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### JACK'S CORNER

I was in the mood to ramble about a few things this month so here ya go...

TRAVEL: Just for a change, (yeah, right!), Marina and I visited four cities in July. Taipei is teeming again with renewed enthusiasm for the future with a new government, direct flights to China and increased interest in proper structuring given tax changes in the USA and Taiwan. It seems like a financially fantastic future for our Taiwan pengyou (friends). Prague is, well, Prague. If beauty started with a "P", then you would see a photo of the Old Town clock and the St. Charles Bridge with happy people like our daddy below enjoying the scenery with his liliputian living tall. Bangkok remains bewildering, which really is no change since my initial visit in 1985. I still love it as much now as I did more than 20 years ago. So much so that the Asia Offshore Association will be returning to The Big Mango from March 22 to 24, 2009 at The Oriental, of course, a "home" that gives new meaning to the word special! Mumbai, where I made my first visit ever, is manic from the moment you exit the airport into the sluggish traffic that is comprised of more people than cars mixing it up on the road and a unique personality that inspires like vindaloo while softly screaming the subtle mysteries peculiar to a nation of more than 1 billion free thinkers whose motto is "Truth Alone Triumphs". After all these years of eating Indian food in Hong Kong and London, I would have to say, in line with the nation's motto, that I truly only triumphed when visiting Mumbai... yummy!!! Why did we visit Mumbai, particularly during the rainy season? Yes, you got it, the Asia Offshore Association plans to hold a conference in Mumbai in October 2009...watch this space!



OBAMA-MANIA: I woke up every day the last two weeks thinking perhaps I did a Rip Van Winkle and slept through the November USA Presidential elections and Senator Barack Obama had been elected by the people, well, sort of elected by the people via that odd electoral-

college system, to run the USA. Jawing with the troops in Afghanistan, photo-ops with Israel's leaders, Kennedy-like speeches at the Victory Column in Berlin, smiles with the French, etc, one could say he already crossed the finish line in first place. John who?

**TAX HAVEN BANKS AND US TAX COMPLIANCE:** If you are bored and want to read some of the stuff that made Tom Cruise popular in *The Firm*, then visit [hsgac.senate.gov/public/files/071708PSIRReport.pdf](http://hsgac.senate.gov/public/files/071708PSIRReport.pdf) to read the latest report published by the United States Senate Permanent Subcommittee on Investigations entitled *Tax Haven Banks and US Tax Compliance*. A press release issued by the Subcommittee summed up the thinking of these USA leaders when pontificating "At a Thursday hearing entitled, Tax Haven Banks and U.S. Tax Compliance, the latest in a series of hearings with insider information about the workings of the offshore industry, the Senate Permanent Subcommittee on Investigations will examine how tax haven banks facilitate tax evasion by U.S. clients, hide client and bank misconduct behind the cloak of bank secrecy laws, and add to the offshore abuses that cost U.S. taxpayers an estimated \$100 billion dollars each year." Other than the riveting testimony of a self-confessed thief (the "insider information") and the amateurish, non-compliant tax planning structures designed by one of the world's largest banks (we now know what "you and U.S." really means in those corny ads), you might want to read this 115 page document because the fella who apparently already is the new USA President is a member of this Subcommittee. Hmmmm...me thinkist the international community may just live to reconsider the often-shouted mantra of the last 8 years - "any one but Bush"!!! And check out what the British are doing (see below) to their nationals based on the documentation stolen by a character even shadier than the banks!

**Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008:** Remember in 2005 when the New York Times broke the story about the Bush administration's use of warrantless domestic wiretaps? Well, the intrusiveness of the USA government's intelligence gathering actually started in earnest in 1978 with the Foreign Intelligence Surveillance Act ("FISA"). FISA detailed procedures for the physical and electronic [surveillance](#) and collection of foreign intelligence information between foreign powers and agents of foreign powers. Such surveillance also covered USA citizens and permanent residents suspected of being engaged in espionage and violating USA laws in the USA or a controlled area of the USA. FISA has been updated several times since 1978, including the infamous USA PATRIOT Act (did you know the acronym stands for United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism?). FISA was recently "improved" by providing immunity to telecommunication companies that co-operate with the government. If you have some more free time after reading "President" Obama's handiwork, then try this 114 page eye-opening Act ([www.politico.com/static/PPM104\\_080619\\_fisapromise.htm](http://www.politico.com/static/PPM104_080619_fisapromise.htm)).

**BEIJING OLYMPICS:** Marina and I will be attending the last 10 days of the Olympics. We even will bring our laptops given China's promise of "free and unfettered access" to the Internet. Yeah, right, did anyone seriously believe China would relax existing rules to that extent? C'mon, kids, I am a big fan of where China is and where it is going, but let's get real. China still has a long way to go. Having said that, look at the sort of intrusive conduct in which the USA engages. Why would one expect more of China!?

**HONG KONG GOES FROM ADMIRABLE TO SHAMEFUL TO SILLY:** As many people may know, Hong Kong people employ approximately 250,000 foreign domestic helpers from various countries including the Philippines, Thailand and Indonesia. To avoid mistreatment and ensure a reasonable living standard, the Hong Kong Government established a statutory minimum wage. This was ADMIRABLE as the Hong Kong Government rightly recognized Hong Kong people would seek to cut a better deal and the foreign domestic helpers have virtually no bargaining power given the overabundance of people from Southeast Asia seeking employment anywhere but in their homelands. In 2003, the Hong Kong Government imposed a HK\$400 monthly Employees' Retraining Levy for hiring a foreign domestic helper. The stated objective of the levy was to generate revenue for training and retraining the local workforce. You might have noticed this levy only applied to "foreign domestic helpers" and effectively imposed a tax on the lowest paid members of Hong Kong society despite the fact local people earning a similar salary were not subject to such a levy or tax. This was SHAMEFUL. In July 2008, the Hong Kong Government announced the suspension of the levy for two years from 1 August 2008 to 31 July 2010 as part of inflation relief measures. With careful planning, some employers would be able to fire their existing foreign domestic helpers, rehire them and effectively turn the 2 year moratorium into 4 year suspension. Confusion and fear reigned supreme among the foreign domestic helpers who were being fired, rehired and basically jerked around. This was and remains SILLY. Listen – I really love living in Hong Kong and after nearly 20 years consider it my home. But, c'mon fellas, please demonstrate some leadership by scrapping the levy! Admirable is far better than Shameful or Silly!

Onwards and upwards...and please remember China is moving, albeit slowly, in the right direction...can we say the same about the USA?



### Commandment 3 ALLIANCE ALWAYS WORKS

Time flies... This is the third episode of the 10 commandments series and I'm into my fourth month with GCSL. Alliance Always Works. Yes, and you'd better believe it! One of my most-read authors is Kenechi Ohmae, who has written extensively on the subject of strategic alliance. In today's global environment, it is perhaps one of the most critical strategic thinking in business development and expansion.

Strategic Alliance is really nothing new. It has been frequently practiced by politicians in ancient China and in other parts of the world for many years. A Strategic Alliance is a formal relationship formed between two or more parties to pursue a set of agreed upon goals or to meet a critical business need while remaining independent organizations.

Partners may provide the Strategic Alliance with resources such as products, distribution channels, manufacturing capability, project funding, capital equipment, knowledge, expertise, or intellectual property. The alliance is a collaboration which aims for a synergy where each partner's benefits from the alliance is greater than those from individual efforts.

A typical example of a successful Strategic Alliance is the Star Alliance. Code share flights between these member airlines are, for the most part, seamless; allowing smaller airlines to service their customers to more destinations. This tight cooperation led to suspicions of anti-competitive behavior, and the alliance was investigated by the European Union as a virtual merger of its members. The creation of Star Alliance was a milestone in airline history due to its size and sparked the formation of rivals, notably SkyTeam and OneWorld.

The alliance developed the "regional" concept in 2004, which helped Star Alliance penetrate individual markets with the regional participation of smaller carriers. Star Alliance members now fly 18,100 daily flights to 975 airports in 162 countries utilizing a fleet of 3,087 aircraft. Its members carried a total of 405.7 million passengers with a turnover of US\$95.3 billion in 2006. All Star Alliance carriers combined employ over 350,000 pilots, flight attendants, and other staff. Star Alliance was voted best airline alliance in the Skytrax 2007 World Airline Awards.

Now, that's Strategic!

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## GCSL NEWS

### 08.08.08 BVI BUSINESS COMPANIES

GCSL Hong Kong has the following BVI Business Companies formed on the auspicious date of August, 8 2008 available for immediate purchase:

1. Lucky Star Partners
2. Olympia Industries
3. Sporta Investments
4. Sportico Inc
5. Olympica International
6. Bababa Ltd
7. Circle Eight
8. China 888
9. China World Traders
10. OIAL Inc
11. Constellation Partners
12. New Era Ventures
13. Sunshine 88
14. Prospero 888
15. Miracula 88

### CATHY COMPLIANCE IN BELIZE

On my recent visit to Belize, Carlo and I took the time and pleasure of meeting Director General of the IFSC (International Financial Services Commission) Gian Gandhi and FIU (Financial Intelligence Unit) Director Mrs. Geraldine Davis Young.

The FIU is in charge of investigating and prosecuting financial crimes, performing the functions of the Supervisory Authority under the Money Laundering (Prevention) Act, ensuring coordination and cooperation between law enforcement agencies, government departments, regulatory authorities, private institutions and members of relevant professions in evolving methods and policies to prevent and suppress financial crimes, sharing information and cooperating with foreign financial intelligence units in the fight against financial crimes and dealing with all requests for legal assistance from foreign countries, law enforcement agencies and other regulatory bodies relating to financial crimes.

The IFSC is in charge of promoting and developing Belize as a center for international financial services, protecting and enhancing the reputation of Belize as an offshore financial center, providing appropriate supervision and regulation of international financial services, formulating policies

and providing advice and assistance to the government on the regulation of such services; collecting, storing and disseminating reliable and timely information to interested parties on changes and new trends in these services.

We thank both very busy offices for their time in explaining new developments in Belize law and future directions. Over the next few newsletters Carlo will outline some of these changes and how they may affect you if you have a Belize Trust or Company. Developments on the horizon include a Foundation law and a re-stating of Anti-money Laundering laws.

As usual, I thank Carlo and Kerry Ann, Delicia, Sofia and the newly married Raquel for their kindness, good manners and assistance in my performing of my annual review of the office.

Of most concern however was the Radisson Hotel's inability to provide any of their usual tours to even the zoo, let alone caving or to explore the natural beauty of Belize away from Belize City. With tourism being Belize's prime revenue machine, one sees the need for the offshore industry to expand as a revenue generator if this is the level of tourism adventure on offer.

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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 ([www.mandarinoriental.com](http://www.mandarinoriental.com)) in Hong Kong. We are exceedingly pleased to have David O'Rear, Chief Economist, Hong Kong General Chamber of Commerce ([www.chamber.org.hk](http://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, Robertson's Law Firm ([www.robertsonshk.com](http://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](http://www.go-offshore.com)), and Dan Mitchell, Senior Fellow, Cato Institute ([www.cato.org](http://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](http://www.austrian-taxes.com)), and AOA Global Advisory Committee Member Diana Palombo, Director, The Benedict Partnership ([www.benedict-partnership.co.uk](http://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](http://www.barclaysasia.com)), will provide us with his insights. Gary Ferraro, President, Guardian Trust Company (Asia) ([www.guardiantrustcompany.com](http://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 Philippe Boulle, Director, Intershore Consult ([www.intershore.com](http://www.intershore.com)) and Simon Mitchell, Managing Director, Mayfair Trust ([www.mayfair-offshore.com](http://www.mayfair-offshore.com)) about the most recent developments in the Seychelles. In usual AOA fashion, our cocktail parties are shaping up to be fantabulous with Barclays Wealth ([www.barclaysasia.com](http://www.barclaysasia.com)) sponsoring the opening glitzy gala at M Bar & Pierre at the tippy top floor of The Mandarin Oriental and Robertson's Law Firm ([www.robertsonshk.com](http://www.robertsonshk.com)) taking us back in time to the exclusive colonial ambience of The Hong Kong Club, which opened its doors in 1846.

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



## HONG KONG UPDATE

## Hong Kong's International Standing Slipping

For more than thirty years, Hong Kong has held its place as a leading regional and international business and finance center. However, as we enter typhoon season, the city finds itself in the proverbial eye of the storm. It is no secret to anyone with connections to China that the preparations and seeming random policymaking by Beijing surrounding the upcoming Olympics have already seriously disrupted the plans of both tourist and businessperson alike. Hong Kong has, as a city, been affected as well. Even as the economy has begun to experience the first effects of the global credit and oil crises, the Hong Kong Government, in an effort to buttress the colossal PR campaign undertaken by Beijing in support of the Games, has spent more time emphasizing patriotic fervor than focusing on the economy. That is not to say Hong Kong's Chief Executive and his cabinet are unaware of the issues. Earlier this year the government offered some of the largest tax cuts ever to private citizens as well as businesses, including eliminating certain tariffs, like those on wine, completely. In fact, in between Olympic flag wavings, our Chief Executive has managed to raise the issue of inflation with his Mainland counterparts and secured, at least verbally, a commitment from the Central Government to assist with supportive measures.

What is of most concern, however, is the precarious situation in which Hong Kong now finds itself, particularly in relation to cities that pose a competitive threat. Traditional rivals like Singapore and Shanghai have stepped up their efforts to offer alternatives to Hong Kong. In the case of Singapore, the government continues to refine its banking regulatory infrastructure in an effort to attract sophisticated global clientele. Shanghai, while kept somewhat in check by Beijing, continues to develop at breakneck speed.

The less evident, but perhaps more alarming, threats are aimed directly at Hong Kong's fallback role as THE gateway to China. Shenzhen is no longer simply Hong Kong's backwater, Wild West neighbor. City officials have made extraordinary efforts to lure core industries like shipping and air cargo across the border by offering world class facilities and economic incentives. Once thought a target for merger with Hong Kong, Shenzhen now sees itself as a stand alone competitor.

As relations between China and Taiwan continue to warm, Hong Kong will further lose its relevance as a gateway. Direct air links, while limited, are already under operation, and leaders from both sides of the Taiwan Straits hope this will lead to greater tourism, banking and investment flows, eliminating Hong Kong as middleman.

One can only hope that, once the spectacle of the Olympics has passed, Hong Kong's leaders can refocus their efforts on ensuring the city's future.

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## CHINA UPDATE

### State Administration of Foreign Exchange's Notice of Foreign Exchange Settlement for Trading Industry

Hot money is always the great concern of developing countries, including China. Many economic specialists and professionals have issued warnings about the fate of the current fast growing economy after the Beijing Olympics are over and the hot money travels elsewhere. To address this concern, the State Administration of Foreign Exchange issued a notice on July 2, 2008 to further regulate foreign exchange settlement in the import and export industry, which is considered the easiest channel for speculators to move money in and out of China.

### Visa policy in China is tightened

The granting of visas to China has severely tightened in the run-up to the Beijing Olympics. This has impacted not only foreigners seeking to visit China, but those foreigners residing in China wanting to go overseas for holidays, business purposes or to renew their China visas. "F" and "Z" China visa holders beware...life will not be the same until September!

### Operating Model determines the China investment structures

Choosing the correct corporate structure when making an investment in China is crucial and requires consideration of many factors as the decision may impact the operating model, payments and billings, financing channels and other administrative issues. Many professionals immediately recommend using Hong Kong or other jurisdictions with double taxation treaties ("DTT") to form an intermediary parent company for holding the China investment. However, investors should ask some simple questions prior to making this all-important decision:

- Will the China entity or operation be a profit or cost center?
- How should the China investment be separated from existing investment outside of China?
- Is the foreign operating model likely to succeed in China?

Many people may know that for foreigners to invest in China one does so via a Representative Office, Wholly Foreign Owned Enterprise or Joint Ventures. A Representative Office is, by definition, a cost center, which should not generate profits or conduct business in China. Thus, using DTT jurisdictions for a Representative Office may result in additional costs without any corresponding benefits. However, if the China entity is likely to generate profits, then certainly Hong Kong and other DTT jurisdictions combined with a Wholly Foreign Owned Enterprise or Joint Venture may be a better alternative. Many service providers set up a Hong Kong company and Wholly Foreign Owned Enterprise while separating the operations (China) and the billings (Hong Kong). However, since January 1, 2008, the Enterprise Income Tax ("EIT") law clearly states that

administration or work done or profit originated from and in China would be subjected to China EIT. As such, splitting the operations and billing functions may result in dangerous consequences, particularly as DTT usually if not always have exchange of information clauses. Be careful!!!

#### OVERSEAS INVESTMENT DOUBLED IN 1H08

China experienced a doubling of non-financial overseas investment in the first half of 2008 to US\$25.7 billion, which also exceeded China's total overseas investment in 2007.

#### WAL-MART SIGNS AGREEMENT WITH CHINESE LABOR UNIONS

After 18 months of tough negotiations, the US retail giant Wal-Mart has finally signed collective bargaining agreement with labor unions in Shenzhen. The agreement introduces annual wage negotiations and specifies that the minimum wage offered by Wal-Mart should be higher than the local minimum wage of RMB1,000 (US\$147). In addition, the agreement addresses terms and conditions concerning working hours, paid vacations, social security and training. Thanks to the agreement, more than 8,500 employees of Wal-Mart in Shenzhen will enjoy a 9% wage increase this year and the next. The USA giant boasts a strong presence in China with 107 Chinese outlets, among which 16 are located in Shenzhen. Wal-Mart has already signed similar agreements with unions in Shenyang, Liaoning province, and Quanzhou, Fujian province. However, the retailer has no timetable to sign such agreements with unions in the other cities.

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#### China's Overseas Acquisitions

China's cash rich banks are reported to have in excess of US\$30 trillion in foreign exchange reserves accumulated over the past 30 years. Figures vary according to sources and measurement criteria but the consensus is that the number of outbound mergers and acquisitions ("M&A") is increasing rapidly in the last 2 years to the tune of US\$4 billion. In addition to acquiring companies that have access to natural resources and energy, Chinese companies are also buying into technology, distribution networks and brand names. It's difficult for Chinese to expand overseas by organic growth because they need local teams to do their sales and development in foreign markets. The types of issues they face include visas for their personnel sent abroad, the inconvertibility of the RMB and the image and reputation of Chinese companies globally. Outbound M&A can help circumvent these problems. The most significant deals last year were Industrial and Commercial Bank of China's US\$5.4 billion investment in South Africa's Standard Bank, China Development Bank's US\$3 billion investment into Barclays and China Investment Corp's US\$3 billion investment into the USA private equity firm Blackstone. While these may seem small amounts given the size of the Chinese economy and total volume of cross border investment flows, expectation are high for a continued upswing in coming years.

#### China's Rich

The Chairman of China's Economic System Reform Research Association Mr Wang Depei believes that the country has accumulated so much wealth in the past 10 years its time for the wealthy to spend their money. He was speaking at the 1st Annual Luxury Brand Forum held on in April 2008 at the CEIBS in Shanghai. Wang sees China as an ideal market for high-end goods citing inclination of Chinese consumers towards the element of face. Also present at the forum was Paolo Zegna, President of Ermenegildo Zegna Holditalia Spa. He said China contributes 33% of its total sales globally and this trend is expected to grow by 50% per annum. Another trend is the growth of fine wine consumption as more and more connoisseurs clubs are setting up in major cities around China namely Cheese and Fizz, Wine Spring etc offering the finest in wine collection. China now has an estimated 50,000 individuals with a net worth of US\$10 million and growing. At last count there were about 200 US\$ billionaires in China according to the famous Hurun Report of China's wealthiest individuals.

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## SINGAPORE UPDATE

#### THE PRICE OF FUN

As reported earlier, Singapore is racing ahead in its bid to create a casino hub in Asia with the building of two Integrated Resorts with each containing a world-class casino. Any visitor will tell you of the break-neck speed at which construction is taking place – with each site looking like a crane park as hundred of cranes and piling equipment are deployed side by side to expedite the process. Word has it that even bus drivers and transport drivers have given up their jobs to become crane and dump truck drivers – yielding salaries of up to 5 times from their previous jobs. The surge of demand for construction materials and resources has driven construction costs up by more than 100% in the past year alone. This, in turn, has impacted the rest of the on-going projects substantially. With the construction of the new Sports Hub (another multi-billion project) due to commence, more of the already hectic construction resources will have yet again have to be re-deployed. The influx of foreign contractors, consultants, professionals to tap on this growth has been ceaseless. In an expected move, the Government has just announced that it will withhold S\$1.7 billion of public projects to “cool” down the industry. As work continues to develop Universal Studios in Sentosa for its 2010 opening, Resorts World at Sentosa announced yesterday that a \$705 million contract for infrastructural work for the theme park has been awarded to China Jingye Engineering. The firm, a unit of one of China's biggest construction conglomerates, will be take charge of general building works such as structural buildings, walkways and an amphitheatre. China Jingye, in Singapore for the last 12 years, was previously involved in building MRT station and Housing Board projects here.

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## INTERNATIONAL UPDATE

### UK To Begin Crackdown On Liechtenstein Account Holders

The UK tax authority is ready to open new tax evasion investigations into holders of accounts in Liechtenstein, as part of a wider crackdown on offshore bank accounts. According to reports in the UK media, Her Majesties Revenue and Customs ("HMRC") is targeting about 300 wealthy Britons who have used Liechtenstein foundations to hide income and assets from the tax man. About GBP300 million in unpaid taxes is supposedly at stake. It is understood that HMRC has uncovered the identities of many of those account holders after it paid an informant in possession of data stolen from Liechtenstein's LGT Trust earlier this year. The tax department is believed to have paid GBP100,000 to the informant - a former employee of LGT - for the information. The same informant also sold the information to the German intelligence service for about EUR4.5 million sparking a huge tax evasion scandal involving hundreds of wealthy Germans and other nationals. HMRC's investigation into the Liechtenstein account holders is likely to form part of a wider probe into offshore bank accounts which began in 2007 with an amnesty designed to encourage account holders to declare assets with the carrot being a more lenient-than-usual penalty regime. About 44,000 people took advantage of the offshore disclosure scheme, but in March 2008, HMRC began sending letters to thousands more taxpayers who did not respond to last year's inquiries, seeking further information on funds held in offshore bank accounts. It is now thought that HMRC is ready to launch the next phase in its war against offshore tax evasion, and will soon begin to pursue criminal investigations against some 3,500 Britons lasting up to three years.

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### SEC ACTS TO PROTECT FANNIE, FREDDIE AND OTHER MEMBERS OF THE "HOUSE"

The Securities and Exchange Commission of the USA issued an emergency order on July 15, 2008, which was modified on July 18, 2008, targeted at limiting "naked" short selling in the publicly traded securities of Fannie Mae, Freddie Mac and the following members of the "house":

BNP Paribas	Bank of America Corporation	Barclays PLC BCS
Citigroup Inc.	Credit Suisse Group	Daiwa Securities Group Inc.
Deutsche Bank	Allianz SE	Goldman, Sachs Group Inc.
Royal Bank ADS	HSBC Holdings ADS	JPMorgan Chase & Co.
Lehman Brothers	Merrill Lynch & Co., Inc.	Mizuho Financial Group, Inc.
Morgan Stanley	UBS AG	

The order requires a person to borrow or arrange to borrow, or otherwise have the security available to borrow from its inventory, prior to executing a short sale in the relevant securities. The order took effect on Monday, July 21, 2008, and was scheduled to terminate on Tuesday, July 29, 2008.

Good to be a member of the "house"...and the rich get richer while the taxpayer foots the bill!

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### MAJOR GERMANY COMPANY LAW REFORM

The German Parliament has implemented a new company form called the *Unternehmensgesellschaft* (hereinafter "UG") as part of the recent company law reform. While the minimum capital of an ordinary GmbH remains at EUR 25,000, the UG can be formed with an initial capital of only one Euro. If the company is formed with standard articles, the foundation can cost as little as EUR 120. The UG form is intended for start-ups which will convert to the GmbH form at some later time. Therefore UGs must save 25 % of their annual profits until the minimum capital for an ordinary GmbH is reached. While the UG provides an interesting alternative to the English limited, the use of which has become popular in Germany in recent years, some legal experts criticize the lack of a minimum capital requirement as potentially undermining the reliability of German companies which has been a key factor of German company law over the last century. Company registration has been simplified. The company law reform has also set up standardized templates for the incorporation of companies and their registration. Articles of association, the appointment of directors and the shareholder's list can be combined in one document to accelerate the registration process. Furthermore, in addition to the electronic commercial registers and online filing introduced in 2007, the GmbH can now also be registered before the necessary business permits have been obtained. These steps will significantly accelerate the registration process. GmbHs allowed to have their administrative seat outside Germany. Under the reform, the German GmbH can now be exported to any other state since the administrative seat of the company may now be located outside of Germany and separated from the registered seat within Germany. German corporate groups can therefore now organize their companies as GmbHs regardless of where they do their business. The shareholder list has become more important. Only those shareholders whose names are included on the list filed with the commercial registry are considered shareholders for purposes of voting and dividend rights and this listing requirement has now been extended to apply to any bona fide share-acquisition offers. Cash pooling will

become easier and safer. The handling of intercompany upstream loans had become quiet complicated and legally unsafe in Germany due to an extensive interpretation of the capital maintenance rules of the GmbH Law by German courts. The company law reform has also clarified that capital maintenance rules do not apply to parties bound by so-called domination and/or profit transfer agreements (*Beherrschungs- und/oder Gewinnabführungs-verträge*). Furthermore, a GmbH may broaden its upstream intercompany loans if the consideration is sufficient and therefore amounts to a simple accounting exchange on the asset side of the balance sheet. The repayment of shareholder loans has been simplified. The complex provisions regarding the repayment of equity-replacing shareholder loans have been amended with the result that they can now be repaid in any financial crisis prior to insolvency regardless of their treatment as debt or equity. However, once insolvency is reached, all shareholder loans are generally subordinated with exceptions only allowed in certain situations, for example, for purposes of restructuring. The current company law reform presents the most fundamental reforms in German company law since the introduction of the GmbH form in 1892. The effect on legal and corporate practice will be enormous. It is to be awaited how start-ups will make use of the Mini-GmbH (UG) and whether the changes made to the classic GmbH will provide a sufficient competitive edge over other European company concepts such as the UK Limited.

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## CENTER FOR FREEDOM & PROSPERITY

The political winds in Washington and Europe are blowing in the direction of increased statism and fiscal imperialism. Democrats are poised to win the White House and increase their majority in the Senate and House. Their path to victory is paved with false populism and anti-free market demagoguery that threaten global prosperity and individual liberty. To make matters worse, most Republicans are not standing up for free-market principles and seem all too eager to cede the moral high ground in economic policy to the statist.

Not surprisingly, American taxpayers operating in low-tax jurisdictions and foreign companies operating in the United States are bearing the brunt of statist attacks. Two bills single out American taxpayers operating in so called tax havens for discriminatory treatment, and these bills are likely to gain momentum after the 2008 election.

Senator Levin's legislation, S. 681, imposes taxes, regulations, and penalties on American individuals operating in targeted low-tax jurisdictions. Senator Dorgan's bill, S. 396, increases taxes on the income American companies earn in selected low-tax jurisdictions.

The presumptive Democratic nominee for President, Senator Barack Obama, has sponsored both bills, and has also introduced "The Fair Share Act" (S.2775 / H.R.5602), which raises taxes on American corporations operating overseas if they obtain contracts with the U.S. government.

Foreign investors, who create jobs and help grow the American economy, have also been targeted for tax increases. The original version of the 2008 U.S. House Farm Bill included a tax hike on U.S. subsidiaries of foreign corporations. Although the provision was eventually stripped, this case demonstrates the left's aggressive push to raise taxes on foreign investors in order to offset out-of-control spending.

Meanwhile, on the other side of the Atlantic, the OECD and the EU are seeking to revive draconian tax harmonization and double-taxation schemes. Emboldened by the political climate in Washington, these bureaucracies are poised to aggressively stymie tax competition.

Last February, in a remarkable display of fiscal imperialism, the German government bribed a former Liechtenstein bank employee to provide confidential records about German account holders.

Germany's aggression against Liechtenstein's fiscal sovereignty demonstrates, in no uncertain terms, the threat posed to economic freedom and fiscal sovereignty by high-tax, inefficient welfare states.

Determined to prevent the outflow of capital and labor, these uncompetitive and stagnant jurisdictions work closely with the OECD, UN and EU to restrict tax competition. The Liechtenstein case is proof that powerful interests are willing to go to great lengths to impede the free movement of capital across national borders.

The combination of misguided American populism and the hostility of international bureaucracies towards low taxes and free markets is a dangerous combination. If and when Democrats win the White House and expand their majority in Congress, friends of economic freedom and fiscal sovereignty should expect unrelenting attacks against low-tax jurisdictions from both sides of the Atlantic.

The best hope for proponents of liberty is to shore up defenses now, because at this point it looks like things are only going to get worse.

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OFFSHORE UPDATE

## ANGUILLA: The Foundation Act 2008

Last month, the House of Assembly, or Parliament of Anguilla, enacted at long last, the Anguilla Foundation Act 2008. GCSL Anguilla welcomes this development. This is the first in a series of articles that I shall be writing on this new legislation with a view to educating readers. I have produced verbatim below, the explanatory notes which the Government of Anguilla issue in introducing this legislation in Parliament.

“The aim of the Act is to offer a modern private foundation concept as it is well known in Liechtenstein, Panama, The Netherland Antilles, the Bahamas or St. Christopher & Nevis, to name only the most important jurisdictions. The criticism has often been made by service providers that Anguilla does not offer the foundation concept as an alternative to trusts and that Anguilla is therefore deprived of the phenomenal success of mainly Liechtenstein and Panama but recently also St. Kitts and Bahamas family foundations. This criticism was reason enough to undertake the exercise to draft an Act, which is based principally on the Panama legislation but also draws on the corresponding Liechtenstein, St Kitts and Bahamas legislation.

The Act is designed to close the gap between the Common Law trust concept and the Civil Law foundation, benefiting from the advantages of both. It is strongly believed that this new Act will further increase Anguilla’s attractiveness and reputation as one of the most modern, responsive and innovative jurisdictions in the world, having one of the most comprehensive and best balanced range of financial services products while also being well-regulated.

The main objective of the Anguilla Foundation Act is to enable Anguilla to attract clients based in civil law countries by offering a modern, lean and workable estate planning concept, with which they are much more familiar as opposed to the Common Law trust concept. The latter is often very difficult to sell in the Civil Law area.

The main distinction between a foundation and a trust lies in the fact that the foundation has its own legal personality whereas the trust is “only” a hybrid relationship between the settlor and the trustees with certain beneficiary rights. Consequently, the foundation concept allows the founder to appoint a foundation council to be comprised of one or more council members, known as the supreme body of the foundation, similar to the board of directors of a company. Unlike Liechtenstein but similar to the Panama model, the Act does not require a licensed Anguilla based council member. However, if no Anguilla based and licensed foundation council member is appointed, the Anguilla Foundation is required to appoint a local, licensed secretary in order to assure that the local law and regulations are respected at all times. The secretary and the registered agent can be the same.

It is further important to understand that certain tax structures are dependent on the concept of legal personality and in any such case, for example, an Anguilla Foundation provides the solution, whereas planning with a trust would require the incorporation of an additional underlying company.

One of the most innovative aspects of the Act is that the Anguilla Foundation may choose between being registered or deposited. This concept so far only exists in Liechtenstein and is one of the main factors responsible for the great success of the Liechtenstein family foundation. By passing the Act, Anguilla will be the first and only Common Law jurisdiction to adopt this highly attractive concept. The concept combines compliance with Anguilla’s regulatory requirements as well as clients’ demands for increased confidentiality. Yet even for Anguilla Foundations opting not to be registered the law provides for an official confirmation of its existence from the Registrar. Such confirmation is, for example, necessary to open a bank account, and is a requirement that is not well catered for within the framework for the establishment of a trust.

There is also an opting out clause which enables the Anguilla Foundation to provide in its articles that all disputes shall be dealt with by an arbitration tribunal instead of by the ordinary courts. This provision will certainly be viewed with great satisfaction by practitioners whose clients are very interested in the ability to have disputes resolved in a confidential and efficient way.

The Anguilla Foundation may be established for basically any legitimate purpose, ranging from family support to charitable purposes. Commercial activities are allowed if they are conducive to achieving the foundation’s purpose. It will even be possible to set up a “purpose foundation” without beneficiaries, similar to the “purpose trust” concept. This will make the Anguilla Foundation an attractive tool in international financing and structuring projects.

The Anguilla Foundation is irrevocable and not subject to any perpetuity periods. The foundation council may, however, decide to dissolve the foundation, if the purpose cannot be realised any more or if there are no assets left in the foundation.

The Act is kept as short as possible, as its potential core markets are Europe, South America and the Middle East, which are all well known for short pieces of legislation. This leaves the greatest scope for the autonomy of the vehicle’s governing instruments, in this case the foundation’s declaration of establishment, articles and by-laws. It enables Anguilla to offer the Civil Law based Private Foundation concept whilst affording the greatest possible protection with regard to anti-forced heirship rules and other foreign rules and laws, by stating that no Anguilla Foundation shall be void or voidable and no contribution to an Anguilla Foundation shall be void or voidable due to a foreign law or judgement. This is certainly an important advantage compared to other jurisdictions.

Each Anguilla Foundation shall have a local Registered Agent and Office and there shall be an annual Government fee which will provide additional income for Anguilla.

Finally, the Act contains provisions with regard to the appointment of the guardian in respect of an Anguilla Foundation. The guardian of the Anguilla Foundation is basically comparable to the protector of a trust.”

## BELIZE: INTERNATIONAL MONEY LENDING REGULATIONS

In July 2008, the International Financial Services Commission passed Regulations to the International Financial Services Commission Act (as amended by Act No. 8 of 2007) geared to achieve the following objectives:

- To promote Borrower understanding of the terms of credit transactions and to foster competition among suppliers of credit so that Borrowers may obtain credit at a reasonable cost;
- To regulate Lenders in a manner that will prohibit unfair practices; and
- To avoid conflict of laws and provide clarity in the interpretation and enforcement of Loan Agreements; as set out in Section 3 of the Regulations.

These Regulations are called the International Money Lending (Short Term and Unsecured Small Loans) Regulations, 2008. The title of course is self-explanatory in its primary objective, but of course, the devil is always in the details.

Section 5 of the Regulations makes it abundantly clear that loans made thereunder will be subject to a repayment period of less than one year, and "shall not be secured by title to real property, a motor vehicle, tangible personal property, or any other type of collateral other than the Loan Agreement and ACH authorization agreement. These loans will be made to persons for only household purposes and for personal expenses (Section 6), and can only be up to a maximum US\$5,000. The good thing is that this amount can, by a simple order of the Commission with the approval of the Minister of Finance, be increased. Further, as Section 7 further elaborates, Lenders making loans under these Regulations must provide a prominent written disclosure in their Loan Agreement and also on their website that:

- The Loan is designed as a short-term cash flow solution and not as a solution for long-term financial needs;
- Additional fees may accrue if the Loan is refinanced; and
- Credit counseling assistance may be available upon request for Borrowers experiencing financial difficulties.

These loans apply to international lending only, as they are not applicable to Belizean borrowers, and the businesses must be confined to non-residents of Belize. Interestingly enough, though, all the activities related to the offering of Loans under these Regulations are to be carried out within Belize, as far as shall be practicable. This includes any decisions concerning the underwriting and creditworthiness of the Borrower. These Regulations are governed only by the Laws of Belize, and no regard is to be had to the laws of the country of ordinary or tax residence of the Borrower. The Regulations clearly state that although Belize expressly recognizes the right of Lender and Borrower to contractually agree to the choice of law governing their transactions, the Regulations are very clear in Section 10, that in the event of any dispute regarding jurisdiction, the prevailing law shall be the law designated in the Loan Agreement, which of course are the Laws of Belize. In addition, there is to be included in the Loan Agreement a disclosure to be executed by the Borrower acknowledging that the Laws of Belize will apply exclusively to ALL aspects of the transaction.

All persons seeking to become Borrowers will have to verify their identity. This is for the purpose of preventing any issues of identity theft, money laundering, fraud, and any other illegal activities. This is of utmost importance, as the Money Laundering laws in Belize are due to get a massive overhaul, the likes of which have never been seen in Belize.

Also worthy of note is the stipulation in the law that no Lender operating under these Regulations can issue or publish any advertisement, circular or document of any kind which contains any statement which might reasonably be construed as implying that the Lender carries on the business of banking.

### Financial and Other Requirements for the License

So what does one need to put up to be able to enter into business under these Regulations? The share capital must be fully paid up and present in a United States Dollar denominated account at a bank or other licensed financial institution located within Belize. Further, of course, as I have been indicating in recent months, the application for this license must be done on behalf of the potential Lender by an existing holder of a license issued by the International Financial Services Commission.

Worthy of note is the fact that there is a provision which specifies that no Lender can lend to any one Borrower an amount exceeding 15% of the paid-up capital stock and surplus of such Lender. One thing that always warms my heart is when there is provision that almost guarantees that there will be employment for locals, for Belizeans. So I was most happy to see the provision in these Regulations which stated that Lenders are required to maintain a physical location in Belize where all books and records relating to the origination of Loans under the Regulations are kept. Naturally, that means that there would have to be persons who would be involved in the business of maintaining those records, be they electronic or hard copy, as the records have to be made available to the Commission for inspection upon request. Further, specified in the Regulations is the stipulation that at least 70% of all the duties and activities involved in the offering of this business is to take place within Belize and is to be done by Belizean residents. So this is what we call a win-win situation, as there is employment opportunity created, and potential Lenders will get the business they seek to employ.

Before we leave, I have to let you know about an effort that we at GCSL Belize were proud to have helped to sponsor. There were a series of healthy living seminars and a clinic put on in the north and west of the country, in the town of San Lazaro and the City of Belmopan, combined with

some financial planning advice provided by Glen Smith, country manager of First Caribbean International Bank in Belize. Dr. Hugh Sanchez and Dr. Ranju provided the medical services for the health clinics which were put on, and many people benefited in one way or another. I make mention as it is part of GCSL Belize's continued desire to serve others, sometimes even in ways that have nothing to do with the sale of IBCs or settlement of trusts.

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## COOK ISLANDS: USE OF COOK ISLANDS CUSTODIAN TRUSTEE AS PART OF A USA DOMESTIC ASSET PROTECTION TRUST

There is specific provision under Cook Islands law, which enables the appointment of a Custodian Trustee, to work in tandem with a Managing Trustee. Applied in the USA setting this means the appointment of a foreign Custodian Trustee to work together with a USA resident Managing Trustee.

From a practical level, this split in roles allows for a greater degree of protection, particularly for those clients who are more likely to come under attack, but at the same time avoids the higher threshold of reporting that applies to foreign trust as well as the higher costs of setting up structures offshore. In other words, the trust remains a domestic Asset Protection Trust, the only difference is that a co trustee is appointed, who is specifically designated as a Custodian Trustee thereby allowing it the benefits that accrue under Cook Islands law.

We are happy to help you draft a trust instrument, using your existing form, which caters for these specific powers. For some trust instruments there will need to be a clause inserted which allows the appointment of a Custodian Trustee, however this may not be necessary where there already exists a power to appoint a co trustee.

There will however need to be inserted a clause which stipulates that upon the happening of certain specified events, such as a creditor attack, the Managing Trustee can be replaced and the foreign Custodian Trustee, who until then has remained passive, assumes full responsibility for the administration of the trust. Upon the occurrence of these events, we would also recommend a change in governing laws to that of the foreign jurisdiction. In other words, when you really need the foreign trustee to step up, the trust instrument allows for this. You get the best of both worlds, the familiarity of domestic laws, and the escape to foreign asset protection jurisdictions like the Cook Islands when there is a need.

We like to call it an insurance policy.

In summary, the advantages with this structure are as follows:

- The USA resident Managing Trustee has control and management of trust assets with no need to confer with the Custodian trustee;
- The Custodian Trustee is resident in a foreign jurisdiction (such as the Cook Islands), and who holds actual title to the assets;
- The trust, for all intents and purposes, including tax filings, is a USA (domestic) Trust meeting the control and management tests;
- Minimal costs of adding a Custodian Trustee as part of an existing USA Domestic Asset Protection Structure;
- In the event that the trust may be compromised or comes under attack, the Custodian trustee can assume full control and management of the Trust.

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## SAMOA: SIFA Sports Spectacular

The Samoa International Finance Authority ("SIFA") has been the major sponsor in two of Samoa's sporting spectaculars for July 2008. A follow on from South Pacific Games last year, SIFA has provided yet another opportunity for locals to watch and partake in some of this year's best sporting events. SIFA sponsored both the inaugural Samoa Classic Golf Open and the IRB Rugby Sevens Oceania leg of the World Cup qualifiers to be held in Dubai next year.

The golf classic was graced by 28 international and local pro golfers. It gave an opportunity on the first day for local amateurs to team up with pros and play in an Ambrose competition where budding golfers could gain a few pointers from the pros. It made out for an enjoyable afternoon of golf before the main three day tournament kicked off on the following day. Prime Minister Tuilaepa Sailele Malielegaoi thanked Registrar of the Offshore Companies Registry Ms. Erna Vaai for the sponsorship and continued support of the development of this and many sports in Samoa.

While the Gold classic was under way a more physical confrontation was taking place at the Apia Park National Stadium with countries vying for positions in the 2009 IRB Rugby Sevens World Cup. As it was a forgone conclusion Samoa thrashed its arch rivals Tonga in the final to secure its place in next year's event with a 52 nil score over the visitors. This is a good start to their campaign and a warning to other Nations that Samoa is as every year a force to be reckoned with in Dubai, Hong Kong and the rest of the 2009 IRB Sevens Circuit.

## US Secretary of States Visits

July also saw the visit of US Secretary of State Condoleezza Rice to the treasured islands of the Pacific. Although her visit was only a brief 3 hours, it had all the "bells on" for the second ever visit from a person holding the position to Samoa. On the agenda Samoa's PM discussed two of

the key issues currently facing Samoa - fuel and food price increases. The request from the PM was for financial assistance to curb the increasing cost of living all an indirect result of the global increase in the cost of oil.

On a humorous note it was also funny locally that Ms. Rice's visit coincided with a shortage of rice in Samoa. People of paradise isle were seen buying fresh bread to substitute the staple on evening dinner tables. One local wise old man was over heard at the village chiefs meeting as asking, "Did Ms. Rice bring us any rice?" If the Inter-governmental talks are successful Samoa maybe looking at getting the rice they can eat.

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## TIDBITS

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

### OUR MONTHLY QUOTE THAT MADE US SMILE

If a woman tries to fail and succeeds, which did she do? *Plato and a Platypus walk into a bar*, Cathcart & Klein

### PATRIOTISM HAS GONE TO HIS HEAD

Well, we have heard of patriotism, but what about the Chinese fella who broke his own Guinness Book record of sticking 1,790 needles in his head at one time by inserting 2,008 in the Olympic design and colors. Oh my...patriotism has gone to his head!

### AN ENEMA A DAY KEEPS CONSTIPATION AWAY

Yup, we think that should be the slogan for a spa specializing in colonic treatment in Russia's Caucasus Mountains that recently unveiled a 366 kg brass syringe bulb held by 3 angels as a monument to the enema. The sculptor wants to promote the brand and franchise the same with souvenirs and awards for medical practitioners. We think this artiste should hang out with the pin fella from China!!!

### FEAR OF SCHOOL? DUH...

Yes, a mother represented to a school board in the USA that her daughter had such a devastating fear of school that she needed financing of special education including tutors, special software, travel expenses and modeling classes to improve her self-esteem. Guess what, the school board bought the story to the tune of US\$45,000 over the last 3 years. Yup, and we supposed you also would be shocked to learn that once the \$ were paid according to budget, the kid dropped out of school altogether. The school board is imposing truancy fines against the mother. We think the school board should be put in jail for being stupid!!!

### TO THE DOGS...

We were standing around in the infamous Heathrow Terminal 5 (jolly good, now) listening to the big story on the BBC News about people being attacked by robbers seeking to steal their expensive dogs. Hmmmm...the Yanks have huge problems, but what about the Brits when (a) your people are robbing citizens for dogs and (b) it is the feature story on the BBC news. Yanks, feel good about sub-prime for at least a moment.

### BUTLERS CAFE...YEAH, BABY, LET'S HEAR IT FOR THE GIRLS

We saw a special on the news the other day about a cafe in Tokyo where young, strapping Western men dressed like Tom Cruise at the Oscars serve cakes, sweets and tea to Japanese women, often married, while answering a bell with the mantra "Yes, my Princess". These Japanese women complain their Japanese men, who they love, are incapable due to Japanese culture to treat women like Princesses. A Japanese form of Hooters for the ladies? We love it!!!

### C'MON OVER FOR SOME FUN...THE GAS IS ON US!

Yes, we are now convinced the USA economy is hitting the bottom as the Shady Lady Ranch has been handing out US\$50 gas vouchers, round trip cost of gas from Las Vegas 130 miles away, to "guests" who then pay US\$ \$300 for one hour of services -- at this innovative brothel. Do they also provide free Viagra???

### RENT A CHILD

Did ya know that nearly 9 million people in the initial six months of 2008 or on average 50,000 people per day and on some days more than 250,000 people crossed over from Zhuhai to Macau!? And did ya know that those Mainland Chinese may have to wait up to 3 hours to enter the enclave for the chance to give all their \$ to the casinos? Well, not any more. Some enterprising Macanese parents, who along with their families enjoy fast track access to Macau, are now renting their children to weary Chinese travelers at approximately US\$2.50 per visit. Yes, those loving parents are willing to part with their kids for the 20 minutes or so as they escort their newfound masters across the border through the Macau fast track line. Reminds me - why is it that one has to pass both a written and practical exam to obtain the privilege to drive, but one only needs to engage in a few seconds of frenetic activity with a member of the opposite sex to have a child? It seems like humanity for a very long time has had its priorities out of whack. Thanks to the Macanese we now have a shining example why some people should only be allowed to drive...not be parents!!!

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