

November 2008

Home


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JACK'S CORNER

October was, yet again, a big travel month where, yet again, I had the opportunity to experience and think about the Human Condition...in which I am inextricably entwined...

A HUGE CITY WITH SOME UNDERACHIEVING WINES: When you hear the stories about Mexico City being a big, sprawling city, well, believe every one of them. Anguilla or Nevis would call the place a country!!!! Nice people, good restaurants and, hey, the local Noble Grape offered some exceedingly good value in the form of Monte Xanic Chardonnay and Casa Madero Cabernet Sauvignon. Thanks to Adrian and Horacio...I have been enlightened!!!

AREPIA'S IN CARACAS: Well, ya gotta try the local stuff right? Thanks to Marcel for introducing me to the one bite fills you up for a week Venezuela sandwich known as "arepia". Stuff cornmeal with shrimp, cheese, ham, the kitchen sink, whatever. This meal is what makes you grow old, happy...and fat!!!!

TRAFFIC JAM...in the baggage claim area of the Sao Paolo airport. Travel note - do NOT arrive Sao Paolo in the early morning. Locals say try Noon. Hilarious experience as a few ladies arranged lines snaking a dozen different ways with people bumping into each other, some trying to jump the queue - I got caught 2x - and a human refugee camp of different cultures mostly smiling and laughing about The Human Traffic Jam in an Airport!!!

FREE MARKET CAPITALISM: I was sitting in The Wine Library at The Grand Hyatt, Sao Paolo sipping an expensive, but not equally engaging, Chardonnay when I read the following two comments regarding the demise of Lehman Bros and Countrywide:

"It wasn't obvious to me that Lehman should fail, but the control of whether it failed was in the hands of the government."

"Countrywide, the nation's largest lender and loan servicer that is now owned by Bank of America, has been sued by the states over what they said were predatory lending practices."

Make a choice, people! Either take a risk OR do not take a risk!

Banks are competitive businesses. Fund managers, stock brokers are even more competitive. You want high returns with no risk? Yup, I want to be a Gold Medal winner in the Olympics while being a couch potato in Iowa.

Stop it. We, the consumer, are as much to blame as the jerks, who, one way or another were smarter than us to make tens or hundreds of millions.

Win, lose....get back to work!!!

THE GIRL FROM IPANEMA? I visited the famous bar in Rio, searched high and low, but could not find that famous gal. I think Marina sent her packing just before I arrived. Oh, well, at least I had some nice wine at Gero, which is one of the many fantastic restaurants I encountered in this famous city on the beach! Not to mention, I saw all those athletes playing the greatest sport known to the Human Condition - Chicks on Sticks With Cheerleaders, aka Women's Beach Volleyball.

Bs As: The locally used acronym for Buenos Aires says it all - As and just a few Bs right across the board and not only the Ruitini, Catano Zapato and Cobos Malbecs. The people are engaging, fun and intelligent. The city is stunning, but locals warn - a bit too much from my experience - about crime. If you get a chance to visit, Sunday brunch at the Four Seasons, dinner at the Park Hyatt and drinks at Porto Madero are just some of the must do things!!!

FREE MARKETS? BS!!!: I saw the famous George Soros on CNN in Bs As. I have listened to Paulson, Bernake, W and all the others. When they say "free" markets, please recognize it is the same poop your beautiful child deposited in her toilet and birds deposit on your shirts. Let's be honest. All about "fair" markets. Relatively well-off people will continue to punt the lottery, obtain 2nd mortgages and leverage their children's future. Well-off, as opposed to wealthy people, will see an opportunity to borrow at least 150% of what they can afford. Better make some \$ now. It will not get better. It will be the same scam by politicians who want to be re-elected and financial people who want to save their legacies. STILL SUCKS, PEOPLE!!!

GYPSY KINGS STILL ROCK: The Offshore Investment Conference in Puerto Rico was, yet again, an excellent time to learn from some of the industry's leading and often contrarian minds. Thanks, Roz, Barry and all the fellas!!! However, the Gypsy Kings stole the show as they made the El San Juan Hotel lobby vibrate with a pulse that was only second to the excessive amount of silicon prancing about the venue....makes life worth

living, folks!!!

SOUTHERN HOSPITALITY: When you grow up in the Northeast and are educated in California in the USA, one often engages in unfair mockery of the deep South. The slow drawl and conversations dominated with church, high school football and an often overbearing love of country, lends itself to a gee whizz, aw shucks sort of criticism of some of the nicest, down to earth and intelligent people I have ever met. When you throw in She Crab soup and some of the prettiest countryside you will ever see, well, Savannah is a place to visit!!!

"KILLING" OF VIRTUAL HUBBIE: Did you read about the Japanese piano teacher who was accused of illegally accessing a computer and manipulating electronic data to "kill" her virtual hubbie after he virtually divorced her? Financial meltdown? Mortgage foreclosures? Complete loss of one's retirement funds? Sorry, folks, but we have bigger problems when a simple countryside lady responsible for teaching kids to tap on a keyboard commits online crimes to address her anger at a computer image!!!

CIBOPHOBIA: A fear of food...just learned about this one...oh my, where do I sign up!?

Onwards and upwards...and please remember to enjoy the Human Condition everyday and no matter where you are...even online!!!



GCSL NEWS

Check out these adorable GCSL liliputians from Anguilla and the Cook Islands. Star power, baby!!!



ACKER MERRALL & CONDIT

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).



AOA

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

Has the current financial market turmoil affected China? The simple answer is definitely YES! However, the questions are how bad and what are the resolutions that the Chinese Government is proposing to navigate safely through this catastrophic financial storm?

Unlike other leading developed countries, China enforces a strict foreign exchange control policy. This effective method protected China from being directly attacked during the 1997 Asia financial crisis and the one we are currently experiencing. In addition, banning non-Chinese investors and non-China registered legal entities, institutions, and organizations from participating in China's stock markets is another reason why China has not been as adversely impacted.

As mentioned in the GCSL October Newsletter, China took several steps to save its stock markets in September. In October, the Central Government tried to set its 2009 objectives and policies to maintain stability of GDP growth. These included:

1. Increasing focus on requirements of local people.
2. Changing focus from inflation to deflation.
3. Maintaining and helping labor intensive and exporting industries.

Instead of stimulating domestic consumption, preliminary and primary, "agriculture" will be Chinese government's main focus. Of course, public infrastructure is also another focus area.

Reducing interest rates on both savings and lending and the change in bank reserve ratios indicate a loosening China monetary policy. The main reason of this is to avoid deflation and to reinforce market confidence.

Exporting still is the main sector for China's GDP growth. Recently, Premier Wen stated globalization has resulted in increased connectivity and interdependence between economies, and China is in the forefront as a provider of consumer goods.

*Contributed by Johnson Chien, Managing Director, GCSL Shanghai
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MACAU FEELS THE PINCH

After growing from a small sized market controlled by a single company/individual into a gambling Mecca rivaling the Las Vegas Strip, Macau is now experiencing its own slump. In fact, the gambling industry, long dependent on free-wheeling credit markets, is suffering a global downturn. In the wake of deregulation of the city's casino industry, the major players, including Wynn, Sands, MGM and Australia's Crown, all invested billions to develop monster gambling and entertainment facilities with their eyes on China's millions of punters. And, while Las Vegas and other gambling centers have been moderately affected by global economics, Macau is now dealing with a whole other slew of problems. Mainland authorities have taken the usual conventional steps to keep China's economy chugging along, including further regulation of the financial industry and injecting billions of dollars into domestic markets. But they have also become creative, using inventive measures to control individual spending. One of the first casualties - visas for China nationals wanting to visit the city. Further, the authorities are placing caps on the commissions paid to junkets that provide high rollers to the casinos. Finally, Macau is likely to face stiff competition from Singapore's up and coming casino projects. With lower gaming taxes, Singapore is likely to attract VIP players from both China and other jurisdictions. Still, Macau continues to rival other world gambling cities and with several more projects due for completion in the coming eighteen months, the city looks to continue its stellar growth, even in the wake of a small bump in the road.

*Contributed by Jason Gerber, Business Development Manager, GCSL Hong Kong
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CHINA'S SUPER RICH: HOW DO THEY MANAGE THEIR WEALTH?

It is perhaps unusual to find a 26-year-old at the summit of China's rich list, but the origins of Yang Huiyan's fortune -which the Hurun Report listed as US\$17.5billion in 2007 -are fairly typical. Yang received a 59.5% stake in Country Garden, her family's Guangdong-based real estate business from her father. When the company went public in April 2007, the value of Yang's holding rocketed.

The 800 members of the 2007 Hurun rich list had a combined net worth of US\$457 billion. The average wealth level was US\$562 million, twice the figure from a year ago. This was due in no small part to the strength of the property and stock markets, both of which have since waned. The list featured 106 US\$ billionaires.

The typical profile is a 47 year old man from east China with interests in property or manufacturing, who started his business in 1993. Although the makeup of this elite group is changing - members now come from a wider variety of industrial and geographical areas - they are all essentially entrepreneurs.

Self-made millionaires approach wealth management in a different manner than those who inherit fortunes as they are willing to accept a high level of risk, take a hands-on approach to managing their wealth, focus on wealth creation rather than protection and currently engage in little tax or estate planning.

*Contributed by Ooi Hoay Beng, Business Development Director - Asia, The GCSL Group of Companies Limited
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HONG KONG UPDATE

LEHMAN BROS FIASCO WILL LINGER

Several hundred retail investors stormed the branches of eight banks complaining of misleading sales tactics that resulted in the sale of nearly US\$2 billion of now worthless derivative products to these individuals. The Hong Kong Government is implementing a mediation/arbitration program to address investors' complaints. Watch this space as the Lehman Bros fiasco will linger...

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SINGAPORE UPDATE

PERC UP SINGAPORE!

Having just been totally pampered by Barclays Bank at the recent Singapore F1, it is back to the real world and grind here for us in Singapore. Thank you Barclays, the roaring is still ringing in my ears...and as Alonso and the rest of the pack drive along St. Andrews Road and past the Supreme Court Building, I am shamelessly reminded of the recent report of the Political and Economic Risk Consultancy ("PERC").

In the PERC survey, Hong Kong's judicial system topped the vote with a score of 1.45 on a scale that has zero representing the best performance and 10 the worst. Regional rival Singapore was in second place with a grade of 1.92, followed by Japan (3.50), South Korea (4.62), Taiwan (4.93) and the Philippines (6.10). Malaysia was in seventh place with a grade of 6.47, followed by India (6.50), Thailand (7.00) and China (7.25). Indonesia got the worst score of 8.26 after Vietnam's 8.10.

The Hong Kong - based consultancy said 1,537 corporate executives working in Asia were asked to rate the judicial systems in the countries where they reside, using such variables as the protection of intellectual property rights and corruption. Transparency, enforcement of laws, freedom from political interference and the experience and educational standards of lawyers and judges were also considered.

*Contributed by Lawrence Fong, Managing Director, GCSL Singapore
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CHINA, SINGAPORE SIGN FREE-TRADE PACT

China recently signed a free-trade agreement with Singapore, which is seen as an effective way for China to build political and commercial ties with the wealthy island Republic, the majority of whom are ethnic Chinese. Singapore's trade with China reached a record high of approximately US\$62 billion in 2007. Under the agreement, Singapore will abolish tariffs on all products imported from China from the beginning of 2009. In return, China will reduce the tariff to zero on 97.1% of goods imported from Singapore by January 1, 2012. The Singapore pact is China's 7th free trade agreement. New Zealand was the first developed nation to enter such a pact and China is now speaking with Japan, South Korea and Australia, as well as Russia and some Central Asian states.

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INTERNATIONAL UPDATE

A BARACKING FOR OBAMA - FOREIGN VIEW

There are two general elections in the first week of November. One which will see my home country New Zealand probably elect the same sort of money-grubbing, high spending government for another three years added to the nine current based on a political system, Mixed Member Proportional (MMP) voting where the current poll leading party will not necessarily govern.

Then there is the USA where Barack Obama is favourite to become the first President of colour that their country has chosen.

Ironically I am more affected personally by the US election than that of my home country. Why? Because from the day I left New Zealand and asserted on a form that I was "permanently leaving" New Zealand ceases to have any right to tax my earnings from outside the territory. I am no longer paying for the welfare whims of my home country. I don't even need to fill in a form. I am safe in the knowledge that I am no longer paying for increasing amounts of bureaucracy, government corporate bailouts and middle class welfare. No longer is welfare considered for the most needy and desperate, institutionalized welfare is available for high income earners as long as you have children, a dodgy mortgage or have chucked money into housing, finance companies or other investments that have already had such downside risk factored into their return. I chose a friendly place to live and pay very low flat taxes in Hong Kong, where our leader is called a Chief Executive and he respects the right of people resident in Hong Kong to make as much money as they can, however they want and he only takes from the pot that is actually derived in his territory. It is just good manners in my view.

Americans who perform the same runaway tactic as I did back in 2003 have no such luck. They are taxed and answerable to the IRS for as long as they live.

It's a system that as an "alien" I cannot understand. It is indicative of a born-to-rule arrogance that has defined American governments no matter Republican or Democrat. While enemies of the USA accuse the USA government of atrocities around the world, I am more concerned about the effective ATM ankle bracelet they enslave their own citizens with when they have left the USA permanently.

While in New Zealand a household income of US\$250,000 would gain attention by your neighbors and the Deputy Prime Minister who disrespectfully terms such high earners as (and I quote) "rich pricks", in the USA it seems you are very average and requiring of income support.

Obama is promising so much welfare for everyone that it is difficult to actually NOT qualify for some sort of assistance. But while in New Zealand such high earners can leave if they like and pay no tax to the New Zealand government, the USS will not let their people go. Obama has declared war on the offshore industry, reporting we cost US\$100 billion in tax revenue but with the enslavement of an effective IRS ankle bracelet, an American actually is beginning to have no other real option. How Constitutionally abusive is it to tax USA citizens forever when they no longer use services in the USA, are eligible to benefit from being in the USA and have no access to the very welfare and out of control public spending and bureaucracy that they are now paying for? Sure you can hand back your passport and wait a period of time, but the USA Government view this up with flag burning and you will need to find another nation's passport to give you freedom of movement that the USA holds so dear.

Rather than look at the offshore industry, Obama should look at domestic spending by governments under pressure from woolly woofter pro-welfare agencies (that he used to support), who have bought elections with promises of effectively slapping everyone on some type of welfare or assistance. And then these people are turning around to thank the politicians for returning the very hard earned money they have stole in the first place. Obama should look at the financial crisis currently and ask how many American votes were bought with the subsidies and encouragement that they could afford their own home. When they clearly couldn't. The offshore industry doesn't have anything to do with stupid promises from government's whose primary objective is to make people feel richer than they actually are in order to keep them happy enough to vote them all back in.

During the American Revolution, the phrase "no taxation without representation" was coined in protest by those who felt they were paying taxes without being represented. Some 200+ years later, welfare and out of control spending from "huge" government has moved from the poor and infirm to the middle classes and it does make you wonder just how much longer it is sustainable in a civilized society for voters to vote themselves an income at the expense of the relative few who are now left to pay for it without any recognizable benefits of their own. In New Zealand hundreds of thousands of taxpayers actually receive more money transferred back from government than they pay in tax in the first place. They are a "net beneficiary" in my view, as opposed to those in the opposite circumstance who are "net taxpayers".

How democratic is it now that one group in society can vote themselves an income over others in the minority who will ultimately be paying for it? The pendulum has swung with this changing attitude that welfare truly is for everyone, not just the very poorest and needy.

Instead of "no taxation without representation", I offer a new slogan for the 2000's, "representation based solely on net taxation".

*Contributed by Cathy Odgers, Group Legal Counsel and Compliance Office, The GCSL Group of Companies
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SILVER LINING?

The ongoing financial crisis is undermining confidence in economies around the world and bringing about real problems for people around the world, as it depletes stock portfolios, makes it a lot tougher to borrow money and brings under household names in banking. However, according to a recent article carried by Reuters, it is offering a silver lining to those considering wealth transfers to their heirs or others.

Tax rates on gift are linked to interest rates. As interest rates approach their all-time historical lows, the tax liability on certain kinds of transfers is coming down with them. Meanwhile, as the value of commonly transferred assets, e.g. stocks, falls, more assets can be transferred without reaching the threshold for taxation.

Adding to this environment, the current crisis is quickly doing away with hopes that taxes on such wealth transfers will be lowered or repealed. With Joe Six-Pack and Hockey Mom increasingly feeling the squeeze, and with the federal government set to dish out close to a trillion dollars in bailout money, public sentiment is simply not supportive of tax cuts that seem to-or do in fact-favor the wealthy. With expectations of a tax break gone, we can expect an increase in the number of people opting for gifts as an avenue for wealth transfers.

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THE PLANNING PLEASURES OF CANADIAN IMMIGRATION

Canada is one of the leading emigration destinations for wealthy individuals from many jurisdictions and Canadian tax and other laws afford significant planning opportunities for wealthy immigrants, opportunities not available in most other major immigrant recipient countries such as the USA. Three statutes - Tax Act, Citizenship Act and Immigration Act - govern the main "status" concerns of wealthy immigrants.

Tax Law

Canadian "tax residents" are required annually to pay tax on global income and, pursuant to "foreign asset disclosure" rules, declare the existence of, but not pay tax on, certain offshore assets. The legislation does not define clearly what constitutes tax residency status. That has been left to the evolving jurisprudence. Suffice to say that most, but certainly not all, immigrants will become tax residents. Even for those wealthy immigrants who become tax residents, Canada offers a number of very significant planning advantages including the following:

- The Tax Act provides that all income and capital gains linked to assets settled by an immigrant upon and held by a properly structured offshore immigrant trust are free of Canadian tax for a period of up to 5 years. In effect Canada is a tax haven for the first 5 years of tax residence.
- For some immigrants, the tax free period may extend well beyond 5 years. The immigrant trust may, subject to limitations imposed by the Rule Against Perpetuities, make permanent distributions on a tax free basis to Canadian tax resident beneficiaries where the settlor/contributor of assets either never acquires or abandons tax residency status before the expiration of the 5 year term. In such circumstances Canada, in effect, becomes a permanent, multi-generational offshore centre for wealthy families.
- Unlike USA green card holders, immigrants to Canada are not automatically deemed to be tax residents. Some are resident, some are not, according to their ties to Canada.
- Unlike USA citizens, Canadian citizens can shed their tax residency status by severing their linkages with Canada and moving offshore. This will trigger a departure tax, a "deemed disposition" giving rise to deemed capital gains. There is no departure tax for assets held in an immigrant trust.
- Canada has no estate taxes (although there is a "deemed disposition on death" which will trigger a capital gains tax).
- Distributions from a trust settled for the benefit of Canadian tax residents by a non-resident settlor where all contributions have been made by non-residents (called a "Granny Trust") are tax free on a multi-generational basis. So if Granny in China settles trust for children, grandchildren, etc. in Canada, the latter pay no taxes on distributions.

In summary, Canadian tax laws, the high marginal rates notwithstanding, provide unique planning opportunities for wealthy immigrant families.

Citizenship and Immigration Law

Immigrants who are "resident" in Canada for 3 out of the 4 years immediately preceding the application for citizenship are entitled to citizenship status. Wealthy immigrants who qualify for citizenship will almost certainly have been tax residents for at least 3 years and there are no "loopholes". However, the tax free period of the immigrant trust is 5 years and the residence period for citizenship only 3. So a wealthy immigrant could shelter offshore assets and income for up to 5 years in the trust, acquire a Canadian passport in 3-4 years, and then move offshore prior to the expiration of the 5 year tax free period, thereby legally avoiding taxes on all non-Canadian source income. An immigrant, to retain his immigration status, should be physically present in Canada 730 days out of every 5 years.

Conclusion

All wealthy families who immigrate to Canada should "tax plan" their way in by retaining experienced tax AND immigration counsel to advise on their specific circumstances. There is no "one-size fits all" solution; every plan should be customized taking into account the particular needs of each family. GCSL can make the necessary introductions.

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LIVE WITH TECHNOLOGY, DIE WITH TECHNOLOGY

There is a Chinese saying that goes like this: "Water can sail a boat and water can sink a boat." I thought of this saying due to a recent technology experience.

Since the invention of the personal computer, I, as many of us, have been increasingly relying on the machine in our respective daily lives-at work, at play, simply daily chores and almost everything else. Without any warning, we now find ourselves in a position where we can barely function without the dreaded PC or laptop!

Last month, my HP died on me when I was in Taiwan. I was so miserable because I could not function- no email, no reference, no records - just nada. I felt so helpless and useless. The only technology that could keep me floating and barely floating was my little Blackberry, which Jack uses as a laptop.

When I got back to Hong Kong, I asked our IT person to fix my laptop, which would involve replacing the hard drive. I told them to make a back up copy before replacing the hard drive and the IT genius failed to do so. The reason was simple; he could not even turn on my laptop to access the hard drive. When I got my laptop back, it was just like my first day at GCSL, i.e. a laptop with only the software programs, no data. I spent days re-establishing my previous data. Unfortunately, some of the things are not replaceable, i.e. my Ten Commandments data. To continue with the Ten Commandments, I will have to spend a significant amount of time, which I do not have, to rewrite all my notes.

Lesson learned: I am now making back-up copies of everything that I store in my little laptop. The irony of it is if I have to spend excessive time to protect my data, what advantage do I really get out of technology? Would not paper filing be better after all? I was talking to a potential client this

afternoon and he told me that his Mac has a function that prompts him to make a back up copy on the external drive. Gee, what a wonderful feature! I might switch to a Mac-user soon...

The bottom line, technology is like water, it can sail your boat and it can sink your boat. Use it wisely.

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THE FINANCIAL ACTION TASK FORCE'S RISK-BASED APPROACH

In June 2008, the Financial Action Task Force ("FATF") published a set of guidelines regarding a Risk-Based Approach to Combating Money Laundering and Terrorist Financing. This article seeks to review briefly the most relevant points for trust and company service providers ("TCSP"). The complete document may be found at <http://www.fatf-gafi.org/dataoecd/19/44/41092947.pdf>.

According to the FATF, there are several strategies for managing potential risks related to money laundering and terrorist financing. The most common strategy is the application of risk categories. These categories are based on the following:

- **Country/geographic risks** may be determined taking into consideration embargos, regulatory sanctions, corruption level and the extent of level of Anti-Money Laundering and Combating of Financing Terrorism as identified by credible sources.
- **Customer and product/service risks** are trickier as what may raise suspicion for one client may be common practice for another. In such cases, the TCSP has to consider what he knows about the client. Other relevant variables include the nature of the relationship, source of wealth and funds, the duration of the relationship, unusually high volume of transactions in relation to the expected ones, rapidly increasing asset levels and the degree of regulation to which the client is subject in his home jurisdiction.

A review of these variables coupled with the relevant weight given to each will result in different conclusions by each TCSP regarding the country, client and product/service risks.

By now you may be thinking, "this sounds great for a big company with significant resources, but what about me?" The simple answer is you have no choice as TCSPs are now required to implement a risk-based approach, no matter their size. You will have to ensure your internal controls take the above risk assessment into consideration by focusing on the products, services, customers and geographic locations that are most vulnerable to abuse by money launderers, by reviewing your risk assessment on a regular basis, designating someone within your company to be responsible for managing the compliance, implementing due diligence policies for new products and updating information, identifying and reporting suspicious transactions and educating your staff.

Given the above, I suggest all TCSPs implement risk assessment in their internal procedures, assess the risks associated with your clients on a regular basis and pay special attention to your professional clients as the level of regulation to which they are subject in their home jurisdiction influence your assessment.

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OFFSHORE UPDATE

ANGUILLA: ANGUILLA FOUNDATION ACT (part 3)

As part of my on-going series of articles on The Anguilla Foundation Act 2008 (The Act), this month I wish to have a broader discussion of it. The Act introduces an entirely new concept into Anguillian statutory law and jurisprudence and thus, I have seen fit to go through the Act in a somewhat exculpatory manner in order to explain its provisions.

To begin with, one or more natural or legal persons may establish a foundation in accordance with the provisions of the Act. A foundation may be established by -

1. a declaration of establishment made in writing and signed by one or more founders during their lifetime; or
2. a testamentary declaration of establishment made by a single founder, comprised in a will as defined in the Wills Act and complying with all formalities required by that Act and probated in the High Court.

An initial property endowment, expressed in any currency of legal tender, not being of less value than \$10,000, must

1. be placed under the control of the intended registered agent on or before the date of registration of the foundation pursuant to the deposit of the foundation's documents; and
2. become the property of the foundation upon such registration or, as the case may be, such deposit.

There shall be no requirement for separate articles of a foundation but, subject to the Act and to the terms of the declaration of establishment of the foundation, provision not required by the Act to be included in the declaration of establishment may be included in separate articles of the foundation.

Where a foundation established cannot be registered or its documents deposited within a reasonable period of time after the death of the testator, any interested person may apply to the High Court for the appointment of a temporary receiver of the initial property endowment who shall be responsible -

1. for applying to the Registrar for the entry of the foundation on the Register, or depositing the declaration of establishment with the Registrar when probate of the will has been granted;
2. for carrying out the declaration of establishment and administering the property endowment until the Foundation Council is appointed; and
3. if necessary, for appointing the Foundation Council.

It is important to note that the temporary receiver -

1. shall be entitled to reimbursement for his proper charges and expenses, which shall be determined by the High Court; and

2. may be removed by the High Court as soon as the foundation acquires legal personality.

A Foundation can be formed in either of two ways. The first is through a declaration of establishment which shall include the following particulars:

1. the name of the foundation;
2. the initial property endowment accompanied by a certified confirmation, by the person designated as the registered agent of the foundation, that such initial endowment of property is readily available to the foundation and will be vested in or under its legal control immediately upon the foundation's acquisition of legal personality;
3. the name and address of the founder or founders, but, if at any time the founder's rights are assigned, any assignee of the founder's rights shall be deemed to be a founder for the purposes of the Act;
4. the full names and addresses of the Foundation Council members;
5. the name and address of the registered agent;
6. the name and address of the Secretary, if any;
7. the name and address of the guardian, if any;
8. the purposes of the foundation;
9. provisions, if any, for the designation of beneficiaries;
10. the names and addresses of any designated beneficiaries;
11. provisions, if any, for the exercise of powers otherwise than by the Foundation Council;
12. the method of appointing and changing Foundation Council members;
13. provisions concerning the making of by-laws and their amendment;
14. provisions concerning any power to amend the declaration of establishment of the foundation;
15. provisions concerning the application of the foundation's property endowment in the event of the dissolution of the foundation;
16. provisions concerning the term of the foundation and whether such term shall be for a definite or indefinite period of time.

Subject to the provisions of the Act, the declaration of establishment of a foundation may, in addition to the particulars above -

1. provide for the appointment, removal and term of office of the auditor, if any;
2. provide for the appointment and removal of its guardian for the maintenance of the objectives and purposes of the foundation;
3. specify the duties, functions, powers and rights (including rights to remuneration) of its guardian, if appointed;
4. provide for the appointment of persons to act by power of attorney or otherwise to carry out particular duties on behalf of the foundation;
5. provide for the transfer to the foundation of supplementary assets in addition to the initial assets;
6. specify any named beneficiary; and
7. make any other lawful provision that the founder or founders may deem appropriate.

Subject to the Act and the terms of its declaration of establishment, a foundation may be established for any purposes which are capable of fulfilment and are not unlawful, immoral or contrary to public policy. The purposes for which a foundation may be formed shall not include -

1. the carrying out of any activity prohibited from being carried on, in or from within Anguilla; and
2. any financial services business, unless and until such licence as may be required to conduct such financial services business has been granted. It is important to note that the expression "financial services business" shall have the meaning assigned to it in the Financial Services Commission Act.

A foundation may, in the course of the management of its assets, do all such things as are necessary for the proper administration of its assets including, but not limited to, buying and selling of such assets and engaging in any other acts or activities which are not prohibited under any law of Anguilla. In addition, the declaration of establishment of a foundation and any amendment thereto may be written in any language but, where such declaration is not written in the English language, it must include a certified translation into the English language.

The declaration of establishment of a foundation may, subject to the terms of that declaration of establishment, be amended or revoked in writing -

1. in the case of a foundation established by one founder, by the founder during his lifetime; or
2. in the case of a foundation established by 2 or more founders, by the founders jointly during their joint lifetimes;

if such right is personal to the founder or, as the case may be, the founders and is non-assignable.

A foundation established under the Act may adopt by-laws, and such by-laws may include regulations -

1. concerning distributions or applications of property endowment;
2. naming beneficiaries, defining classes of beneficiaries or providing for additional beneficiaries of the foundation;
3. providing for the identification of the residual beneficiary on a dissolution of the foundation;
4. providing guidelines, policies and procedures for the Foundation Council; or
5. providing for any other lawful matter compatible with the purposes of the Foundation.

Any such by-laws shall be in writing and shall be signed by at least one Foundation Council member. The Foundation Council of a foundation may, subject to the terms of the declaration of establishment of the foundation, amend or replace the by-laws of the foundation.

The name of a foundation -

1. must end with -
 - o the word "Foundation" or its abbreviation "Fdn", or
 - o the foreign language equivalent of the word "Foundation" or its recognised abbreviation in that language;
2. may contain the name of a founder or Foundation Council member;
3. may contain the name of a founder or Foundation Council member;
4. must not be the same as or similar to the name of any other legal entity registered or deposited under the laws of Anguilla or reserved under this or any other Act, unless such other legal entity consents in writing to the use of that name; and
5. must not be a name prohibited by regulations made by under this Act or by any other law in force in Anguilla.

Notwithstanding this provision of the Act and subject to the approval by the Registrar, one or more words, or an abbreviation thereof that, in the opinion of the Registrar, denote in a jurisdiction other than Anguilla the existence of an entity having the characteristics of a foundation, may be used in place of the word or words or abbreviation specified in that subsection.

The Act provides for a Registrar of Foundations who shall maintain a Register of Foundation. The registered agent of the foundation shall apply to

the Registrar to enter the name of the foundation on the Register. For the purpose of registering a foundation under the Act, the declaration of establishment of the foundation shall be delivered to the Registrar together with the prescribed fees. If the Registrar is satisfied that all the requirements of the Act in respect of the registration of a foundation have been complied with, he shall register on the Register the declaration of establishment delivered to him. Upon the registration of the declaration of establishment, the Registrar shall issue to the registered agent a certificate of registration in respect of the foundation stating -

1. the date of registration of the foundation,
2. the name of the foundation, and
3. the registration number of the foundation; and

issue to the registered agent an extract of the declaration of establishment of the foundation stating -

1. the full names and addresses of the Foundation Council members,
2. the name and address of that registered agent,
3. the purposes of the foundation, and
4. the initial property endowment of the foundation.

Each certificate of registration shall be signed and sealed by the Registrar and it shall be conclusive evidence of the registration of the foundation.

Of special note is the fact that the Foundation Council may decide not to register a foundation, not being a foundation that has a commercial purpose, and in any such case the declaration of establishment of the foundation must be deposited by the registered agent with the Registrar together with the prescribed fees, and the Registrar shall record such declaration of establishment in a schedule of deposited foundations. If, upon such deposit, the Registrar is satisfied that all the requirements of this Act in respect of the deposit of the declaration of establishment of the foundation have been complied with, the Registrar shall issue to the registered agent a certificate of deposit stating -

1. the date of deposit of the declaration of establishment of the foundation,
2. the name and deposit number of the foundation, and
3. the name and address of the registered agent.

In such case, the Registrar shall only disclose information on the foundation -

1. upon the request of the registered agent;
2. upon an order of the High Court; or
3. upon a written request from the Commission or any other body duly authorised under any other enactment.

A foundation shall, from the date of its registration or, as the case may be, the date of acceptance of its deposit, have the status of a separate and independent legal person in its own right. A foundation shall be invalid and unenforceable -

1. if it is not registered or deposited;
2. in the case of a registered foundation, if it has been struck off the Register; or
3. in the case of a deposited foundation, if it has been struck off the schedule of deposited foundations.

Where the declaration of establishment of a foundation is amended or a change occurs in any of the particulars

1. the foundation shall, within 14 days of the amendment or occurrence of such change or within 14 days of becoming aware of such amendment or occurrence, file or deposit with the Registrar a notice, signed by the registered agent, containing details of the amendment or change, together with the prescribed fees; and
2. the Registrar shall -
 - in the case of a registered foundation, retain such notice and file it in the Register, and
 - in the case of a deposited foundation, retain such notice, cancel the certificate of deposit and issue to the registered agent a new certificate of deposit indicating such amendment or change.

Where such amendment constitutes a change of name of a registered foundation, the Registrar must issue a new certificate of registration indicating the change of name. Any amendment of the declaration of establishment of a foundation and any change in the particulars shall come into effect -

1. in the case of a registered foundation, from the date when notice of the such amendment or change has been filed in the Register; and
2. in the case of a deposited foundation, from the date on which the Registrar issues to the registered agent the new certificate of deposit indicating such amendment or change.

Any interested person or the Registrar may apply to the High Court for an order to require a foundation to comply with the Act and the High Court may so order and make any further order it thinks fit.

This article details the preliminary sections of the Act. Next month, I shall examine the bodies of an Anguilla foundation.

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BELIZE: GETTING BACK TO BASICS...

Belize has suffered untold financial loss this past month of October, Tropical Depression 16 left tonnes of water in the hilly regions of Northern Central America, specifically Guatemala, Honduras and Belize. As I type here, I am trying not to think of my house, which has fish swimming in the living room, despite efforts to sandbag so as to keep the water out.

Despite the loss to Belize, this time has me thinking about getting back to basics. What are those basics, when it comes to GCSL in Belize? Simply put, it is the Trusts and Companies that we help to set up. They are the backbone of these operations in Belize. Let us just take a quick look at them, for the sake of recollection:

TRUSTS

The International Trust under Belizean law is governed primarily by the Trusts Act of 10992. By virtue of this Act, there was created provision

allowing for the creation of Asset Protection Trusts. Take section 7(6), for example, where it is quite clear that there can be no causes of action or claims entertained against a trust whose law of administration is Belize, where those claims arise out of marriage or the termination of marriage, where there are succession rights (be they testate or intestate), and finally, where there are creditor claims upon insolvency. This means that the angry ex-wife or ex-husband cannot bring a claim against the trust in an effort to reclaim part of the trust proceeds. The trust property is technically no longer part of the Settlor spouse's property, and therefore must be considered separate from the spouse and outside of that spouse's control.

Also of benefit to the settlor of the trust is the fact that the Reciprocal Enforcement of Judgments Act does not apply to the Trusts Act. That has been made expressly clear by Section 7(7) of the Trusts Act. Sounds simple enough, but the result is that anyone seeking to make a claim against the trust in question will have to commence their proceedings in Belize. Again, simple, right? Well, consider that you will have to

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COOK ISLANDS: BANKS IN COOK ISLANDS SHOW STRENGTH

With the world financial meltdown, and banks in the USA looking especially vulnerable, it is relevant that this month we talk about banks. This article gives you some insight into what has been going on in the world market, and what impacts if any, there are on the two major banks in the Cook Islands: Westpac Banking Corporation and ANZ Banking Group.

The Recent Past

In essence, the turmoil in global financial markets originated in the USA from poor lending practices, excessive exotic instruments and a crisis of confidence. Too many home buyers were lent excessive amounts of money that they could not afford creating a 'sub-prime' crisis. In the USA, most mortgages are held by investors by way of mortgage backed securities. As these securities lost value, it started a chain of events impacting other similar and complex securities, and in early 2008 it began to create a crisis of confidence. These events also caused a contraction in the number of financial companies willing to lend to any counterparty.

More extensive problems began to emerge when companies holding these securities needed to write down their value. To date we have seen over US\$450 billion of write offs.

These events have placed a number of global financial institutions under severe pressure. This has caused some businesses to fail, and extreme uncertainty on the prospects of other companies. It has also created a crisis of confidence and it may be some time before confidence is returned.

Both Westpac Banking Corporation and ANZ Banking Group are headquartered and regulated in Australia - and most importantly, both have branches in the Cook Islands. Both are AA+ rated by S&P, with only 18 banks worldwide in that category. **It's important to mention that the tiny Cook Islands is host to two banks on that very exclusive list!!!**

While it is virtually impossible to predict where the market is going, the Australian financial system, where both these banks are based appears to be in good shape. In particular the:

- Australian economy is robust with low unemployment;
- Major banks in Australia have small write downs and losses;
- Australia regulators have responded proactively to the current environment.

With operations predominately in Australia and New Zealand, both banks have indicated they do not hold sub-prime or related assets and have not incurred the losses experienced by many overseas and in particular USA banks.

In my discussions with local bank manager of Westpac in the Cook Islands, Wayne Beckley some interesting facts emerged regarding Westpac:

- Does not hold exotic securities that have impacted peers.
- Well-capitalised locally and overseas with a Tier 1 capital of 7.7%.
- Credit ratings have remained the same.
- Best performing of the four major banks in Australia over the last 12 months, and one of the two best performing major banks over the last 3 and 5 year periods.
- On 8 August the bank announced that they were expecting 6-8% cash earnings growth, another record profit, which is different from the write offs and losses experienced by many banks globally.
- Proactive management of the current situation, completion of funding requirements and strong resources will help support the through these times.

Looking forward

Banks like Westpac with a presence in the Cook Islands gives confidence to advisors looking for jurisdictions to park their client's money. This was highlighted on my recent trip to the USA, where it was quite noticeable that professional advisors (some of whom I have been visiting for many years and yet remain sceptical about going offshore of the USA) were more willing to discuss "offshore" and in particular banking outside of the USA. This is understandable in this day and age. My prediction is that this interest in banking services outside of the USA will only increase and professional advisors would be well advised to open their minds and eyes to the opportunities that truly exist outside of the USA for their clients.

Having access to foreign currencies, investment houses (many of which are used by big USA Fund Managers), solid banks, and of course foreign protective laws, is in my view an absolute must in the current financial environment.

Add to that the strong regulatory regime of the Cook Islands, my bet is that this jurisdiction will grow and strengthen, even amidst the current volatile financial markets.

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SAMOA: PICKLE JAR-GONE TO FAR

A jovial note of jest from the paradise of Samoa sees two New Zealand based solicitors in a bit of a pickle for unlawful jargon. A jar is a metaphor used in many a good parable with an array of teachings on the dos and don'ts of life in general. In both cases the solicitors in question were alleged to have verbally abused Police and other Court Staff. As a result of the alleged events both were charged with using insulting words, and were in turn invited to Court to argue their respective cases. What ensued out of Court was a collaboration of sorts to turn the Legal System of

Samoa on its head to prove their innocence's. Both lawyers took their plights to the Ministers of both Ministries involved together with the Prime Minister. They requested that either a commission of inquiry be setup on the procedural tact of the Ministries and/or Government paying to bring in overseas "impartial judges" to preside over their cases.

Well as with all requests of this magnitude the Government wasn't going to take it lightly, or be gagged for that matter by the for once, "proper legal jargon" contained in the solicitors' requests. The PM responded through media stating his surprise at the audacity of the solicitors' requests. He said that, "no one was above the law and that for justice to be seen, justice had to be done." Continuing he expressed his disbelief in the calling for an inquisition into the running of the local justice system which would cost the Samoan tax payer tens of thousands of dollars. Proof of the integrity of the Samoan Judiciary and legal process can be seen in our highest court, The Court of Appeals rulings. Although some rulings may have had discrepancies in judgment sentence duration or amounts, there have been only a handful of overturned rulings. This in itself suggests the system although may not be perfect, it is close to it in international comparison.

Public comment on the case has been thought provoking, with most people finding the whole affair quite amusing. One spokesperson was heard under a roar of laughter saying that "why fix what isn't broken at the expense of the taxpayer, if found guilty they'll probably only get a slap on the hand in the form of a small monetary fine. So, if they can afford to come here and argue cases I'm sure they can afford to pay a fine, and remember next time not to let the illegal jargon out of the jar, because you might turn into a pickle."

Note: For you amateurish chefs our tale is a lot like the preparation of pickles. Normal zucchini from the vine is prepared and then fermented in a jar over a period of time. A chemical reaction takes place and when the zucchini has pickled and is consumed it has become a spicy delight for even the weakest of stomachs. Stay tuned from what the result is with this pickle in paradise it could end up pickled onions and someone will be left in tears.

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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 like paying taxes. With them I buy civilization. - *Former USA Supreme Court Justice Oliver Wendell Holmes*

This is worse than a divorce... I've lost half of my net worth and I still have my wife! - *Unhappy fund manager during recent financial meltdown*

I do my best strategic thinking in my Qantas first class pajamas. - *GCSL's Cathy Compliance when suggesting some brilliant ideas regarding how we should handle a difficult client*

SOLICITING LAW SUITS

We recently saw a full page color ad while flying to Buenos Aires that gave a whole new meaning to "solicitor". Yes, The Law Society of England and Wales is now seeking your lawsuit to be handled by its members using the English court system. Visit www.lawsociety.org.uk/jurisdictionofchoice. Two oddities. First, we are under the impression that members of The Law Society probably cannot "solicit" in such the same fashion as its governing body. Second, why only the English courts? The Welsh seemed to have been excluded from the "solicitation". Perhaps the Welsh do not have courts? And we thought ambulance chasing was the sole province of the Yanks!!!

STAND UP FOR SUDAN LADIES' RIGHT TO BE TIGHT!!!

We were not terribly surprised to read about a police investigation in Sudan that resulted in arrests of young women arrested for "disturbing the peace" by wearing tight trousers. Fortunately for Sudan's men, the President stepped up for the ladies ordering their immediate release...and the right to be tight!!!

THIS FELLA COULD TEACH THE YANKS A THING OR TWO!!!

Ah, the passion of the Thais!!! A massage parlor king who was vying for the title of Bangkok's mayor became unhappy with a journalist's questions and decided to kick and punch the fella during the live interview. Why can't the two fellas running in the USA stop talking trash and start kicking butt...far more entertaining than the current childish behavior!!!

THE TRUTH WILL SET YOU FREE...AKA GET FIRED!!!

A South Korean financial researcher was fired for telling a TV talk show that people made bad investment decisions because they were too greedy. Let's face it folks, your broker is appealing to your greed when pitching you shares, bonds, mutual funds, etc. We are no better than the jerks who manufacturing, analyze, rate and sell the garbage we buy. Yikes, will I now get fired!!!!???

OUCH, POPS!

"Hey, pops, let's chill out this week, have a few beers, check out a game of hoops and, well, no, dad, please, no!" Yup, pops decided his 20 year old son was too idle, needed to pursue more productive activities, requested a court to send the young one to jail and got his wish when junior was sentenced to six months in prison and 30 strokes of the cane. Ouch, Pops!!!

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