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HOME


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WE WISH YOU A SAFE, HEALTHY AND PROSPEROUS YEAR OF THE OX!!!

The GCSL Wine + Fireworks Chinese New Year Cocktail on the 27th was one heckuva party!!! Our Angus Wong guessed correctly the amount of money in GCSL Hong Kong's piggy bank (monthly event because I do not like coins), which resulted in 1/3 of the \$ going into Angus' pocket, 1/3 of the \$ going to Angus' chosen charity (World Vision - <http://www.worldvision.org.hk/eng/default.asp>) and 1/3 of the \$ going to Tea Time for the GCSL Hong Kong Ladies & Men. Photos speak volumes...


JACK'S CORNER
GENERAL POWER OF ATTORNEY – YUCKY POOH!!!

I recently have encountered an issue that is likely to be of interest to all members of the fiduciary services industry. GCSL often provides corporate or natural person directors ("Director") for clients' companies. Issues such as liability and good corporate governance arise in such circumstances. Many clients request the Director to issue a General Power of Attorney ("General POA"). A General POA, as opposed to a specific power of attorney, basically grants the "attorney" the right to do anything lawful that the Director could do. The following is fairly standard language I have seen over the years:

"...to be the true lawful Attorney in fact of the Company (hereinafter called the "Attorney"), for and in the name of and on behalf of the Company to do or to execute all or any of the facts and things hereinafter mentioned that is to say:

1. To transact manage carry on and do all and every business matter and things requisite and necessary or in any manner connected with or having reference to the business and affairs of the Company and for such purposes to conduct all correspondence appertaining to such business and affairs.
2. To enter on behalf of the Company into any agreements, deeds, contract including related to purchase or selling of securities and sign, stamp or seal any agreements deeds, contracts with the stamp or seal of the Company, to manage, conduct and provide all and any acts, business and things which are or can be necessary or however related to the business and affairs of the Company and with these purposes to conduct all correspondence related to this business and affairs.
3. To buy, sell shares, securities, bonds, saving certificates, options, derivatives and other instruments of financial market, real, personal and other estate of the Company, incorporate companies and subsidiaries, establish branches, representative offices, take part in the management of such a companies, branches and representation, employ their staff, perform any legal acts or things in any part of the world, including any country, state, colony, province, municipality and political division of any countries as the Attorney may deem necessary.
4. With the right of casting vote to take part in general meetings and in other managing bodies of newly registered and existing legal entities, partnerships, companies, branches, Representative Offices, subsidiaries, Joint Ventures in any part of the World where the Company is the owner, shareholder, founder, participant, and to sign on behalf of the Company all statutory documents of these legal entities and companies, to be elected to the managing and supervising bodies of these legal entities and companies, to propose candidates to these legal entities and companies on behalf of the Company.
5. To delegate and transfer rights according to this power, in part or in whole, to any third person
6. To provide on behalf of the Company any credit acts and things in all and any bank institutions, to open, operate and manage current and any other accounts including security accounts in the name of the Company; to sign invoices, payment orders and orders for operations with securities and also to sign and endorse checks, bills to discuss instruments and documents of any nature in the Company's business interests and with other purposes as the Attorney may deem necessary or required for the Company's business.
7. To adjust settle compromise or submit to arbitration any account or debts owing to the Company claimed or demanded by the Company or any disputes concerning any such accounts debts claim or demands which may hereafter arise between the Company and any person or

persons.

8. To commence prosecute enforce defend answer or oppose all sanctions and other legal proceedings and demands touching any of the matters aforesaid or any other matters in which the Company is or may be interested or concerned and also if through fit to compromise refer to arbitration abandon submit to judgment or be no suited or any such action or proceedings as aforesaid.
9. For the better and more effectually executing the powers or authorities aforesaid or any of them to retain and employ advocates attorneys or lawyers as our Attorney shall think fit to act or represent the Company wherever it may be necessary in the view of our Attorney so to do.
10. Generally to do such acts matters and things the Attorney considers may be necessary or desirable for furthering corporate purposes of the Company or properly to represent the Company and its interests and further those interests and generally act either by Resolution or person presence or by proxy or otherwise as the case might be and in all respects as if the Attorney were the Company."

Jeez, why even bother having a Director who is willing to delegate, well, every power a Director has!? Would a Director willing to sign such a document be what we call a "fiduciary"? Would any third party, i.e. banks, business people, etc, be reasonable to work with someone waiving around such a nonsensical document? Perhaps the Attorney's first order of business would be to remove the lousy Director who signed the document!

Let's take a step back and think about this animal called a General POA. When the precursor of the modern day company was formed on December 31, 1600 (the English East India Company), a change was introduced to the conduct of business and company law in the form of the separation of ownership (shareholders) from control (directors and officers). Thus, the law carefully embarked on a journey down the road of creating fiduciary duties, which sought to address the responsibilities and risks inherent in such delegation of control to non-owners. The law reached out to the Latin root of the word fiduciary (*fiduciaries*), which means one in whom *trust (fiducia)* reposes, to give important substance to these newly imposed duties.

The delegation of control over the company's assets by its owners means that effective corporate governance is achieved through good behavior and decision-making by the company's board of directors. The common law imposed fiduciary duties upon Directors to ensure they acted in the best interests of the company and its shareholders when making decisions regarding the conduct of the company's affairs.

Fiduciary duties of Directors include, but are not necessarily limited to, a duty of care, diligence, loyalty and good faith in discharging the Director's duties. Directors often delegate powers to officers, who take various positions such as "president", "chief executive officer", "treasurer", etc. The delegation of such powers, given the duties mentioned herein, should not and, as a matter of law, cannot be taken lightly.

I have no problem with a specific power of attorney that clearly details the conduct the "attorney" may undertake on behalf of the Director and is for a limited time period. Delegating such powers may be problematic in certain circumstances, but it does not push the limits of pragmatic business operations to the absurd.

However, I would argue the language in the General POA cited above exceeds the absurd and, as a matter of law, is flawed immediately upon being issued. This reflects the fact that the Director has sought to delegate **ALL** his powers. I believe a Director cannot delegate, or at least should not delegate, **ALL** his powers given his fiduciary duties.

By issuing a General POA as per the example cited above, a Director, in my view, has failed to exercise his fiduciary duties. The very existence of such General POAs will only serve to make legitimate business people, legislators and the general public think modern day "fiduciaries" are little more than straw-men who will sign anything for a few hundred dollars here or there!

With that in mind, please understand that if GCSL is providing Directors to your companies, GCSL will not issue General POAs.

HEALTHY YANKS: So I was attending a conference of 2000 + lawyers at an Orlando hotel with 15 treadmills, 10 elliptical machines and 5 exercise bikes in a fully equipped fitness center. I woke up at 5:30am, arrived at the fitness center at 6am and **POW** I discovered lines 3 deep for each aerobic machine and 2 deep for the weights!!! Yanks out of shape? Heck, in Europe most hotels do not have fitness centers and if they do, the joint opens at 7am and has only a few machines. Asia has spectacular fitness centers both in terms of equipment and the fact hardly anyone uses them!!! Oh my...perhaps it is the recession so even lawyers are skipping breakfast to work out...or are Yanks really healthier than most of us think!?

Onwards and upwards...plan, protect and preserve in 2009!!!



GCSL NEWS

GCSL MIAMI SEMINAR

Jack, Carlo, Carlyle and Vance made presentations to approximately 20 lawyers in Miami and followed up with a true GCSL ending to a great evening...wine + cheese. Q&A demonstrated that offshore planning is still strong for USA persons!



GCSL HECKERLING

GCSL went big again as Platinum Sponsors of the Heckerling Institute (www.law.miami.edu/heckerling/) where more than 2,000 estate planning lawyers and 300 exhibitors discussed current trends as they are being influenced by the global economic downturn. Dinners at Christini's (www.christinis.com/) were the highlight of those who joined not to mention the GCSL paid for visits for some lucky delegates to our offices in Anguilla, Belize, Nevis, Cook Islands and Samoa! Mom & Grandmom Jack were also very welcome guests!!!



GCSL BELIZE AND GCSL SINGAPORE ON THE MOVE!

Please note the following changes:

GCSL Belize
35 New Road,
Belize City
Belize, C.A.

GCSL Singapore
6 Eu Tong Sen Street
#10-14 Soho 1
Soho@Central
Singapore 059817

Telephone, facsimile and emails all remain the same! C'mon over and visit the kids and see the new digs!!!

JACK VISITS GCSL BELIZE

The GCSL Belize Ladies, Carlo as well, invited Jack to a nice lunch at the Radisson. The Ladies are all that!!!



GCSL COOK ISLANDS EXPANDING

A big welcome to Ms. Foreman Amaru, who recently joined GCSL Cook Islands as an Administration Officer, and increased the number of staff to four people. We look forward to a most excellent contribution from Foreman as GCSL Cook Islands continues to grow and work hard for clients!!!



AOA

AOA BANGKOK, MARCH 22 – 24, 2009: The stage is set for a most excellent conference – Thai style – at **The Oriental** (www.mandarinoriental.com/bangkok). Our first night extravaganza will be held at the Rim Thai riverside restaurant at The Oriental. Executive Committee Member, **Michael Doyle, Partner, Seri Manop & Doyle** (www.serimanop.com) will update delegates on the latest Thailand business law issues facing foreign investors. Closely following on Mike's comments will be Global Advisory Committee Member, **Gabor Szabo, Partner, Dr. Gabor Szabo & Partners** (www.offshorg.com) discussing some of the cutting edge European tax issues. **Patrick Trainor, General Manager, Asiatic Trust** (www.asiatic.com) will discuss the new LLC legislation in the Cook Islands and mutual funds legislation in Samoa. Our second night fun will include a riverboat cruise. On Tuesday, we will learn about global intellectual property issues from **Franck Fougere, Director, Vidon & Partners (Thailand)** (www.vidon.com). **Howard Fisher, Partner, The Law Offices of Howard S. Fisher** (www.howardfisher.com) will parachute into Bangkok from Beverly Hills to enlighten delegates regarding pressing international tax issues. Executive Committee Member, **Peter Tay, Director, Mossack & Fonseca Singapore** (www.mossfon.com) will address the latest developments in private wealth in Malaysia, Singapore and Indonesia. Our last speaker, **Kevin Whitcraft, Director, The RMA Asia Group of Companies** (www.rmasia.net), will offer some unique insights of a foreigner working, doing business in and basically living the life in IndoChina. C'mon over to The Big Mango for a wonderful event at The Oriental.

In true AOA fashion, we are delighted to be supporting the Goodwill Group (www.goodwillbangkok.org), which teaches English and computer skills to disadvantaged women (most of whom are in their twenties, from Issan with no more than a high school education) and employed in a variety of low-paying jobs. The Goodwill Group do very good work for these young women, and we are privileged to be able to support their efforts in March!!!

AOA BEIJING: Given the current global economic slowdown, the Executive Committee has decided to postpone the AOA Beijing conference until 2010. We look forward to seeing you in The Big Mango in March!!!

LARRY LIPSHER, AOA EXECUTIVE COMMITTEE MEMBER will offer some Tax Wisdom for American Expats in Asia on Thursday, February 26, 2009 at 12:30pm at the FCC. Lunch will be served and Larry's

Light-hearted approach to tax after 41 years of being a CPA (19 in Asia) will no doubt make this a most memorable event. His luncheon remarks will address several of the topics covered in his book, *The Tax Analects of Li Fei Lao*.



GREATER CHINA UPDATE

PROPERTY TAX

Do you or your company have property in China? If yes, then you should make a note of circular Cai-Shui [2009] No. 3, January 1, 2009. It states "Wholly Foreign Owner Enterprise, Foreign Investment Entity or Foreign person will need to pay Property tax based on the law of Property Tax of Peoples Republic of China which was effective on October 1, 1986". And the "Municipal Property Tax" regulation has been abolished.

Extracts / notes from Property Tax of Peoples Republic of China (Guo-Fa [1986] No. 90) are as follows:

Article 2: Registered Property Owner is the tax payer.

Article 3: Provision of 10% - 30% allowance from original buy and sell contract value, which is to be decided by local government. If there is no original buy and sell contract, the local tax authority has the right to decide the taxable value and if the property is being rented, then the rental amount is to be the taxable amount.

Article 4: The tax rate for the remaining original buy and sell contract is 1.2% and 12% for the rental.

STRENGTHEN TAX COLLECTION - SPECIAL TAX COLLECTION MANAGEMENT CIRCULAR

In a follow-up to the Guoshuifa [2008] No. 114, which was issued on December 16, 2008, the State Administration of Taxation (SAT) on January 8, 2009 issued a circular (GuoShuiFa [2009] No. 2) to further strengthen tax collection. The circular focuses on the issues of "Transfer Pricing"; "Pre-approval on Pricing"; "Cost Sharing Agreement"; "Controlling Foreign Corporation"; "Capital Diluting" and "Other Anti-Tax Planning". China's new tax era began on January 1, 2008, and so have investigations.

The key point of the entire Circular is surrounding two words: "Related Party". The Circular does not only define the shareholding percentage (25%), but also includes "Management"; "Loan and Debentures"; "Market Value"; "Offshore Jurisdiction Tax Rate"; and "Dividend Distribution" as the rules and guidelines on how to define "related party".

The following group of entities will be the primary focus:

1. Entities with significant number of related party transactions.
2. Unstable profit making, small profit margin and long term deficit entities.
3. Profit level is lower than other entities in the same industry.
4. The profit level does not match with risk level.
5. Doing Business with Tax Haven Related Parties.
6. Did not supply required documents in time.
7. Other obvious behavior that breaks "Independent Transaction Principles".

WAHAHA VS. DANONE – DIVORCE CONTINUES

The divorce process between Wahaha and Danone has being around two years. Both parties are trying to secure assets as much as possible. And yet, our focus is not only on who is winning, but also at how China's legal system is handling this matter.

Since "friendly" negotiations broke down in the first quarter 2007, Danone initiated law suits in Sweden, USA, Italy and France. In November 2007, Danone activated a frozen assets petition in the British Virgin Islands (BVI) and Samoa. KPMG was appointed as a receiver by BVI and Samoa courts. Rather than responding to the law suits, Wahaha brought the battle back to China. Wahaha won the first battle confirming Wahaha retaining its trade mark "Wahaha" in China.

In July 2008, one of Wahaha's subsidiaries (SuQian Wahaha) which is not under Joint Venture Structure, sued KPMG for invasion of its interest in China and demanded a public apology and compensation of RMB1 million. On November 27th 2008, a Chinese court held that KPMG had to make a public apology and compensate SuQian Wahaha RMB300,000. The Chinese court rejected KPMG's petition of lack of jurisdiction because management was in China.

*Contributed by Johnson Chien, Managing Director, GCSL Shanghai
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HONG KONG #1 FREEST ECONOMY AGAIN FOR 15 STRAIGHT YEARS

Hong Kong continued to take the top place in the ranking of the 2009 Index of Economic Freedom for the 15th consecutive year according to the Heritage Foundation. Rankings of 2 through 10 in order were Singapore, Australia, Ireland, New Zealand, the United States, Canada, Denmark, Switzerland and the United Kingdom.

GERMAN BUS COMPANY WINS US\$3 MILLION INTELLECTUAL PROPERTY AWARD IN COURT

MAN Group's Neoplan Bus filed in 2006 a lawsuit seeking RMB40 million for violation of intellectual property rights involving bus design, which was the first of its kind. The Chinese Court awarded RMB20 million in damages and RMB1.16 million in costs. Yes, folks, the enforcement of the law does work in China!!!

*Contributed by Jack W. Flader, Jr., Chairman & CEO, The GCSL Group of Companies Limited.
Jack's email address is jack@gcsl.info*

TAIWAN VOUCHER SYSTEM – UNIQUE APPROACH?

The unprecedented scheme, under which every ROC citizen will receive NTD3,600 (USD107.8) worth of consumption vouchers, began in Taiwan on Monday, January 18, 2009. A total of NTD85.7 million (USD2.56 billion) worth of vouchers will be distributed through 14,202 stations across the island from 8AM through 5 PM. Mirroring a similar project in Japan in the 1990s, aiming to exert a multiplier effect to boost spending and revitalize the economy, these vouchers are given out before Chinese New Year so people would not have too miserable a New Year and amid the economic downturn.

All local-level governments and private enterprises have stepped up publicity campaigns to lure people to use the vouchers in their districts and shops with unprecedented incentives. Even public and private hospitals around Taiwan have been telling the public that they will accept consumption vouchers from patients as payment for their medical bills.

To cash in on the coupons, businesses rolled out various special deals, loaded with unprecedented incentives. One supermarket offered free breakfasts and shuttle services to ferry people from collection centers to its store. The three hypermarkets, Carrefour, Geant, and Rt-Mart, are estimated to rack up NTD1.1 billion of revenue in just one day on January 18—the first day of the coupon distribution.

Urging the public to spend and save the economy, government leaders including President Ma Ying-jeou and Vice President Vincent Siew, went on their own shopping sprees.

Chen Tain-jy, Minister of the Council for Economic Planning and Development (CEPD) and mastermind of the project, uttered a sigh of relief over the shopping spree, as the CEPD was originally worried about the effect of the project in stimulating consumption and economy. Chen is optimistic about the continuing effect of the project and attributed the satisfactory outcome to a number of factors, including consumption coupon-related preferential packages put forward by retailers, the expanded scope of stores accepting the coupon, and the large denomination of the coupon (NTD500), which helps magnify the consumption effect.

While supporters of the plan have said it should give the island's sagging economy a much needed shot in the arm, some critics have labeled it a waste of money. Indeed, given that surveys have consistently shown that two in three intend to use the vouchers on their usual daily necessities and not on anything extra, the critics questioned whether the vouchers can boost gross domestic product by the envisaged 0.64 percent. One group of the businesses is definitely not benefiting from the scheme—the street hawkers. Not only that they are not among those allowed to exchange the coupons for cash, they are also not in a position to compete with the supermarkets and other larger retail outlets in tying hefty discounts and incentives to the vouchers. That explains why the electronics stores reported increased sales but the hawkers at a Chinese New Year fair had no such luck.

The engine of Taiwan's economy—exports—is another sector that will not benefit from the spending spree if people spend too much on imported (branded) goods. While arguments were presented that the main purpose is to stimulate the spending and worry about the exports later, further devaluation of the New Taiwan dollars seems inevitable.

The pressure is now as many neighboring countries are waiting to see if Taiwan's move worked before they chime in with their own version of economic stimulation.

*Contributed by Stephen Tsih, Business Development Director – Greater China, The GCSL Group of Companies Limited.
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STRUCTURING CHINA INVESTMENTS - TAX CONSEQUENCES BETWEEN CHINA, HONG KONG AND FRANCE

In the current financial crisis, China is seen as one of the least "affected" countries. It is perceived by many companies to be a springboard for growth and continues to offer development prospects to companies that have already taken the leap. China remains attractive for those wishing to produce at low cost, but today, it is its internal market, more than anything else that is the subject of envy.

China, which will be the world's second-largest consumer market within five years, is a dream for a West that is entering a financial crisis. China is becoming more dynamic and is welcoming more and more foreign companies in the distribution and service sectors, while continuing to be the world's factory.

All these changes have been accompanied by modification and greater complexity of the system, both legally and fiscally. Today, all companies interested in China have to ask themselves how they will structure their investments in Asia or whether to restructure them.

To set up directly or via an intermediate entity, the answer is never definite and may change over time. The answer depends on the type of company, its organization, its operation and its medium to long-term plan in this vast part of the world. Companies have to correctly identify the pitfalls, both theoretical and practical, that must be avoided in order to correctly understand their requirements and to rethink models that work less well or no longer in a world where the rules are becoming clearer but more complicated.

Using an intermediary holding company

It is true that Hong Kong, Singapore, Luxembourg and other financial platforms may offer attractive tax advantages, but from another point of view, they may also be considered as tax havens by many European governments. Hong Kong, for instance, has, in the past, attracted the attention of the French tax authorities, who often give it a bad press. There is still no double taxation treaty between the two countries. The fact that on 1 April 2008, the corporate income tax rate in Hong Kong was reduced from 17.5% to 16.5% (now less than half the French corporate income tax rate) does not favor the signing of such a treaty.

The French general tax code (CGI) also aims at fighting against investment in tax havens, justified by the extent of financial flows that find their way there. Thus, article 209 B of the CGI specifies, subject to saving clauses, that the profits received by a subsidiary that is subject to a preferential tax regime are taxable in France if the parent company is situated in France and holds, directly or indirectly, more than 50% of the shares, units, financial rights or voting rights. This is a way of penalizing companies that set up a shell company for their activities in France in order to receive income and shield it from applicable French taxation.

In view of the tax problems mentioned above and the obvious substance requirement, it is sometimes worthwhile setting up directly in mainland China and not having to bear the costs of an intermediary managing company. Measures to encourage this type of structure – setting up directly – are being put in place in France to encourage French companies to develop internationally while increasing the value of their company in their home country. The absence of an intermediary structure makes it possible, in particular, to benefit from the advantages defined in the Franco-Chinese convention in relation to direct financial flows between the parent company and its Chinese subsidiary. In fact, under the treaty signed in 1984, a "fictitious" tax credit is granted in order to encourage French investment in mainland China. The tax credit granted in this way by France is 20% of the gross amount of the dues (before withholding tax) paid by a wholly-owned foreign enterprise based in China, whereas the tax withheld in China is 10%.

Thus, in the case of a wholly-owned foreign enterprise, the tax credit granted in France may exceed the tax withheld in China. It may be 20% of the gross dividends and gross dues paid by a WFOE, whereas the withholding taxes will only be 10%.

Having a holding company in Hong Kong would result in the loss of these advantages in the absence of a treaty between France and Hong Kong, noting that Hong Kong does not withhold any tax on dividends and interest. However, profit tax rate of 17.5% is withheld on the royalties. Should both parties to the contract be related, the profit tax rate will be due on 30% of the royalties to be paid only. As for the China – Hong Kong agreement, it only makes it possible to reduce from 10% to 5% the withholding tax on dividends paid by the Chinese subsidiary to the Hong Kong structure, provided the latter owns at least 25% of the subsidiary. The treaty also makes it possible to reduce from 10% to 7% the withholding tax on interest and dues paid by a Chinese subsidiary to the structure in Hong Kong.

Thus, as a general rule, the tax treatment of the flow of dividends and dues is more favorable if these flows go directly from China to France, without being channeled through a Hong Kong holding company. However this does not apply to interest in the absence of a fictitious tax credit

granted in respect of interest under the Franco-Chinese convention.

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

TEMASEK BLUES

It has long been suspected that some of the largest investors in the world come from Singapore, both of whom are state-run. In the fall of 2007, Temasek, one of two of the Titan-Twins, became the largest shareholder in Merrill Lynch after it agreed to invest US\$5 Billion in the troubled Wall Street firm. At the time, it was just one of many government-run funds in Asia and the Middle East to invest in Wall Street firms hit by the subprime mortgage crisis.

In a historic deal, Merrill was sold to Bank of America—the deal closed Jan. 1 — The Financial Times did some number-crunching and found that Temasek appears to have lost billions of dollars, at least on paper, after its fateful tryst with them.

After pumping in a further US\$900 million investment, Temasek had spent a total of US\$5.9 billion in Merrill stock. With the Bank of America buyout and consequent conversion Bank of America shares, Temasek now holds stock worth just US\$2.59 billion, or less. There are however other considerations, fortuitously laced with foresight on Temasek's part. For one, in its original investment agreement with Merrill, Temasek had extracted a "rest" provision. This obliges Merrill Lynch to pay Temasek if it sold more equity in Merrill at a lower price. Fact of the matter is that Merrill did sell more stock at a lower price, which triggered the reset provisions. As a result, with the partial payback from Merrill, Temasek's average purchase price of about US\$48 a share was lowered to about US\$23 a share. On Dec. 31, the last trading day before the Merrill-Bank of America deal closed, Merrill's stock closed at US\$15.83.

In the meanwhile, Temasek seems to have sold more than 30 million Merrill shares last year, according to regulatory filings. It's not known how much money Temasek sold the shares for but Merrill's fourth quarter results were dismal.

Temasek's post-merger stake of 3.8 percent in Bank of America is also under threat. Owing to Merrill's results, investors fled Bank of America. At the moment, Bank of America shares have lost 40% of its value being reduced to single digits for the first time in 18 years.

Since then, the USA Government has rushed emergency funding of US\$20 billion to Bank of America. The Federal Reserve and Treasury Department also will provide a backstop of US\$118 billion for its assets, which include mostly securities whose collateral are commercial or residential real estate loans. Most of these assets were assumed by Bank of America in its acquisition of Merrill Lynch.

It appears that the bleeding has not stopped for Temasek.

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

STIMULATING TIMES

Well Barack Obama has moved in after swearing two oaths and he's about to "stimulate" Americans.

As if after the Hollywood hype of getting Obama into office, the nation needed any more stimulating. Obama, armed with his 27 year old mind-reading speechwriter whose never had another job of any note in his life, is about to exercise his new vision to lead the world in throwing away the most money down the bottomless pit and in the process forcing Governments around the world to do likewise.

Obama must be the least successful leader of any nation in memory if financial gain is anything to go by. Most politicians earn far less money out of politics than they do by being in it, in fact I whole-heartedly believe it should be a condition of any political candidate that they take a pay and wealth cut to enter politics. Obama has made no such self-sacrifice as politics has made him the pennies he rubs together today.

Reporting his wealth at between \$456,000 and \$1.1 million. Most of this from politically-driven book advances. There can't be much money to be made from being a community organizer then law lecturer and a civil rights lawyer before moving to the Senate. In other words, if you want a President who knows how to spend other people's money living off the status of his position, Obama is fully qualified and your man.

Of the hundreds of pages of nonsense in the stimulus package, the best bit is the manly effort it makes to ensure that states do not waste money, the only broad restriction in this free-for-all:

"None of the funds appropriated or otherwise made available in this Act may be used for any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool".

Wonderful stuff, a "Trump" clause eliminating The Donald's core business. God knows who sorted out these for prohibition or why anyone thinks such projects have lower economic growth or employment multipliers than any other Keynesian damp dream. There is even \$50m appropriated "to fund arts projects and activities which preserve jobs in the non-profit arts sector threatened by declines in philanthropic and other support during the current economic downturn."

As Heconomics writer Timothy Carney points out:

"So a city or federal agency can use this money for a jungle gym but not a swimming pool, a croquet court but not a golf course, a football stadium but not a casino, a museum full of dead lions and fish but not a zoo full of live ones. Everyone knows aquaria are utterly unstimulating, or something".

What has Obama got against the goldfish and turtles

*Contributed by Cathy Odgers, Group General Counsel and Compliance Officer, The GCSL Group of Companies Limited.
Cathy's email address is cathy@gcsll.com*

IPOS GO THE WAY OF THE...ECONOMY

In 2007, the USA boasted 272 IPOs while 2008 saw only 43 new issues. 2009? Not one planned until mid-February when even in 2007 there were 10 in January. Poor investment bankers and venture capitalists...yeah right.

*Contributed by Jack W. Flader, Jr., Chairman & CEO, The GCSL Group of Companies Limited.
Jack's email address is jack@gcsll.com*

NEW USA RULES REGARDING ATTORNEY COMMUNICATIONS

Frequently, I am asked to take on a new client that has an ongoing relationship with a CPA or Attorney in which tax liability issues are ongoing. Normally, I would communicate via telephone or email with the CPA or Attorney to gather relevant client files and an update on the current status of the client's situation. Effective this year, the Internal Revenue Service (the "IRS") has issued new regulations under section 7216 concerning the disclosure of tax return information by return preparers. In relevant part, Treas. Reg. §301.7216-2(d) (issued by T.D. 9375) and Rev. Proc. 2008-35, 2008-29 I.R.B. 132 provide that after December 31, 2008, any disclosure of a client's tax return information by one return preparer to a second return preparer who is not an officer, employee or member of the first return preparer's firm, made to obtain a substantive determination affecting the client's tax liability, requires the client's consent. Failure to obtain the consent could result in CRIMINAL penalties.

This affects how a CPA or Attorney will provide me with client's tax return information and also how I will provide information to new tax counsel for the cases that are now pending before the IRS. There are also situations where I may obtain co-counsel or retain the services of a CPA to assist in the tax calculations in which the CPA charges a lower rate and therefore keeps the billing at a lower amount for the benefit of the client. However, even in these situations, I now must first obtain the client's consent to disclose the tax return information to me.

Example 4 at Treas. Reg. §301.7216-2(d)(3) illustrates this:

"Example 4. A, an employee at Firm A, receives tax return information from T for Firm's use in preparing T's income tax return. A forwards the tax return information to B, an employee at another firm, Firm B, to obtain advice on the issue of whether T may claim a deduction for a certain business expense. A is required to receive T's prior consent under §301.7216-3 before disclosing T's tax return information to B because B's services involve a substantive determination affecting the tax liability that T will report."

*Contributed by Michael Nelson, The Law Firm of Michael B. Nelson, California, USA
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ASSET PROTECTION TRUSTS DO WORK

A few weeks ago, a client came to me with a question about what the best tool for her Asset Protection needs would be. She had done a lot of research on the Internet, talked to a lot of planners and other professionals, and had a lot more questions than answers. She finally narrowed her options down to a couple – either a Domestic (U.S.-based) Trust or a Foreign Asset Protection Trust (FAPT). She'd read about both and liked the idea of "going offshore." Her biggest concern, though, was that she had been made aware of some case law in which FAPTs had led to ruin – while the trust had survived, the grantors of the trust had been held in contempt of court and even sent to jail for not repatriating the assets from the foreign trust *situs*. In those cases, the judge had simply disbelieved that the grantor had no control over the trustee. My client wanted to know if there was any case law upholding a FAPT in which the grantor didn't end up doing prison time after a creditor assault in which a contempt citation was sought.

In the Grant case, Raymond Grant (now deceased) had established two FAPTs in Bermuda and Jersey for him and his wife, Arline, in the early 1980's, with total assets of about \$2 million. When the trusts were established, the Grants stated that they had no known creditors and no knowledge of any claims against them, including any tax liabilities. In 1991, the IRS assessed a tax deficiency against the Grants, and ultimately got a judgment against them in 2003 for about \$36 million. In 2005, the IRS moved the Southern Florida U. S. District Court for an order repatriating the assets of the FAPTs, arguing that because the trust documents gave Arline Grant the ability to discharge and replace the trustee of the FAPT in "any jurisdiction throughout the world," she had the power to repatriate the assets by appointing a U.S. trustee who could bring the funds into the U.S. The court ordered Arline to do so, under penalty of contempt of court.

On May 27, 2008, the federal judge who had ordered Arline to repatriate the assets had to finally admit that she couldn't do so because both the Jersey and Bermuda trustees refused to relinquish the funds (based on legal opinions from the trustees' lawyers that to do so would be a breach of their fiduciary duties to the other beneficiaries of the trusts, the Grants' children). Additionally, the court found that no U.S. trust company was willing to act as transferee trustee, in large part because of the possibility of a legal fight with the offshore trustees over repatriation of the funds. Rather than find Arline in contempt of court, the federal judge found that she had done everything she reasonably could do to comply with the court's order and that the manner by which the trust had been drafted and carried out precluded her from getting the funds back to the United States. Citing the U.S. Supreme Court case of *United States v. Rylander*, the court concluded that there was no reason to proceed with the contempt action because compliance with the court's order was impossible.

The Grant case doesn't stand for the proposition that every FAPT will be upheld in U.S. courts. To the contrary, there is quite a body of law that holds that where the grantor has created the "impossibility" of the trustee complying with a court order, the court may go ahead and jail the recalcitrant grantor who doesn't repatriate the funds. What the Grant case does stand for is the proposition that if a FAPT has been carefully crafted and well-defended, it could well withstand an aggressive creditor challenge, even if that creditor is the IRS.

For now, Arline's trust is intact, the trust beneficiaries are protected and, best of all, Arline no longer has the threat of a civil contempt of court citation hanging over her head. She is a free woman. Chalk one up for the FAPT.

Of course, FAPTs are not the end-all, be-all, one-size-fits-all asset protection tool for all occasions. Each person's situation will dictate which particular tool is best for their unique circumstances. Nonetheless, the Grant case has affirmed that the FAPT is one tool that should be carefully considered in formulating one's Asset Protection Plan.

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ESTONIA – CORPORATE PROFITS REMAIN TAX-EXEMPT

The profit of Estonian companies is not taxed up to the distribution of profit. On November 20, 2008 the long-expected package of changes regulating the income taxation of companies was adopted by the Estonian Parliament. The aim of the changes was to ensure compliance with the EU Parent Subsidiary Directive.

The flat income tax rate in Estonia is 21% and will start to decrease again from the year 2010 – 20%, 2011 – 19% and 2012 – 18%. The same

rates apply when corporate profits are distributed.

The withholding of income tax from passive income of non-residents has been waived. Similar to the currently valid tax exemption of interest to be paid to the non-resident, income tax is not withheld also from dividends paid to non-residents and this is so without additional conditions (currently dividends paid to the shareholders holding 15% of the shares or more were exempt from the withholding). The requirements for the holding relationship between the receiver of the dividend and EU origin of the receiver will be lost. This facilitates the participation exemption and payment of dividends without withholding tax to offshore companies located in low or no tax jurisdictions e.g. Belize or BVI.

Withholding of tax regarding licence fees to be paid to non-residents remains in force, but the income tax rate withheld from the licence fee has decreased from 15% to 10% (licence fees paid to the shareholders holding 25% or more are exempt from withholding).

The good news is that the main peculiarity of the income tax of the Estonian companies: postponement of the tax liability up to the distribution of the profit - remains. Estonian companies, in effect, have the following advantages:

- no corporate income tax, until profit distribution
- excellent tax deferral opportunities
- ability to receive dividends with low or zero withholding tax rate
- no withholding tax on outbound dividends derived from dividend income
- no withholding tax on outbound interests
- participation exemption for dividend income (subject to certain circumstances)
- shelf companies are available and widely used

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HOORAY FOR THE BVI!!!

The British Virgin Islands Financial Services Commission has recently published in their web site the Press Release#1 of 2009 summarizing the positive results of the jurisdiction in the Caribbean Financial Action Task Force (CFATF) report; you can read the complete article at www.bvifsc.vg According to the CFATF's report, the BVI is compliant with the Financial Action Task Force 40+ 9 recommendations and that the territory keeps committed to the fight against money laundering and financing of terrorism.

The CFATF conducted an on-site visit in the BVI between February 10th and 22nd 2008. During this visit, their regime was examined through the review of documents and interviews of public and private sector stakeholders. The assessment team was led by a member of the CFATF Secretariat and included assessors from the CFATF and FATF member countries and they reviewed the Territory's institutional framework, relevant AML/CFT laws, regulations, guidelines, policies and the regulatory systems in place to deter money laundering and the financing of terrorism. It also examined the capacity, implementation and efficacy of these systems.

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OFFSHORE UPDATE

ANGUILLA: TOURISM BOOMING

Anguilla's Ministry of Tourism has announced the launch of a new executive air service which will operate between San Juan, Puerto Rico and Anguilla. The new service, scheduled to start on February 14, 2009, will be provided on the Anguilla Air Express, and operated by Rainbow International Airlines Inc. Rainbow International Airlines Inc. is one of the charter companies in the region, and currently operates executive charter service out of major hubs in the Caribbean. The Anguilla Air Express will operate a Beechcraft 1900D Turbo Prop Airplane with seating capacity for 19 in leather reclining cabin chairs on this route. A captain and first officer will pilot the flight. Departures out of San Juan are at 1:30PM and at 5:30PM and departures from Anguilla are at 9:00AM and 3:00PM, and flying time is approximately 46 minutes. The emphasis of the Anguilla Air Express will be on first class, personalized service, with an agent meeting all passengers at the gate and escorting them through security and to the departure gate in San Juan, and through Immigration and Customs on arrival in Anguilla. Currently, only American Airlines, using its American Eagle service, fly into Anguilla from San Juan. Two flights are operated daily; the first departs Anguilla between 7am and 8am depending on the time of the year and the return flight is between 9pm and 10pm from San Juan. With this new service, Anguilla Air Express will compensate for American Airlines' reduced service to Anguilla. What has irked many local people is the fact that American Airlines reduced its service only a few years after the Government of Anguilla spent millions to extend its airport runway to facilitate the airline which has threatened to cancel all service to the island. At the time, the Government also took the decision to market this development as a benefit to the increasing number of private jets which visited the island.

And speaking of private jets, there was no sign of economic fallout on the island recently with some 215 private jet flights into the island. Famous throughout the world for its pristine beaches, tony resorts and celebrity clientele, the island's Wallblake Airport came alive during the Christmas and New Year holiday season with a record-breaking number of executive jets roaring in and out of Anguilla. Causing near traffic jams on the tiny tarmac, and keeping staff working nearly round the clock, jets included Gulfstreams 4s and 5s, Falcon 900s, Citations, Lear Jets, Challengers, Hawkers, Astras, Embraer 135s, Global Expresses and Galaxies.

The activity began on December 19, 2008 and continued through January 5, 2009, with celebrity and VIP passengers staying at the signature luxury resorts and renowned super villas that dot the island.

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BELIZE: TAIWAN FEICHENG HAO PENGYOU

The special "very good friend" relationship between Belize and Taiwan has continued to grow as a production sharing agreement was recently signed between the government of Belize and OPIC Resource Corporation, which is a subsidiary of the Chinese Petroleum Corporation of Taiwan.

The Agreement provides for petroleum exploration for a period of eight years. Revenues collected by the Belize government will include royalties, share of production, income tax, and 10% working interest. The relationship also extends to offshore fiduciary services as Taiwanese continue to form IBCs and settle Trusts in Belize.

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COOK ISLANDS: WOULD MOSES AND NOAH PLEASE STAND UP?

January is traditionally the time of year when you plan for and contemplate the year ahead. This year however is different – very different. 2009 will be like no other since the great depression of the 1930s. The challenges that Governments and private enterprise face will be the Everest of our times, there will be unprecedented pain felt right across the globe and people's lives will change for ever. There will be adjustments as companies big and small, consolidate, refocus, and try to stay alive. 2009 will be judgement year for many, for nations, companies and individuals alike. Only the fittest will survive.

And it is at this time, that people need solace, a safe haven, a place where they can weather the storm. This is the time when professional advisors of wealthy individuals and their families will be called upon to step up and be more than just an attorney, advisor, or financial planner. The professionals of 2009 will need to be Moses. They will need to be a friend, a listener, someone who genuinely cares – the beacon of light in turbulent waters.

As Trustee, this responsibility is even more true. This is when the word "fiduciary" will reveal its true meaning. As Trustee, it's not a question of going beyond the traditional parameters of responsibility; rather it's a quest to discover the true meaning of responsibility. Trustees will be called upon to be the safe haven that so many will seek in these times – a fountain of hope. We must ensure that the water keeps flowing in the proverbial desert of despair. If professional advisors are to be Moses, then trustees will need to be the Noah of today.

But rather than the safety of an enclosed Ark in turbulent waters, trustees will instead be surfing an economic tsunami. A tsunami built out of greed. For those that have already prepared their Ark, they will be well placed to face the challenges ahead. However, the good news is that even for those that have not prepared their Arks, there is still time. Unlike the Noah of old, and the reason we cannot have a closed Ark, is that we must try to help as many as we can, even in the midst of the flood.

This time last year, I tried to look into the crystal ball and predict the future. I couldn't have imagined in my wildest dreams what was to unfold in 2008. This shows that we simply cannot predict the future or for that matter the extent of the damage that has and will be caused. What we can do however is to sail through the winds of change, live the moment, take the credence of our trade to heart, and rise to the occasion.

Also at this time last year, I declared the virtues of the Cook Islands as a jurisdiction with much more to offer the offshore world than just simple company and trustee services. What the Cook Islands offer is a unique product that cannot be matched by many offshore jurisdictions – the level of competence of our people. The jurisdiction has overcome many barriers in the past and has matured to a level, where it can now market itself as more than just an asset protection jurisdiction. It is a service oriented jurisdiction, where you will get trusted, competent and responsive trustees – across the board.

So I will again ask the question - where to for the Cook Islands? Looking into the crystal ball, I see a mature jurisdiction that can and will deliver a safe haven, a place where people who need our services can weather the storm and find solace. 2009 will see a new marketing and development body come to being in the Cook Islands. Even in the current economic crisis, I am confident that the Cook Islands will rise to the occasion and help both advisors and trustees deliver high quality services to people that desperately need those services.

See you all on the other side!!!

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SAMOA: SAMOA BRINGS IN THE YEAR OF THE OX

Wishing Happy Year of the Ox to all our valued clients and friends. May the Ox bring much strength and prosperity to all as we journey through the uncertainties of the current global economic environment.

In a previous article, we announced the decision by the Samoan Government to open up Diplomatic Missions in both Japan and China. Last week, the Government announced those who will spearhead these missions. Dr. Kirifoti Eteuati, Samoa's current High Commissioner to Australia will head to Japan, whereas Tapusalaia Terry Toomata, current Assistant CEO to the Ministry of Foreign Affairs will be the Ambassador to the People's Republic of China in Beijing. Both missions will be established before the end of the year. Hope to publish the addresses and more details when it's up and running.

For those interested in the state of our local economy, click on the following link: http://www.samoobserver.ws/index.php?option=com_content&view=article&id=3095:our-economy-governor&catid=1:latest-news&Itemid=53 to read the Governor of the Central Bank of Samoa's view on "Our Economy". Some interesting tidbits about the challenges faced by Samoa on the effects of the global economic crisis and some successes so far.

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TIDBITS

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

OUR MONTHLY QUOTE THAT MADE US SMILE

"She had a ten cent mind and a million dollar body". – Country Western Love Song

"I remember a time when banks lent money to people. Now it's the other way around." - Taxpayer

YEAH, BABY, WE SUPPORT THIS BAILOUT!!!

We were impressed when Hustler publisher Larry Flynt and Girls Gone Wild CEO Joe Francis announced they were requesting that Congress allocate US\$5 billion for a bailout of the adult entertainment industry. Flynt quipped, quite rightly, "This is very unhealthy as a nation. Americans can do without cars and such but they cannot do without sex."

Go Larry, go!!! If the Yanks are going to piss away money, then they might as well do so for the common good and in an industry where they can somewhat compete!!!

YOU CAN'T FIRE ME FOR BEING DRUNK ON THE JOB...HICCUP!

We started thinking about relocating to Peru when its highest court ruled that workers cannot be fired for being drunk on the job. The Constitutional Tribunal ordered that a city janitor be reinstated because the firing was excessive as he did not offend or hurt anybody. Progressive or perverse thinking? Hmmmm...perhaps the judges also sip a bit of The Noble Grape every now and then while in session...nah, perish the thought!

THE BEST "JOB" IN THE WORLD

We thought of a few good Aussie mates when reading about Queensland's offer of AUD150,000 for lazing around a beautiful tropical island for six months. The "job" also includes free airfares from the winner's home country to Hamilton Island on the Great Barrier Reef as well as a rent-free three-bedroom beach home complete with plunge pool and golf buggy. The "island caretaker" will have the onerous tasks of walking along the beautiful beaches, swimming in the reef and reporting to a global audience via weekly blogs, photo diaries and video updates. "Job"? Please....

DATING A BANKER ANONYMOUS...OUR HEART FEELS FOR THEM

Life on Wall Street during the financial meltdown just got more interesting with the launch of the blog Dating a Banker Anonymous (<http://dabagirls.wordpress.com>), which "...is a safe place where women can come together – free from the scrutiny of feminists– and share their tearful tales of how the mortgage meltdown has affected their relationships. DABA Girls was started by two best friends whose relationships tanked with the economy." Hmmmm...." relationships"? Our heart feels for them, particularly when reading some of the DABA Vocab, i.e. **Lost boys**: Unemployed finance guys. For example, "When T. Christopher Pettit resigned the dive bar scene was like a Lost Lehman boys playground".

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