffled when reading that the students would not have to re-sit the exam as the board concluded that less than 5% of the overall marks on the paper were possibly affected and most students were unaware of the freebie offered them. It appears this conclusion was reached because there were only 20 queries of teachers. Three observations: First, is the board serious!? We would bet that VIRTUALLY EVERY student saw and used the answers. Second, who were the 20 idiots!!!! Finally, where were those examiners when we went to school?

GIVE US MICKEY MOUSE

We were disappointed to learn that almost every buyer of a car at a Missouri car dealership chose a US\$250 credit towards buying a handgun rather than a US\$250 gas card as their gift and sales had quadrupled since launching the promotion. Even worse, the genius who created the promotion was inspired by Senator Obama, who apparently said "...all those people in the Midwest, you've got to have compassion for them because they're clinging to their guns and their Bibles." If Senator Obama inspires fellas who say "We all go to church on Sunday and we all carry guns" and Senator Clinton is the alternative candidate, then the Democrats would be better off voting for Mickey Mouse...our favorite cartoon character worships Minnie and doesn't have the required fingers to fire a gun!!!

WE HATE DISCRIMINATION

Yes, this really happened in 2008. Until the State Human Rights Commission ruled the dress code "...humiliating and an insult to human dignity", shrine authorities had required employees counting donations at a popular Hindu shrine in southern India to work topless wearing only a dhoti - a cotton wrap worn around the waist - and to strip before an officer prior to departing to ensure they were not getting away with the cash. Awakening to the modern age, shrine authorities are now experimenting with electronic surveillance systems. We tend to agree this was "...humiliating and an insult to human dignity". After all, the shrine authorities did not allow women to count donations... we hate discrimination!!!

YA GOTTA LOVE FRANK

Yeah, baby, ya gotta love Frank...he knows where to park. Mildred, the church gossip, and self-appointed monitor of the church's morals, kept sticking her nose into other people's business. Several members did not approve of her extra curricular activities, but feared her enough to maintain their silence. She made a mistake, however, when she accused Frank of being an alcoholic after she saw his old pickup parked in front of the town's only bar one afternoon. She emphatically told Frank (and several others) that everyone seeing it there would know what he was doing. Frank, a man of few words, stared at her for a moment and just turned and walked away. He didn't explain, defend, or deny... He said nothing. Later that evening, Frank quietly parked his pickup in front of Mildred's house... Walked home... And left it there all night!!!

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