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Home


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JACK'S CORNER

Several thoughts for this month...

THIS SUCKS: I think what happened in Washington DC where a group of politicians from both major parties crafted a "rescue", "bailout" or "investment" plan, depending on your viewpoint, to address the most devastating financial meltdown in modern history **SUCKS**. Bear Stearns, Fannie & Freddie, Lehman Bros, Merrill Lynch, AIG, Washington Mutual, Wachovia, to name a few, have either entered the hallowed halls of bankruptcy or have been gobbled up by barely surviving financial organizations. US\$700 billion almost flushed down the toilet so that politicians can sally forth blindly, greed (both demonstrated by the little people who borrowed and the big people who lent money) can go virtually unchecked, crazy borrowing can start anew with the unmatched enthusiasm of a teenage boy walking through Patpong, weapons can be purchased from politicians' buddies to ensure continued and unfortunate death and, well, **THIS SUCKS** as the Senate revived the Save Wall Street Bill, the House lost its nerve and voted yes and that person in the White House signed it into law!!! C'mon, fellas, the experts, whoever they are, say the credit-default swaps amount to more than US\$43 trillion and the total derivatives market exceeds US\$500 trillion. US\$700 billion? Be serious!!! Sorry, folks, but the system is broke, Yanks have to learn how to live the life they can afford not the life they can afford by borrowing beyond what their grandchildren can repay and this Band-Aid will only provide an opportunity for a never-ending spiral of financial meltdowns ... or perhaps I am wrong and the system is a jolly good one...dunno...but I don't think so!!!

TRANSFER FEES: My favorite subject remains hot. Those "Johnny Does It So I Do It" service providers continue to extort sums ranging from US\$50 (why bother preparing an invoice!?) to US\$3,000 (shameful) when faced with an instruction to transfer administration of companies, trusts and other structures. Talk about petty theft!!! Well, one jurisdiction is moving forward to change all that. I am pleased to inform you one jurisdiction has agreed in principle to prohibit transfer fees of any kind unless agreed in writing at the initiation of the client relationship. Three cheers for them...name to be disclosed soon!!! Clients benefit, service providers live up to their fiduciary obligations and the industry as a whole looks better...I encourage all jurisdictions to join the crusade...it feels good!!!

A BETTER INVESTMENT: Some clever fella, obviously not an investment banker, recently proposed an alternative to the bailout of AIG...and I like it. The US\$85 billion We Deserve It Dividend would be paid to every USA taxpayer 18 and older - he reckons approximately 200 million people - resulting in a nice payday of US\$425,000 per person. The We Deserve It Dividend would, of course, be subject to tax of, say, 30% so each taxpayer would cough up US\$127,500 to Uncle Sam, which would return US\$25.5 billion to continue financing the DC corruption. That would leave each taxpayer with US\$297,500 to spend on the important things in life like paying off their mortgages (housing crisis solved), saving for college (kids with poor skill sets solved), paying off their student loans (graduates suffering excessive debt solved), depositing in savings accounts at banks (credit crunch solved), buying new cars (employment problem solved), investing in the stock market (falling and jittery share prices solved), paying for medical insurance (people dying due to lack of available care solved) and a whole host of other pressing problems solved!!! The We Deserve It Dividend or Down We Greedy AIG Gratuity - write to your representative in DC now...and don't forget to mention he/she not only receives the net US\$297,500, but also a big junk of change for he/she and his/her cronies to enjoy the best that tax \$ can buy!!!

MELAMINE MILK: I have had the misfortune of visiting a factory using melamine to make kitchen utensils. All perfectly OkeyDokey as, when used properly, melamine is non-toxic. The people in China who used it as an ingredient in milk? Well, hey, I think we clearly have experienced an act that justifies imposition of the death penalty. C'mon, I know you want to make \$\$\$ fast, but this sort of conduct demonstrates a callousness unknown to humankind!!!

YANKS - SAVE SOME BUCKS: I recently read that former USA presidents receive pensions of US\$191,300 per annum until the age of 80. If John "I voted 90% of the time with George W, but I am different" McCain wins and then manages to survive through a second term, then Yanks will pay a whopping US\$0 in pension money. If Barack "We need to change Washington DC so I chose a 30+ year veteran of the corrupt city as my Vice President" Obama triumphs and staves off Hilary and someone younger than a dinosaur from the Republicans for a second term, then Yanks will pay nearly US\$5 million in pension money if he graces the planet, which of course would have changed for the better after his 8 years, until he is 80. Hey, every penny counts even when your debt surpasses numbers that even baffle the innocent children, the ones who will suffer most as their futures are mortgaged for the silliness of their parents.

JACK'S HAIR: Many of our readers have noticed the length of my hair has somewhat changed in recent months and all of you have asked why? Simple: mid-life crisis as (a) I don't like cars so no fancy taxis for me; (b) I get sea sick in a bathtub so yachts are not of interest; (c) I don't like airplanes so a private jet is not on the agenda; (d) I do like Marlanes and I don't like the ramifications of slinkies so no tall, thin, young and attractive ladies willing to be a girlfriend to an old man in my future; and (e) I do like The Noble Grape, but there is only so much I can drink every day. Thus, until this mid-life crisis fades, you can expect to see my hair continuing to surrender to gravity...but I will not succumb to those readers seeking a pony tail!!!

Onwards and upwards...and please remember institutionalized corruption SUCKS!!!



GCSL NEWS

IRENE MAKES THE GRADE

GCSL Hong Kong's Irene Lam recently passed her Chartered Company Secretary exams and joined the ranks of this elite organization of the best of the best in the company secretarial field. No easy task, ladies and gents, so three cheers for Irene!!!

ACKER MERRALL & CONDIT BACK AGAIN

Following on from an incredibly successful Hong Kong auction in August, Acker Merrall & Condit, a GCSL Hong Kong client, is returning on November 15, 2008, 10am at the Island Shangri-La. Over 950 lots and HK\$60 million (US\$7.7 million) will be on the block including the following:

- Domaine de la Romanee Conti is the star of the sale, with 122 lots in total, including an original wooden case of 1990 Romanee Conti, and a super-lot of the original wooden 'Assortment' cases from 1990-2001.
- 285 lots of First Growths mainly from the best vintages of the past 25 years, including 90 lots of Lafite Rothschild.
- 51 lots of Petrus highlighted by five original cases of 1989 Petrus, one in magnum and one in double magnum.
- 30 lots from the collection of Wolfgang Grunewald with a value of approximately US\$1 million.
- Two incredible, once-in-a-lifetime lots from Krug.

If you want more information, please contact Jason Gerber (Jason@gcsl.info).

GCSL SHANGHAI

GCSL Shanghai recently morphed from Representative Office status to a Wholly Foreign Owned Enterprise with Jolly Hard Working Johnson Chien taking the helm as Managing Director. Only one reason: the business is looking positive for GCSL Shanghai and we thought it was time to take the plunge. GCSL Shanghai WFOE is licensed to do business and enterprise management consulting in China with main focus to help investors to invest in China and Chinese to invest outside of China. And yet, we are still on the Bund with new office address of No. 12 on the Bund, Room 202, Shanghai, China. Go get 'em, Johnson!!!



AOA

AOA HONG KONG - COMING BACK HOME WAS OH SO SWEET

From Barclays Wealth's opening cocktail with Bruce Lee outfits to the able Ambassadors of Outward Bound to a cast of speakers offering insightful presentations about economics, finance, law, tax, banking and investing to Robertson's classic cocktail at The Hong Kong Club to our always wonderful sponsors such as our Chief Sponsor, Guardian Trust, as well as Bilanz-Data, Seychelles International Business Authority and Nevis Financial Services Department to Peter Kung usurping the perfect attendance record from absent, but always with us in spirit, Ben Lim...the AOA Hong Kong conference was an oh so sweet return home for sure. Photos tell the story...have a look! By the way, special congrats and thanks to our very own Ron Cheung, who, in addition to her GCSL responsibilities as Group Marketing Manager, pretty much handled the entire event from A to Z...go get 'em, Ron!!!





AOA BANGKOK, MARCH 22 - 24, 2009 is shaping up to be as exciting as ever with almost all the speakers booked, sponsors seeking information and delegates pre-booking. C'mon over to The Big Mango for a wonderful event at The Oriental.

AOA MUMBAI, OCTOBER 11 - 13, 2009 will be our first visit to the magic and mystery of this most fascinating city. The Taj Mahal Hotel will welcome us with the perfect combination of old and new world charm for which it is famous.



CHINA UPDATE

CHINA STILL CHUGGING ALONG DESPITE USA WOES

As the power of USA Sub-Prime debacle continues to impact the global economy and banks, China on the other hand seems unaffected. Based on China National Bureau of Statistics' report, from January to August, industrial enterprises (all state-owned enterprises and non-state-owned enterprises with annual sales over US\$730,994) claimed realized profits, on year to year basis, of:

- State-owned and State-Controlled enterprises: US\$97.5 billion with 0.7% increase.
- Collective-owned enterprises: US\$7.34 billion with 36% increase.
- Joint-stock cooperative enterprises: US\$1.71 billion 18.9% increase.
- Shareholding enterprises: US\$153.72 billion with 25.9% increase.
- Foreign funded enterprises, and enterprises funded from Hong Kong, Macao and Taiwan: US\$73 billion with 14.3% increase.
- Private enterprises: US\$356.9 billion with 48.6% increase.

The total volume of tax contributed by industrial enterprises was US\$194.38 billion with an increase of 26.7%. However, in August, the 2008 Producers' Price Index for manufactured goods was up by 10.1% from the same month last year and the purchasing price for raw materials, fuels and power products, the price for fuel and power, nonferrous metal materials, ferrous metals, and chemical materials increased 30.9%, 26.6%, 0.7% and 9.2%, respectively.

China's stock markets have seen prices of shares decreasing by 65% in the first half of 2008. In response, China announced on September 19, 2008 the cancellation of 0.1% stamp duty on buying stock. The next step is for banks to issue loans to state owned enterprises for the purpose of buying back their shares from the market.

On August 29, 2008, the State Administration of Foreign Exchange announced that the procedure for capital injection had been changed. The new procedures require Wholly Foreign Owned Enterprises ("WFOE") to have an accounting firm to issue a capital examination report before moving capital from foreign currency accounts to RMB operating accounts. Without the report, the bank cannot exchange foreign currency in the capital account to RMB current account.

*Contributed by Johnson Chien, Managing Director, GCSL Shanghai
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HONG KONG UPDATE

GOOD TO SEE SOME BROKERS ARE MAKING LESS, ALBEIT NOT AS LITTLE AS THEIR CLIENTS

Hong Kong's securities industry reported a decline in profitability with the first half of 2008 seeing overall net profit of all brokers dropping to HK\$9.6 billion, compared with HK\$21.3 billion in the second half of last year.

COMPANY REGISTRATIONS ON THE RISE

Hong Kong remains a favored destination for company formations with the number of registered companies in Hong Kong growing 83.7% in the last 15 years with a record high of 101,512 in 2007-08.

*Contributed by Elie Sfeir, Managing Director, GCSL Hong Kong
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WORLD FINANCIAL CRISIS GETS A LITTLE TOO PERSONAL

Everyone has felt consequences of the global financial market collapse, whether from direct effect on our day to day business and clients or on our individual wealth and retirement funds. For most the damage has come in the form of falling digits on a computer screen or financial statement, certainly painful, but probably a somewhat surreal experience for most. For yours truly, the whole debacle became all too tangible. As I left work a

couple of days ago, I happened to walk by a branch of a bank where I hold personal accounts, and got a bit of a shock. Lined up around the block were account holders in a mad panic to grab their cash before, as rumors sparked by mobile phone text messages had prophesized, the bank closed up shop. The scene included police for crowd control and a gaggle of reporters recording the scene on every medium know to man. Hong Kong has its own version of depositors' insurance, although the total covered is fairly low, and the city has had bank runs before – during the 1997 Asian Financial Crisis International Bank of Asia faced a similar run and later changed its name. But after a week of doom and gloom coming from all fronts, I have to admit I got caught up in the frenzy and withdrew a fair amount of cash from the nearest ATM.

At the time of writing, the bank has pretty much quelled the panic of the last few days, major financial players have invested their own money in the bank, the government has injected around US\$500 million in to the financial system and the media has been pretty upbeat. That initial panic was probably illogical to the outside observer, but for me and the rest of the bank's customers, it was hard not to react. If a bulge bracket investment bank like Lehman could go down, why not a mid-sized regional player? Fortunately, Hong Kong remains a strong and stable economy with one of the best capitalized bank systems in the world and a government with huge monetary reserves to shore up any instability. The latest experience should help to ensure depositor confidence as the region continues to move forward.

*Contributed by Jason Gerber, Business Development Manager, GCSL Hong Kong
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FOUND MONEY

It's good to have a retired uncle. Making good use of his ample free time, he recently Googled his nephew's name, and found out that I have unclaimed funds back in Puerto Rico. The money comes from an account I opened last decade, which fell through the cracks as my visits to Puerto Rico became less frequent. What my uncle found was a bank notice dating from 2004, when the account had been inactive for at least five years.

On the same day I prepared a sworn document, indemnifying the Commonwealth of Puerto Rico from any further claims on that money, an article in *USA Today* highlighted how many American states are shortening the time they must wait before seizing unclaimed property, including bank accounts.

Delaware, for instance, has reduced the dormancy period for stocks and dividends from five to three years. According to the state, unclaimed property is now its third-largest revenue source. Other states that have adopted similar measures include Alabama, Kentucky, Louisiana, Oregon, South Carolina and Washington.

Unsurprisingly, these moves come as many states face increasing budget crunches. An official from Washington State's Department of Revenue was not shy in saying that the changes "helped with what at the time was a budget problem." If you feel you're already contributing your fair share (or more) to your state's coffers, then be sure to track your accounts and other assets. Take it from me: it's easier to get money from an ATM than from the Commissioner of Financial Institutions in San Juan...

*Contributed by Frederic J Rocafort, Business Development Executive, GCSL Hong Kong
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SINGAPORE UPDATE

WINDOWS OF OPPORTUNITY: The current financial turmoil in the USA has impacted the global economy. Despite this impact, an organization like the Government Investment Corporation of Singapore ("GIC") thinks the global crunch presents its own window of investment opportunities. GIC's group chief investment officer, Mr. Ng Kok Song, said that the current de-leveraging of the global financial system means that "many financial institutions will be looking to raise capital and more international institutions soon will need to raise funds." GIC had increased its cash reserves to 7% of its assets over the past year which positions it to respond to investment opportunities. GIC - which manages Singapore's foreign reserves including pension savings – while giving its assessment of the current situation, said that its annualized rate of return over a 20-year period has declined since 2004. Over the 20 years to end-March, its portfolio grew at an annualized real rate of 4.5 %, after adjusting for inflation. Its nominal annual return over the period averaged 7.8% in US\$ terms. The recent market turmoil is also likely to have taken its toll. Last December, GIC pumped CHF11 billion into UBS. In January, GIC injected US\$6.88 billion into Citigroup, the single biggest investment by a sovereign fund this year. Since then, the share prices of UBS and Citigroup have plunged amid the worsening turmoil in financial markets.

NOT CORRUPT: Singapore ranked right behind 3 joint leaders Denmark, Sweden and New Zealand as the least corrupt country in the world according to Transparency International. Good stuff!!!

F1 RACES INTO SINGAPORE: the first F1 Grand Prix Night Race saw the town abuzz with glitterati. Lewis Hamilton just walked by and so, it is off to the races I go...

*Contributed by Lawrence Fong, Managing Director, GCSL Singapore
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ASIA SPAWNING BILLIONAIRES

Asia is booming and there are hard facts to prove it. According to the Forbes report on [Asia's youngest billionaires](#), the region is home to the world's fastest growing population of the wealthy. According to the World Wealth Report, the population of China's millionaires jumped 20 percent last year. The billionaire population grew even faster. The March *Forbes* list included 42 Chinese billionaires, up from 20 the previous year. Keeping pace are Indian millionaires who's presence jumped 23 percent last year. The billionaire count soared to 53 from 36 the previous year. Adding to Asia's booming billions, 13 Chinese, 10 Indian, 6 Taiwanese, 5 Hong Kong and 3 Japanese companies made it to this year's list of [Forbes Asia-Pacific top 50 companies in 2008](#). Included in this list are also a handful of Thai, Indonesian, Filipino, Malay, South Korean and Australian companies. While, some of the companies have been in the list since the past 2-3 years, this year saw 23 newcomers including Chinese firms like Gome and Sunning - consumer electrical stores and Sinopec China's second-largest oil refiner. Buoyed by neighboring China's ascent to the top, the presence of Taiwanese and Hong Kong companies has risen in the list, while the presence of Indian and Japanese companies has taken a dive. Spurred by Asia's intense urge to grow, technology, commodity and engineering companies still significantly dominate the Forbes list, while internet, telecom and banking services companies also have a sizeable presence.

However, the list to look out for is the [Forbes Bakers Dozen](#) - 13 of Asia-Pacific's companies to watch out for. The list which has a healthy mix of companies from emerging Asia suggests cement, coal, banking, telecom and steel as the sectors which will continue to fire Asia's growth.

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INTERNATIONAL UPDATE

HOW CORRUPT IS YOUR COUNTRY?

Transparency International ("TI") has released the results of its 2008 survey into 'Corruption Perception' and has released a list of the least perceived to be corrupt nations. TI compiles surveys that ask businessmen and analysts, both in and outside the countries they are analyzing, their perceptions of how corrupt a country is. Relying on the number of actual corruption cases would not work since laws and enforcement of laws differ significantly from country to country.

Transparency International, the global civil society organisation leading the fight against corruption, brings people together in a powerful worldwide coalition to end the devastating impact of corruption on men, women and children around the world. TI's mission is to create change towards a world free of corruption. It is funded through Foundations, government funding and private sector donations.

The Corruption Perception Index (CPI) is of course criticised, but for two main reasons. The first is a danger of a self-fulfilling prophecy. Country analysts might be influenced by past corruption indices and therefore not realise changes. Secondly, the use of the index values in time-series statistics is problematic due to the way it is calculated. Another issue that springs to mind is the index and exactly what we perceive corruption to be in a colonial sense versus that of the Eastern sense. It is a rather colonial barometer in that sense. The TI organisation doesn't exactly define corruption in a specific sense.

Over to the lise New Zealand actually won a sporting style contest this year as it was voted first equal with Denmark and Sweden and we can skip to Singapore who rated highly at number 4 and Hong Kong at number 12. The USA rated poorly at 18.

Of note that offshore jurisdictions were perceived relatively poorly, yet their traditional clientele's origin jurisdictions were rated much higher. Once again proving that perception and reality can be poles apart.

Ratings can be found at http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table. The top 20 include:

1. New Zealand
2. Denmark
3. Sweden
4. Singapore
5. Finland
6. Switzerland
7. Iceland
8. Netherlands
9. Australia
10. Canada
11. Luxembourg
12. Austria
13. Hong Kong
14. Germany
15. Norway
16. Ireland
17. United Kingdom
18. United States
19. Japan
20. Belgium

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LIBERIAN LIMITED LIABILITY COMPANY

The Liberian Limited Liability Company (LLC) Act was enacted in 2000 and subsequently amended in 2002. Modeled after the Delaware LLC law in the USA, the Liberian LLC is a relatively new type of business entity, which combines the advantageous features of corporations and limited partnerships.

Presently, Liberian transactions have been used for multiple investment purposes including real estate, portfolio management, shipping, subsidiaries, holding companies) across Europe, USA and Asia.

The owners of an LLC are called members and can be individuals, corporations, other LLCs, trusts etc. A Liberian LLC is formed at the time of the filing of the initial certificate of formation in the Office of the Registrar or the Deputy Registrar through LISCR LLC, the exclusive administrator of Liberia's Ship and Corporate Registry.

To set out the affairs of the LLC's members and the conduct of the LLC's business a written contract is formed that is called the Limited Liability Company Agreement ("Agreement"). The Agreement is most important to the LLC's success because it also determines, defines, and apportions the rights of the members. Liberian LLCs have flexible bureaucratic requirements and as such there is no condition to conduct an annual general meeting of members. There is an almost complete discretion given to its members to determine the terms of their Agreement.

Following the concept of a Delaware LLC, the Liberian LLC protects its owners from liability to the same extent that stockholders of a corporation are protected from its debts and obligations. Moreover, due to its hybrid form, the LLC can be taxed like a partnership, which carries the benefit of flow through taxation. It is not a tax paying entity and any profits or losses are reported on the individual member's tax return. In general, if the members wish to enjoy the tax advantages of a partnership, the Agreement should make clear that there is continuity of life of the Liberian LLC, centralized management, and free transferability of interests. The liabilities and duties of managers, members and other persons may be expanded, restricted, or eliminated by provisions in the Agreement. Usually, a Liberian LLC manager acting in good faith reliance upon the terms of the Agreement will not be held liable to the Liberian LLC or to any other member or manager for breach of fiduciary duty. In general, the owners (members) of the LLC are protected from some liability for acts and debts of the LLC, but are still responsible for any debts beyond the fiscal capacity of the entity. Thus, if the business itself cannot pay a creditor, the creditor cannot legally come after an LLC member's personal possessions. However, one should be aware that an owner can be held personally liable if he/she personally and directly injures someone, personally guarantees a bank loan or a business debt on which the LLC defaults, intentionally does something fraudulent, illegal, or reckless that causes harm to the company or to someone else, or treats the LLC as an extension of his or her personal affairs, rather than as a separate legal

entity.

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ASSET PROTECTION DOES NOT PROTECT YOU FROM THE IRS

This article could be one sentence long: "Asset protection does not protect you from the Internal Revenue Service ("IRS")!" Since some will doubt me, and many have tried to beat the Collector (the most powerful arm of the USA government targeted at citizens rather than terrorists), here are 10 reasons why asset protection is useless against the government.

- **First**, the homestead exemption does not apply to the IRS. Most states have a homestead statute that protects some or all of your primary residence from creditors. States like Texas protect your entire home, no matter its value, while states like New Mexico protect only \$35,000 in equity. Because these are state statutes, they do not apply to the federal government. Therefore, the IRS can seize and sell your home to satisfy a tax debt.
- **Second**, the cash value in a life insurance policy is not protected from the IRS. If you owe money to the IRS, the Collector will require you to borrow against your whole or universal life insurance policy to satisfy the debt. If you refuse to do so, the IRS can levy your policy, forcibly taking the cash value.
- **Third**, some retirement accounts are not protected from a levy. The IRS can seize Qualified Pension, Profit Sharing, and Stock Bonus Plans under ERISA, IRAs and Retirement Plans for the Self-Employed (such as SEP-IRAs and Keogh Plans) For a detailed list of accounts that can be levied, visit www.irs.gov.
- **Fourth**, a payment plan, installment agreement or any other arrangements with the IRS to stop collections against you is not a right. When you owe money to the Collector, the IRS can levy your paycheck and bank accounts, and take most of your paycheck and all of the money in your bank, until you and the IRS agree on how much you can afford to pay each month. If you have no assets, and your income and allowed expenses indicate you can pay the IRS \$1,000 per month, it does not matter how much you owe...US\$30,000 to US\$300,000... you will pay US\$1,000 per month until the debt expires. If you have assets that you refuse to turn over to the IRS, such as life insurance, retirement accounts, money sitting in corporations, etc., and the IRS is not willing to go after them in court, the Collector simply denies your installment agreement and grabs what it can. Court battles and seizures of homes make the news, but they are in fact very rare. Most of the time, the Collector simply makes your life miserable until you pay.
- **Fifth**, the IRS is willing to litigate and money is no object. The Internal Revenue Service has an army of lawyers in every state and employs about 1,500 tax attorneys in total. If you are going to go to battle with the Collector, be sure you have the talent and budget to do so!
- **Sixth**, time is not of the essence...the IRS has the memory of an elephant and time to collect. There are a number of important statutes of limitations that apply to the IRS, and they are often very long. For example, the IRS usually has 3 years to audit you, and sometimes 6 years for a substantial understatement. The IRS has 6 years to charge you with a crime, and 10 years to collect money from you after a debt has been assessed. In special circumstances, this collection period can be extended another 10 years.
- **Seventh**, your most important asset may be sitting in jail. While you can create a complex offshore structure that hides your assets from the IRS, the Collector might respond by finding a judge willing to hold you in contempt until you repatriate the assets. While in jail, most citizens find their lost assets and pay the government.
- **Eighth**, filing bankruptcy doesn't help most who owe money to the IRS. In order for a tax debt to be discharged in bankruptcy, your tax returns must have been filed for at least 2 or 3 years (various statutes apply). This usually means that the IRS gets to grab what it can for 2 or 3 years before you file bankruptcy. Very few who qualify for bankruptcy can withstand this assault long enough to wait out the collection period.
- **Ninth**, if you leave the USA, you give up your Social Security, Medicare, top quality medical services, and the other benefits of living in one of the richest nations in the world. If you have a tax debt, have not committed a crime (or are not prosecuted for a crime), and select the right country in which to live (certainly not the U.K. or France), the IRS might not be able to find your assets and might not be able to collect. In 8 years as a tax attorney, I have had many clients consider leaving the country. In the end, they all decided to stay and pay their taxes. Going on the run from the Collector is a life choice that very few are willing to make. Again, moving out of the USA to hide from the IRS assumes you are not charged with a crime...I am not considering fraudulent conveyance statutes or extradition in this article. If you do leave, be sure to file your USA tax returns. Failure to file a tax return is a crime. Even if you are not prosecuted, you will have trouble renewing your U.S. passport if you do not file your tax returns.
- **Tenth**, everyone runs scared from the IRS. Most governments and banks around the world want nothing to do with the Collector and will not protect you when times get tough. If the USA escalates your case to a criminal investigation and puts a real effort behind collecting from you, they will succeed! It will not be "cost effective" for a bank to lose a U.S. securities license or their ability to transact in US\$, in order to protect you. Considering the amount of money the USA spreads around these days, the same is true of most governments around the world.

I hope you find this information helpful. The bottom line is that asset protection is meant to protect you from civil creditors and not the federal government.

*Excerpted from the Trustmakers' newsletter and contributed by Chris Rusch, Law Office of Chris Rusch, San Diego, California, USA
Trustmakers' WWW site is www.trustmakers.com and Chris' email address is Chris@ruschlaw.com*

LUXEMBOURG TO ABOLISH CAPITAL DUTY

Following the announcement made by the Luxembourg Prime Minister in May of this year, a draft law (nr. 5913) has been released abolishing the 0.5% capital duty as from 2009. The main aspects of the draft law can be summarized as follows:

- The 0.5% capital duty will be abolished as from January 1st, 2009.
- The five year claw-back period for shares contributed pursuant to a transaction that was exempt from capital duty on the basis of article 4-2 of the capital duty law (share merger exemption) will no longer apply after January 1, 2009.
- The fixed capital duty (eg € 1250) applicable to undertakings for collective investment (UCIs), Specialised Investment Funds (SIFs), venture capital investment company (SICARs), Pension Savings Companies with Variable Capital (SEPCAVs) and Pension Savings Associations (ASSEPs) will be abolished.
- A fixed registration duty (i.e. € 50 or € 100) will be introduced for (1) incorporation of Luxembourg entities (2) amendment of the bylaws of Luxembourg entities and (3) the transfer of seat to Luxembourg.
- Contributions to Luxembourg entities of real estate situated in Luxembourg will be subject to 1.2% registration duty and 0.5% transcription duty in case the contribution is rewarded by shares and to 6% registration duty and 1% transcription duty in other cases. An exemption is available for qualifying reorganisations.

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USING OTHER PEOPLE'S MONEY TO CREATE WEALTH

We all love the idea of creating something out of nothing but this is usually fantasy and does not exist...right? A famous saying in business is that you should always use 'Other People's Money' which is great way to get ahead with no money out of pocket and no personal risk.

Using other people's money, or leverage, to increase your own financial gain is an established practice. Today, though, leverage is being used to

purchase life insurance, and has gotten the attention of insurance promoters and financial professionals. It's important, though, to examine all the angles before trying something like this.

The technique is called Premium Financing and allows a wealthy family or a corporation looking to create a continuity plan by funding an insurance policy can do it using the bank's money. By borrowing the money to pay the life insurance premiums with a loan, the insured individual/s free up capital that can be used more efficiently. The use of premium financing may lower out-of-pocket costs the potential gift taxes.

The lender bases the current loan interest rate on the one-year London Interbank Offering Rate (LIBOR), adding a profit margin spread of 175 to 250 basis points. Essentially, lending rates are determined on a case-by-case basis, taking into consideration the loan amount and the lenders' risk exposure. Loan interest rates can be fixed on an annual basis, but may vary from year to year, based on fluctuations in LIBOR or changes in the borrower's financial conditions, which must be updated annually.

You can also secure what's called a "collar," which is when a loan has both a cap and a floor on the interest rate. It basically keeps the interest rate from spiraling too high but ensures that the lender can charge a minimum in exchange for that security. Caps are more expensive than collars because caps protect only the consumer, while collars offer some protection to the lender.

The best candidates for premium-financed life insurance include:

- Target market: at least US\$5million estate and minimum of US\$100,000 annual life insurance premium.
- Frees up business or personal investment capital for more efficient usage.
- Leverages available assets to provide needed insurance coverage with minimal out-of-pocket expenses.
- Potential to reduce gift taxes.
- Loan rate typically tied to a published rate like LIBOR, plus a spread.
- Required collateral can be offset by cash values growing tax-deferred in the policy.
- Can provide substantially greater internal rate of return on the life insurance policy death benefit over non-financed payment methods.

This planning tool is too technical to discuss here, but if you're reading this and know someone who has an illness, no estate plan and over US\$10,000,000 of net worth, then he needs help!

*Contributed by James Burns, Esq., USA.
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OFFSHORE UPDATE

ANGUILLA: ANGUILLA FOUNDATION ACT (part 2)

This is the second in a series of articles that I shall be writing over the next few months to educate readers on this piece of legislation introduced recently in Anguilla. I have detailed herein, with minor modifications, a description of the legislation by the Attorney General, the Honourable Wilhelm C. Bourne, in explaining the Act to the public through publication in the Official Gazette.

"The main objective of this Bill for the Anguilla Foundation Act 2008 is to offer a modern private foundation concept. In this regard, this Bill seeks to close the gap between the common law trust concept and the civil law foundation concept. This Bill can therefore be described as a cutting edge piece of legislation that seeks to contribute to the creation of a financial services product aimed at providing Anguilla with the capacity to continue to insert itself into the global financial services market. This Bill comprises 70 clauses organised into 12 Parts namely, Preliminary; Establishment of a foundation; the Bodies of a foundation; the Guardian; Disputed rights; Accounts and records; Continuation of foundations; Irrevocability and dissolution; Exemption from taxes; the Registrar; Inspections and Miscellaneous matters.

- **Part 1** of this Bill, the Preliminary Part, provides in clause 1 for the meaning of terms and expressions used in the Bill. Clause 2 of this Bill provides for the applicable law that will govern foundations.
- **Part 2** of this Bill comprises 14 clauses and deals with the establishment of an Anguilla Foundation. According to clause 5, an Anguilla Foundation may be established for basically whatever legitimate purpose, ranging from family support to charitable purposes. Commercial activities shall be allowed if they are necessary in the achieving of the foundation's purpose. It will even be possible to set up a "purpose foundation" without beneficiaries, similar to the "purpose trust" concept. Clauses 13 and 14 permit a foundation to be registered or deposited respectively. Clause 15 provides for an Anguilla Foundation to have the status of a separate and independent legal person in its own right.
- **Part 3** of this Bill comprises 14 clauses and provides for the bodies of the foundation. Each Anguilla foundation must have a local Registered Agent and Office. Clause 19 empowers the founder to appoint a Foundation Council which may comprise one or more members. The Foundation Council is the supreme body of the foundation, being similar to the board of directors in a company. Clause 25 requires the Foundation Council of foundation provide access to full and accurate information as to nature and amount of the assets of the foundation and the conduct of their administration. According to clause 29 every 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 offices of secretary and registered agent can be held by the same person.
- **Part 4** of this Bill deals with the appointment of the guardian of an Anguilla Foundation. The guardian of the Anguilla Foundation is basically comparable to the protector of a trust.
- **Part 5** of this Bill seeks to provide for the restriction against alienation and for the exclusion of foreign law. Clause 33 provides, among other things, 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.
- **Part 6** of this Bill provides for the keeping of the appropriate books of accounts and record necessary or desirable to reflect the financial position of the foundation.
- **Part 7** of this Bill provides for the continuation of an "overseas foundation" in Anguilla and for the continuation of an Anguilla Foundation in a jurisdiction other than Anguilla. Clause 43 specifies the conditions which are applicable to the continuance of a foundation in a foreign jurisdiction.
- **Part 8** of this Bill provides, among other things, that the Anguilla Foundation shall be irrevocable and not subject to any perpetuity periods. The Foundation Council may, however, decide to dissolve the foundation, if the purpose cannot be realized any more or if there are no assets left in the foundation. Clause 48 provides for specified circumstances in which the High Court may order the dissolution of a foundation. These circumstances include the inability of the foundation to pay its debt or the foundation becoming insolvent. And, clause 49 empowers the Registrar of Foundations to strike a registered foundation off the Register of Foundation or a deposited foundation of the schedule of deposited foundations on the happening of specified events which include the failure of the foundation to pay the prescribed fees or maintain a registered agent.
- **Part 9** of this Bill provides, among other things, for a foundation to be exempted from taxes if the founder or the beneficiaries of the foundation are not resident in Anguilla.

- **Part 10** of this Bill comprises 8 clauses and relates to the functions, obligations and responsibilities of the Registrar of Foundations. Clause 60 places an obligation on the Registrar of Foundations to permit a person named in a notice from a Foundation Council member access to inspect the documents of the foundation delivered to the Registrar. The office of Registrar of Foundation shall be held by the Registrar of Companies. This Part also provides for an official confirmation, from the Registrar of Foundations, of the existence of a foundation where that foundation opts not to be registered. Such confirmation is, for example, necessary to open a bank account, one of the main hindering factors in establishing a trust.
- **Part 11** of this Bill empowers to Financial Services Commission to conduct compliance inspections of foundations so as to ensure, among other things, prudential supervision of the foundations. Clause 63 empowers the Commission to take such enforcement action where the relevant provisions of the Financial Services Commission Act have been contravened.
- **Part 12** of this Bill contains seven clauses of general application. Clause 64 provides for the payment of the registration fee and an annual fee. Clause 66 deals generally with the powers of the High Court in respect of matters concerning foundations. Clause 67 enables a foundation to make provision, in its articles, for the resolution of disputes in respect of the foundation by an arbitration tribunal."

Over the next few months, I shall be going through pertinent sections of the legislation to further elucidate the salient points contained therein.

*Contributed by Carlyle Rogers, Managing Director, GCSL Anguilla
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BELIZE: ANYONE FOR LAUNDRY DUTY (Part 2)??

The Financial Intelligence Unit ("FIU") recently issued a response to the views stated by the Belize Offshore Practitioners Association ("BOPA") on the proposed Money Laundering and Terrorist (Prevention) Bill. Their comments were as follows:

1. They are in full agreement with BOPA as to the need to omit Section 2(4) of the Money Laundering and Terrorism (Prevention) Bill. That section makes reference to a written or unwritten rule of law of, or in force in, any part of Belize or that foreign state, as the case may be. This gives no explanation as to what "unwritten law" means, because common sense (which is never common) would suggest that in today's world, a law not written is a law which does not exist, unless of course it is Custom in English Common Law. The public will therefore not know what may or may not be considered as unlawful behaviour.
2. In BOPA's comments, concern was expressed over the phrase "having reasonable grounds to believe", that it was "dangerously unclear." The thought was that it amounted to reasonable suspicion, and therefore generated a duty, not a liberty, to act. The FIU sought to clarify this situation, by indicating that the men's rea or intention requirement was an objective standard, one which was fairly similar to the test of recklessness under the criminal law of Belize.
3. Currently the FIU has a two day period for the purpose of directing entities to freeze funds in their possession for the purpose of investigating the company or person in question. Naturally, the FIU supports the proposed extension of that two day period to extend to seven business days. BOPA argues that such a long period only serves to unduly deplete a private citizen from having the access to his or her property. FIU has indicated that two days has been insufficient time to do any extensive investigation that would yield proper results. As to deprivation of access, the argument was raised by BOPA that there should be some compensation on the part of the FIU to the private person or entity affected by the directed freeze of funds. The FIU countered with the argument that the section of the Constitution upon which BOPA relied (Section 17) only applied to permanent taking of property, and that compensation would only arise if it could be shown that the FIU acted in bad faith.
4. Section 11(i)(j) of the Bill allows for the FIU to extend legal assistance to foreign jurisdictions with respect to property tracking, monitoring and forfeiture or freezing orders. BOPA suggested that such assistance should only be offered to jurisdictions which promise reciprocity of assistance. Also suggested was the this assistance should only be restricted to jurisdictions which have signed MLATs (mutual legal assistance treaties) with Belize.
5. Finally, BOPA voiced concern about the representation of clients who might be charged with the offence of money laundering, terrorism or terrorist financing. The concern focused on the constitutional right of an individual, under Belizean law, to have legal representation of his own choosing when charged with a crime. Of course, it is not the lawyer's position to make any judgment of the guilt or innocence of his client. The question being asked was, will the representation of the client charged place the attorney in the position of an accessory to any of the charges? The FIU took the position that once the attorney is not in the business of assisting his client in the furtherance of the commission of a crime, how can he be charged with aiding and abetting a crime?

While there are a number of areas that the two entities arguably do not have a consensus on, the Bill has been generally well received by most interested parties. I believe that it will be passed almost intact, save for a few changes, and we in Belize will have a much more beefy anti-money laundering and anti-terrorism legislation. A new day is approaching.

P.S. - Please be advised that for those of you who have not as yet renewed your Belize IBCs, they are already in penalty, the government fee now being \$110.00 for renewal. Should you make the unfortunate decision to wait until after October 31, you will incur further penalty, the fee increasing to \$150.00. If at the end of the current year, being December 31, 2008, the IBC is not renewed, it will be struck off. Already there are some of you our valued clients with IBCs in this position. We urge you to contact us so we can assist you in rectifying the arrears. Thank you.

*Contributed by Carlo Mason, Managing Director, GCSL Belize
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COOK ISLANDS: LIMITATION PERIOD UNDER COOK ISLANDS LAW

The Cook Islands has been operating as an offshore financial centre since 1981 and offers a safe, stable and secure environment in which to do business.

It is still considered one of the leading Asset Protection Jurisdictions in the world. It has developed judicial precedent, which has confirmed the validity and strength of the International Trusts Act 1984 ("ITA").

There have been recent enquiries with regards the Limitation Period as it applies in the Cook Islands. So for this month it may be useful to canvass the applicable law under the ITA and the very specific time periods within which an action can be brought against a Trust registered under the ITA.

The starting point is that an international trust can be challenged on the grounds of fraud. But in order to establish fraud, a creditor must prove beyond reasonable doubt (that's the criminal standard of proof); that an international trust was settled:

- with the principal intent of defrauding that creditor, AND
- that the settlement rendered the Settlor insolvent or without property by which that specific creditor's claim could have been satisfied.

Even if these specific requirements are satisfied, the settlement or transfer to the trust is not void or voidable, only that the trust is liable to satisfy the claim of the creditor out of property, which, but for the settlement, would have been available to the creditor.

Then there are deeming provisions under the ITA. For example, a disposition to a trust is deemed **not** to be fraudulent against a creditor of a Settlor:

- if the settlement or disposition takes place after the expiry of 2 years from the time the creditor's cause of action arose; or
- the creditor fails to bring his action before the expiry of 1 year from the date of such settlement or disposition; or
- the settlement or disposition takes place before the creditor's cause of action arose.

It is worth restating the following critical aspects with regards bringing an action in the Cook Islands:

- the Cook Islands do not recognize foreign judgments; and
- as a matter of procedure, costs (or a bond) will be required of the creditor before an action in the High Court of the Cook Islands will be entertained.

It is important to remember that the cause of action as referred to above is the one which occurs in a foreign jurisdiction. This is set out in Section 13B (8). Thus the question of when the cause of action accrues depends upon the law of the non-Cook Islands jurisdiction. So, from a practical point of view, the Cook Islands provisions relate to judgment enforcement proceedings brought by a creditor only **after** he has obtained judgment in his own jurisdiction.

The Cook Islands provision of relevance in connection with this point is contained in section 13B (8). This provides that where there is a continuing or recurring cause of action the date on which that cause of action accrues is the date of the first act or omission establishing the cause of action. This clearly provides an advantage to the settlor of a trust.

In view of the above it is quite easy to see why a trust established under Cook Islands law, provides the very best protection for legitimate wealth preservation plans. Regardless of whatever notions or hearsay you have about the Cook Islands, there is one undeniable fact that cannot be ignored – it has the track record, statutory and case law, combined with experience in preserving hard earned wealth of those that deserve protection from frivolous action.

*Contributed by Puai Wichman, Managing Director, GCSL Cook Islands
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SAMOA: OUT OF POCKET BUT FULL OF LAUGHTER ...

Laughter with friends is worth more than all the dollars in the world.

After a few days of checking on the affairs of the Samoa Office and the profitable business prospects earmarked for the coming months, it was time for a well deserved break. For the travel weary Jack and Puai together with Laura and Team Samoa, where better a place to go than to the beach for some well deserved R&R. (or a restaurant on the beach for that matter.) Picture this - Samoa's serene Mulinu'u Peninsular, Sails Restaurant, and 31 degrees late on a clear but breezy Friday afternoon to wind down.

The innocent bystander or shocked waiter would not be blamed for flipping out on this afternoon as a result of what went on at this respectful establishment. Prior to some good vintage from New Zealand courtesy of Puai's luggage and a somewhat bland wine list, Jack took on the task of upping the ante. Edging the team on, he put his wallet on the table and dares were the pre-main course appetizers with a buffet of laughs to fill the appetite of even the biggest comedian.

All of the dares were covered by lucrative Greenback prize packages, proudly sponsored by Jack's travel allowance. It all started with Fono who after being dared by Jack, hopped on one foot reciting what I think was supposed to be poetry. Successfully completing the feat, she was rewarded well for completing the challenge. Then work mate and newcomer Salome got into the action proving she too could get a bit of the prize action by doing a set of 10 pushups. By this time, the quiet wind down had become an uproar and after being down spoken by Jack, Cook Island's greatest press up mogul Puai proved that he was still as fit as a fiddle after a bottle or two good Vino. Dared by Jack and cheered on by Global Samoa he did an astounding 100 press ups. Then Fono again not to be out done by her Cook Island colleague in her island home did a woman's equivalent of 30 pushups earning her yet another prize. With the laughter by this time reigning through the whole of Samoa, the time had come finish the executive meeting and head home for a good rest, Jack now gob smacked by what he had just witnessed.

Saturday came and the beach was back on the agenda with an excursion to Lalomanu Beach. The Global team took in a tour of the other side of the island with a day at the beach which even Bay Watch would have been envious of. The photo speaks volumes.

Soifua ma ia manuia (Farewell and all the best).



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TIDBITS

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

OUR MONTHLY QUOTE THAT MADE US SMILE

I can resist everything except temptation. -- *Oscar Wilde*

SUSPECTED?

We recently read about the South Korea National Tax Services seizing 960 golf memberships of wealthy, **suspected** tax cheats who paid as much as US\$1 million for the same. If no settlement on back taxes is reached with a **suspected** tax cheat, the confiscated memberships are sold to the public to generate cash. Last year, the friendly revenue confiscated 1,720 golf club memberships and recovered tens of millions of US\$ in back taxes. You might have noticed we highlighted "**suspected**". Yup, you got it...from what we read, the tax cheats were never convicted. Hmmmm...suspected = guilty in South Korea...and we thought that was the sole province of another country!

ANIMAL CRUELTY

Masterpet, a pet food company in New Zealand, has come up with a novel way of gauging the public mood ahead of the Kiwi's general election -- which political leader would you like to see fed to the dogs?

Masterpet will publish the results of sales of the rubber chew toys for dogs made in the images of the two politicians vying to run the country. To date, incumbent Prime Minister Helen Clark is leading in the Masterpet poll, which actually reflects the opinion polls conducted in the old fashion manner. We do NOT like the idea...feeding such bad meat to dogs is purely and simply animal cruelty!!!

BAR STOOL ECONOMICS

Apparently a professor of economics dreamed up this little story, which we like lots.

Suppose that every day, ten men go out for beer and the bill for all ten comes to US\$100. If they paid their bill the way we pay our taxes, it would go something like this:

The first four men (the poorest) would pay nothing.
The fifth would pay US\$1.
The sixth would pay US\$3.
The seventh would pay US\$7.
The eighth would pay US\$12.
The ninth would pay US\$18.
The tenth man (the richest) would pay US\$59.

So, that's what they decided to do. The ten men drank in the bar every day and seemed quite happy with the arrangement, until one day, the owner threw them a curve. 'Since you are all such good customers, he said, 'I'm going to reduce the cost of your daily beer by US\$20. Drinks for the ten now cost just US\$80.

The group still wanted to pay their bill the way we pay our taxes so the first four men were unaffected. They would still drink for free. But what about the other six men - the paying customers? How could they divide the US\$20 windfall so that everyone would get his 'fair share'? They realized that US\$20 divided by six is US\$3.33. But if they subtracted that from everybody's share, then the fifth man and the sixth man would each end up being paid to drink his beer. So, the bar owner suggested that it would be fair to reduce each man's bill by roughly the same amount, and he proceeded to work out the amounts each should pay!

And so:

The fifth man, like the first four, now paid nothing (100% savings).
The sixth now paid US\$2 instead of US\$3 (33% savings).
The seventh now pay US\$5 instead of US\$7 (28% savings).
The eighth now paid US\$9 instead of US\$12 (25% savings).
The ninth now paid US\$14 instead of US\$18 (22% savings).
The tenth now paid US\$49 instead of US\$59 (16% savings).

Each of the six was better off than before. And the first four continued to drink for free. But once outside the restaurant, the men began to compare their savings.

'I only got a dollar out of the US\$20, 'declared the sixth man. He pointed to the tenth man, 'but he got US\$10!'

'Yeah, that's right,' exclaimed the fifth man. 'I only saved a dollar, too. It's unfair that he got ten times more than I!'

'That's true!!' shouted the seventh man. 'Why should he get US\$10 back when I got only two? The wealthy get all the breaks!'

'Wait a minute,' yelled the first four men in unison. 'We didn't get anything at all. The system exploits the poor!'

The nine men surrounded the tenth and beat him up.

The next night the tenth man didn't show up for drinks, so the nine sat down and had beers without him. But when it came time to pay the bill, they discovered something important. They didn't have enough money between all of them for even half of the bill!

And that, boys and girls, journalists and college professors, is how our tax system works. The people who pay the highest taxes get the most benefit from a tax reduction. Tax them too much, attack them for being wealthy, and they just may not show up anymore. In fact, they might start drinking overseas where the atmosphere is somewhat friendlier.

US\$1.8 MILLION IN TRAFFIC FINES

Yes, you read it correctly. Police in Brazil finally nabbed this Speed Racer, who had avoided them for many years by not registering the cars he owned in his name. He has 90 days to pay the fines failing which...is there any doubt...his car will be auctioned. Hmmmm...well that will net the police approximately US\$6,500...crime does pay!!!

F1 ESCORTS IN SINGAPORE WANTED: MUST BE FROM A GOOD FAMILY BACKGROUND AND AT LEAST HAVE A UNIVERSITY DEGREE

We really love Singapore, which is known for being a bit dull and a country with too many rules, but also legalized prostitution many years ago. Apparently, the escort business was booming during the recent F1 night race in Singapore. One of the owners of an escort agency indicated in a newspaper interview that his clients are seeking ladies who "...must be from a good family background and at least have a university degree." Yeah, right, those are the qualities one usually seeks when hiring an escort...in Disneyland!!!

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