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JACK'S CORNER

THE THIEVING TRUSTEE

Many thanks to all the inquiries and positive comments regarding last month's bit on The Thieving Trustee. Spread the word and do your best not to allow the Thieving Trustee into your life or the lives of others!!!

LICENSED, BUT APPARENTLY INCOMPETENT, TRUSTEE OUTSOURCING TRUSTEE SERVICES

Can you believe that a licensed trustee would outsource the actual provision of trust services? The licensed-yet-apparently-incompetent trustee writes "... (we) use the services of third party trustees and we are compiling a database of fees for reference purposes." Hmmmm...perhaps we should refer this matter to the regulator that granted the trust license to the licensed-yet-apparently-incompetent trustee? Or should we applaud the licensed-yet-apparently-incompetent trustee for its admission? Sad day in the world of trustees when one obtains a license to provide trustee services, purports to provide the services to its clients and then turns around to a competent trustee to do the work. Go ahead and ask me the name of the trustee...happy to do the industry a service!

OUR MAN DAN SPEAKS TRUE REGARDING OBAMA ATTACK ON OFFSHORE "TAX HAVENS"

Some of the best four minutes you can spend beyond reading the GCSL Newsletter 😊

<http://www.youtube.com/watch?v=i4NfocHlulh8>

GCSL NEWS

CATHY COMPLIANCE VISITS ANGUILLA

The past month I have been spending time in our Anguilla and Belize offices taking my annual compliance audit and staff training sessions.

Both offices have seen good growth in the numbers of companies and trusts since my last visits.

The Anguilla office under Carlyle's leadership goes from strength to strength with the hard work of Sonia Richardson, Rauvine Thompson and Camilla Gumbs.

While in Anguilla I presented to the local STEP branch explaining the challenges the offshore industry faces in the future. The presentation was based on the content of some of my more recent newsletter articles. As I was presenting President Obama was doing his darndest to give away more money this time to the health sector that Americans of the future will need to fund.

The Financial Services Commission in Anguilla continues to be active and were not only well represented at STEP, but before my arrival conducted an audit of our trust files. This is a practice common on the Island and other jurisdictions with pro-active Regulators. As GCSL Anguilla is looking to focus on the international promotion of the Anguilla Trust, it was a timely event coinciding with work I did with Carlyle and all his staff in this area.

On that note during my time in Anguilla it was announced that Financial Services Commission Director Niguel Streete was to leave his post at the end of 2009. I wish him and family well in their next adventure. Both myself and GCSL Anguilla look forward to working with the yet to be appointed replacement for Niguel and of course continuing our working relationship with Eleanor Astaphan and Lavie Hobson of the Financial Services Commission. Niguel, I am sure Carlyle will finally buy you that elusive beer before December!

Anguilla was quieter than my last stay there. The arrival of private jets has slowed somewhat. Yet the Island continues in my view as a "must visit" for any travellers who love white sand beaches, good food and miles of space to yourself.

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AOA



THE AOA BEIJING CONFERENCE, MARCH 7-9, 2010, THE PENINSULA BEIJING
After a fun opening cocktail/dinner sponsored by the good people of [Guardian Trust Company](#), we will kick-off Monday morning with a presentation regarding international estate planning by our Keynote Speaker, Richard Duke, Partner, The Duke Law Firm, USA (www.assetlaw.com). Our Global Advisory Committee member, Nathan Kaiser, Partner, Eiger Law, Taipei (www.eigerlaw.com), will turn our attention to recent changes in company and tax law in Taiwan. Rupert Hoogewerf, Huron Report, Shanghai (www.hurun.net/indexen.aspx) will provide us an insight into the always interesting world of wealth in China. Our Global Advisory Committee member, Hao Wang, Partner, Ray Yin Law Firm, Beijing (www.rayyinlawyer.com) will round up the first day with a look at the future of trusts in China.

On Tuesday, we will hear from Jon Eichelberger, Partner, Baker & McKenzie, Beijing (www.bakernet.com) and Patrice Marceau, Partner, DLA Piper, Hong Kong (www.dlapiper.com) regarding cutting-edge Greater China tax issues. Henry Liao, Partner, Schinders Law Firm, Beijing (www.schinderslaw.com), will offer delegates his real life experience regarding corporate finance challenges in China. We will finish the day with a presentation regarding international tax matters and offshore centers by Anuj Sharma, Director, Abacus Seychelles Limited, Seychelles (www.abacus-offshore.com).

Please join us at China's political and cultural capital – Beijing - at The Peninsula.

GREATER CHINA UPDATE



NON-CHINA REGISTERED LEGAL ENTITY

With reference to China Enterprise Income Tax Act and Regulation (the "Regulations"), China recently issued a circular regarding evaluation of tax residency for non-China registered legal entities where management is carried out from China. Based on China Enterprise Income Tax ("CEIT") articles 2.2 and the Regulations article 4, these foreign entities will be deemed as China Foreign Tax Resident Entities ("CF-TRE"), which will be liable to pay CEIT on income sourced from within or outside of China.

The following factors, with a focus on substance over form, will be considered when determining if a company is deemed to be CF-TREs:

1. The major shareholder of the foreign registered legal entity is a China registered legal entity or enterprise.
2. The management is carried out from China:
 - 2.1 The key daily operation management officer or personnel is based in China;
 - 2.2 The financial and human management decision or approval is made or obtained from China;
 - 2.3 The statutory records of the foreign registered legal entity is located in China; or
 - 2.4 Half the board of directors or key management officers are domicile in China.

The interesting point is once the foreign registered legal entity is deemed to be a CF-TRE, then dividends, bonuses or capital gains from other related China registered legal entities will be tax exempt, based on CEIT articles 26 and Regulations article 83. However, the shareholder of the CF-TRE will be taxed on the income derived from CF-TRE in the form of dividend, bonus or capital gains. If the CF-TRE is registered in a jurisdiction which has a double tax agreement ("DTA") with China, then the DTA rules shall apply.

CHINA ECONOMIC UPDATE

Exports from China collapsed in 2008 and many factories closed down. Yet, ten months later, China seems to be on the road to recovery from the global financial crisis. As at July 24, the Shanghai Stock Market index reached 3,000, which doubled from last year. On July 23, a Shenzhen based real estate company, Gendale Corp. spent around US\$446 million to acquire a property of 210,000 square meters in Qingpu District, Shanghai. The price was the highest in 2009 with a surge of more than 222% over the bidding reserve price per square meter. In addition, the June GDP stood at 7.1%. Investment has increased by 33% with the majority being carried out in the West part of China. However, exports have still decreased by 21.4%.

So, has China recovered from the global financial crisis?

The answer could be yes. China's RMB4 trillion stimulus program and policy of developing the West has increased domestic consumption. However, it should be noted that exports traditionally have been 1/3 of China's GDP, which was still negative in the first half of 2009. The major contributor to China's 2009 GDP is now investment and the China government is the biggest investor.

*Contributed by Johnson Chien, Managing Director, GCSL Shanghai.
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HONG KONG GOVERNMENT GIVING BACK

The Hong Kong Government recently announced that the Business Registration Fee would be waived for one year with effect from 1 August 2009. Hong Kong companies will only be required to pay a levy for the protection of wages on insolvency fund at HK\$450 per annum.

Please refer to the below link for details of the announcement.

<http://www.ird.gov.hk/eng/ppr/archives/09062403.htm>

*Contributed by Karen Sim, Company Secretary Manager, GCSL Hong Kong.
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HONG KONG STEPPING UP WITH USEFUL GUIDES FOR PROFESSIONALS AND DIRECTORS

Two Hong Kong government agencies recently published the following useful and noteworthy guides targeted at professionals and directors of companies:

- The Narcotics Division, Security Bureau published *Anti-Money Laundering & Counter-Terrorist Financing* (the "AML Guide" can be downloaded at www.nd.gov.hk/en/anti-moneylaundering-contents.htm) as a practical guide for accountants, estate agents, precious metals and precious stone dealers and trust and company service providers (the "Professionals").
- The Companies Registry published A Guide on Directors' Duties (the "Directors' Guide" can be downloaded at www.cr.gov.hk/en/publications/docs/director_guide-e.pdf).

THE AML GUIDE

The AML Guide seeks to assist Professionals in understanding money laundering and terrorist financing, suspicious transaction/activity reporting, due diligence and record keeping and international regulatory standards. Hong Kong sought to publish the AML Guide as a consequence of the Financial Action Task Force, which is an inter-governmental body that sets international standards, develops and promotes policies to combat money laundering and terrorist financing, extended its Forty Recommendations to the Professionals. The Hong Kong Government has indicated the Professionals may have to conduct greater due diligence and put in place anti-money laundering policies and training for staff while taking the best approach to improve standards is that of education rather than punitive measures.

The definition of money laundering has been hotly debated by various governments and international bodies, but is defined in the AML Guide as covering "all kinds of methods used to change the identity of illegally obtained money, i.e. crime proceeds, so that it appears to have originated from a legitimate source." The AML Guide outlines three stages in the process including placement (placing the crime proceeds in the financial system), layering (converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the source/ownership of funds) and integration (placing laundered proceeds back in the economy in a legitimate manner).

The AML Guide continues by explaining why it is important to be vigilant, what Professionals need to do, defining the risks inherent to each of the Professionals and providing a quiz to help evaluate the Professionals' knowledge.

The impact of money laundering and terrorist financing is quite serious. It is important not only for Professionals, but the public at large to exercise diligence and common sense as well as accepting a certain degree of responsibility for ensuring the integrity of the global financial system. The AML Guide is for all Hong Kong people to consider, understand and follow.

THE DIRECTORS' GUIDE

The Directors' Guide outlines the following eleven general principles that a director should follow in the performance of his functions and exercise of his powers:

- Duty to act in good faith for the benefit of the company as a whole.
- Duty to use powers for a proper purpose for the benefit of members as a whole.
- Duty not to delegate powers except with proper authorization and duty to exercise independent.
- Duty to exercise care, skill and diligence.
- Duty to avoid conflicts between personal interests and the interests of the company.

- Duty not to enter into transactions in which the directors have an interest except in compliance with the requirements of the law.
- Duty not to gain an advantage from use of position as a director.
- Duty not to make unauthorized use of company's property or information.
- Duty not to accept personal benefit from third parties conferred because of position as a director.
- Duty to observe the company's memorandum and articles of association and resolutions.
- Duty to keep proper books of account.

Directors, acting in as fiduciaries enjoy the privilege to represent shareholders in all company matters and responsibility to ensure shareholders receive accurate and timely information in an effort to achieve the best possible returns from an investment in a company. The Directors' Guide is not only for directors to study and follow, but for Hong Kong investors to use as a means to measure the performance of these fiduciaries.

*Contributed by Jack W. Flader, Jr., Chairman & CEO, The GCSL Group of Companies Limited
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HONG KONG BANKERS GET JAIL FOR INSIDER TRADING

This year marks the first time in Hong Kong's history as a global financial center that the courts have begun prosecuting, convicting and sentencing offenders to jail time for insider trading crimes. Prior to 2003, when it was made a criminal offense, insider trading was treated as a civil matter heard by the Insider Trading Tribunal under the auspices of the Financial Secretary. Punishment was limited to fines of three times any profits earned or losses avoided along with a limited ban on certain business activities.

With the criminalization of insider trading the government has undertaken prosecution of offenders in earnest. The most recent case, involving a former CLSA director and a local fund manager, reflects the breadth to which the Hong Kong authorities will interpret insider trading as a crime. Allen Lam, former Equity Capital Markets banker at CLSA, was accused of and jailed for six months for feeding information on takeover rumors about Media Partners International Holdings Inc. to former HSZ (Hong Kong) Ltd. fund manager Ryan Fong through coded emails on the pricing of the transactions. Although Lam did not personally profit from the information (not including HK\$69,000 Lam's wife made trading the HSZ fund, for which Lam was fined), Fong did to the tune of HK\$4.41 million. Although both plead guilty the court felt the crimes were serious enough to warrant prison time – Lam received a six month sentence and Fong twelve. What makes the court's decision all the more surprising is that Lam heard about the deal through "office gossip" and was not directly involved with the transaction.

Lam and Fong are the fifth and sixth people to be sentenced to prison time for insider trading crimes this year (please see chart below) along with three others who received community service. All were fined based on the amounts involved and committed their crimes after 2003. Both sources and recipients of the tainted information were punished and worked for global banks and local financial companies. The most recent case involves former Morgan Stanley Asia Managing Director Du Jun, who pleaded not guilty to charges he profited from the sale of HK\$86 million worth of shares of Citic Resources prior to a 2007 announcement of a deal with which he was involved. Given the broad range of backgrounds of the accused, the government, at the very least, appears to be sending a stern warning that it will not tolerate any kind of backroom dealing. The offense now carries a maximum sentence of ten years in prison and fines of up to HK\$10 million.

Those convicted of insider trading as a criminal offense

Name	Offense	Punishment
Vicky Hung Lai-Mei, a former employee of Sino Golf Holdings	Sold shares in the company in 2004 to avoid losses	Six months' jail time suspended for two years and HK\$300,000 fine
Ma Ho-Yeung, a former VP of BNP Parabis Peregrine Capital	Passed information on 2006 privatization deal of Egana Jewellery & Pearls to girlfriend and relatives	26 months' jail time and a fine of HK\$230,000
Ivy Lo Yuk-wah, the girlfriend	Received info on Egana	12 months' jail time and HK\$210,000 fine
Sammy Ma Hon-kit, the brother	Received info on Egana	200 hours' community service and HK\$333,000 fine
Cordelia Tso Kin-Wah, the sister-in-law	Received info on Egana	200 hours' community service and fine of HK\$110,000

Ronald Ma Chun-ho, the nephew	Received info on Egana	200 hours' of community service and HK\$17,000
Andy Lam King-hung, an ex-accountant at China Estates Holdings	Traded shares of Chi Chueng Investments in August 2007 ahead of an asset swap deal	Eight months' jail time and a fine of HK\$130,000
Allan Lam Kar-fai, former CLSA Equity Capital Markets Director	Passed information to his friend prior to a 2005 takeover deal of Media Partners International Holdings	Six months' jail time and a fine of HK\$69,000
Ryan Fong Yen-kwung, a former fund manager at HSZ (Hong Kong)	Received info on Media Partners	12 months' jail time and a fine of HK\$1.37 million

*Contributed by Jason Geber, Business Development Manager, GCSL Hong Kong
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SINGAPORE UPDATE

BOND'S LEGACY

When it comes to the losses that have stumped countless investors worldwide, this Bond moved around in typical style. Shrouded in some secrecy (ala MI6), this Bond promised the characteristic lavish but dangerous lifestyle and antics. As usual, destruction and mayhem also followed. The World Was Not Enough.

Certainly, the world was shaken, not stirred. And it continues to be so.

In the legacy of the Lehman-Brothers backed products, the Mini Bond, even the governments of Singapore and Hong Kong have been pressed to deal with the public outcry and claims.

In Hong Kong, the government recently announced that her banks have agreed to return more than US\$800 million to investors who were affected by the Lehman Brothers-backed products. This sum purportedly amounts to return of about 60% of the principal to 29,000 eligible investors. In the midst of the debacle, the central bank and securities watchdog were rapped by lawmakers. Although the Securities and Futures Commission has hailed this initiative as "a huge settlement", it is understood that many of the 29,000 have found it unacceptable and unfair, and would reject the offer.

In Singapore, many of the republic's top banks and financial institutions also recently got a sharp wake-up call to tighten their internal processes. The Monetary Authority of Singapore, following a seven month investigation into the sale and marketing of the offending products, banned 10 of them from selling structured notes for a minimum of between six months to two years due to flawed practices.

Among the shortfalls highlighted in the 119 page report was inadequately-trained relationship managers, some of whom were allowed to sell the notes and offer advice even though they hadn't attended product briefing sessions.

In some cases, the internal product write-ups for trading representatives at one brokerage firm were inaccurate – which contradicted the product prospectuses by stating that a complex product was "of very low risk" and an alternative to term deposits.

All in all, the report findings seem to show lax management in some financial institutions in the sale of complicated financial products to consumers, lacking due diligence and adequate internal controls.

Till now, amidst the protests and intimations of class-action claims from several groups, a sum of Sin\$107 million have been made to about 3,900 investors.

The actions so far in both Hong Kong and Singapore have hardly placated the cries for blood and recompense of the many claimants. As agitation and demand for more arise through the coming months, somehow, this Bond has turned the investment market into a Casino Royale.

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

EB-5 USA IMMIGRANT-INVESTOR VISA

On November 2, 2007, the Wall Street Journal published an article: "Got \$500,000? The U.S. Awaits (Government's EB-5 Program Offers Foreign Investors Green Cards for Job Creation)". A Federal program known as EB-5 (Immigrant-Investor Visa), administered by the U.S. Citizenship & Immigration Services ("USCIS"), encourages foreign investors to invest their way into the U.S.A. Morrie Berez, chief of the EB-5 program at USCIS, stated: "The opportunity is truly beautiful to individuals who want to live and contribute their energy in the United States, and it creates economic growth and especially jobs for Americans."

There are 10,000 EB-5 visas available every year, and only 867 issued in 2007. Based on the favorable currency arbitrage (Euro/Dollar, UK Pound/Dollar) the EB-5 visa is a cost-effective, time-efficient way to immigrate to the U.S.

An investor (and immediate family) can now obtain green cards (Permanent US Residency) with an EB-5 visa by investing \$500,000 into a Government approved Regional Center (currently, over 30 Regional Centers). Investors receive the security of permanent US residence without repeated visa applications. Citizenship may be obtained after five years.

There are three forms of the investment that is made with the EB-5 visa:

1. Invest \$1,000,000 into a business and hire ten employees anywhere in the USA, or
2. Invest \$500,000 and hire ten employees in an area where the unemployment rate exceeds the national average by 150% or the rural population is less than 20,000, or
3. Invest \$500,000 into a Government designated Regional Center and avoid direct employment.

The \$500,000 investment is the least expensive way to satisfy the visa requirements in order to receive the permanent green card after the two-year period. Although the first two types of investment lead to permanent green card status, they require an additional showing that at the end of the two year period, ten qualified individuals have maintained jobs in the targeted employment area.

The minimum period of the investment is approximately three years. Once an investor emigrates they may apply to have 'conditions' removed after 1 year and 9 months in the USA. Processing takes up to six months. 'Conditions removal' means that the investment is no longer tied to the EB5, and the investor is then free to sell the investment.

With a green card via an EB-5 investment visa investors have the flexibility to take any job, run any business, retire and live anywhere in the USA, with the benefits enjoyed by U.S. citizens including property ownership or education.

*Contributed by Gary S. Wolfe, Attorney, Beverly Hills, California, USA
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USA VS SWITZERLAND - WILL VEGAS MAKE BOOK?

Two weeks ago a shot was fired over the bow of the Department of Justice from the Swiss Justice Ministry. The DOJ is looking for their 52,000 alleged American tax dodgers with non-disclosed UBS accounts in Switzerland. The Swiss Ministry indicated they would actively block UBS from handing over the information. Swiss law prohibits UBS from complying with the Miami court order. Therefore, the Swiss Government is acting to acknowledge and enforce its laws, while reaffirming their lucrative offshore financial business.

In February, UBS entered into an agreement with U.S. authorities in which the firm agreed to pay \$780 million in disgorgement, unpaid taxes, penalties and interest to the U.S. government. As part of that pact, the firm also agreed to end its U.S. cross-border business.

This would include offshore trusts, foundations and non-operating companies with one or more U.S. individuals as a beneficial owner. Included in the pact is an end to servicing U.S. residents as private clients who maintain this status exclusively through subsidiaries or affiliates registered with the U.S. Securities and Exchange Commission. At the time of the pact, UBS was willing to make available the names of more than 300 American clients allegedly involved in evading U.S. taxes.

Last week the stage was set for the trial to begin in Miami's Federal District Court between the DOJ, representing the IRS and UBS AG. Settlement talks ended with a mutual request for a stay of the trial until August 3, 2009. Presiding Judge Alan Gold agreed to the joint request and reset the trial opening for Aug. 3. Karina Byrne, a UBS spokeswoman, called the delay a "positive development" that provided an opportunity "to come to a potential resolution".

So is this trial really between the DOJ and UBS or between the U.S. and Swiss governments? On the surface, it seems like the clash of the titans, as each country now flexes their muscles. The Swiss Ministry has openly stated that if UBS loses the case, the Swiss will not allow UBS to hand over the names. The fallout from the standoff is a demonizing position by the U.S. to coin everything "offshore" as a tax cheat or money laundering scheme, or both!

The DOJ would like you to believe there are a bunch of no good dirty tax cheats hiding all the gold bars they have acquired through illicit dealings. The Swiss would have you believe they are wrongly accused,

and their sovereign laws are being violated.

This case at its very core boils down to tax competition around the globe. Offshore Financial Centers or Tax havens (if you're a high tax country) are nothing more than smaller countries with fewer resources attempting to level the playing field. As with any type of competition, goods and services become cheaper, better and more efficient; tax competition helps keep over spending bloated governments in check. Well, at least that's the idea anyway.

Taxation in the U.S. is sufficiently complicated so much that clients who are good taxpaying citizens get out of compliance when their advisor (foreign or domestic) did not fully comprehend the tax code, tax treaties and information reporting requirements. Consider that out of 52,000 wealthy Americans on UBS's list, is it possible there could be Congresspersons, Senators or government officials? Take the case of Kansas Governor Kathleen Sebelius. The current Obama nominee to be and HHS secretary has admitted to some mistakes on her tax returns and paid about \$8,000 in taxes and penalties for errors on her 2005-2007 returns.

Also, you may remember when the Wall Street Journal reported that in 2006 the current Secretary of the Treasury, Timothy Geithner, was audited by the IRS for 2003 and 2004 taxes and concluded that he owed taxes and interest totaling \$17,230, according to documents released by the Senate Finance Committee. The IRS waived the related penalties. During the vetting of Mr. Geithner late last year, the Obama transition team discovered the nominee had failed to pay the same taxes for 2001 and 2002. "Upon learning of this error on Nov. 21, 2008, Mr. Geithner immediately submitted payment for tax that would have been due in those years, plus interest," a transition aide said. The sum totaled \$25,970.

The Obama team said Mr. Geithner's taxes have been paid in full, and that he didn't intend to avoid payment, but made a mistake common for employees of international institutions. That characterization was contested by Senate Finance Republicans, who produced IMF documents showing that employees are repeatedly told they are responsible for paying their payroll taxes. As to why Mr. Geithner didn't pay all his back taxes after the 2006 audit, an Obama aide said the nominee was advised by his accountant he had no further liability. Senate Finance aides said they were concerned that Mr. Geithner or his accountant used the IRS's statute of limitations as a means to avoid further back-tax payments at the time of the audit. Other tax issues also surfaced during the vetting, including the fact that Mr. Geithner used his child's time at overnight camps in 2001, 2004 and 2005 to calculate dependent-care tax deductions. Sleepaway camps don't qualify. Amended tax returns that Mr. Geithner filed recently include \$4,334 in additional taxes, and \$1,232 in interest for infractions, such as an early-withdrawal penalty from a retirement plan, an improper small-business deduction, a charitable-contribution deduction for ineligible items, and the expensing of utility costs that went for personal use.

Settlement reports indicate that a compromise is possible, and the Swiss will consider handing over the names of those clients who violated Swiss fraud laws as a partial list (translation – overtly, well-healed potential individual revenues sources) of violators instead of handing over all 52,000 names. Both sides have much to gain and lose; but in the end, my guess is that neither have the stomach for trade sanctions and economic warfare.

*Contributed by John Dietz, Trustmakers,
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DOJ CONTINUES TO EXPAND SCOPE OF FCPA

The Foreign Corrupt Practices Act ("FCPA") prohibits individuals or companies from bribing foreign government officials to obtain or retain business. Frederic A. Bourke Jr., co-founder of the famous Dooney & Bourke brand of handbags and accessories, was recently found guilty of conspiracy to violate the FCPA and the Travel Act, and of making false statements to the FBI. The case centers around a scheme to bribe senior government officials in Azerbaijan in order to purchase the state-owned oil company of Azerbaijan. Bourke faces a possible 10 years in prison.

Bourke invested approximately \$8 million in Oily Rock Ltd. on behalf of himself, friends and family. Oily Rock Ltd. was a company controlled by Czech investor Viktor Kozeny (the "Pirate of Prague"), Bourke's friend and neighbor in Aspen, Colorado. Bourke was found guilty of conspiring with Kozeny to pay several hundred million dollars in shares of stock, cash and other gifts to Azeri officials in exchange for them privatizing the State Oil Company of the Azerbaijan Republic (SOCAR) and rigging the auction so that only Bourke, Kozeny and members of the investment consortium could win—which would have made them a massive profit. Ultimately, Kozeny was never able to purchase

SOCAR because the officials changed their minds and decided not to privatize it. The scheme involved the purchase of vouchers and options that could be used to bid for shares in SOCAR. The vouchers and options were intended to be exercised by Oily Rock. In 1997, Kozeny agreed to transfer to corrupt Azeri officials two-thirds of the vouchers and options Oily Rock purchased, and to give the officials two-thirds of all profits arising from the investment consortium's participation in SOCAR's privatization. According to the defense, Bourke knew about the Azeri officials' involvement in the project, but allegedly believed they had paid for their stake. In 2002, Bourke falsely stated to the FBI that he was not aware that Kozeny had made the alleged payments to the Azeri officials.

This case reflects a significant broadening in DOJ cases because Bourke did not himself, or through a company he owned, make any bribes. Instead, prosecutors showed that Bourke was guilty because he invested in an offshore venture—Oily Rock Ltd.—that he allegedly knew was paying bribes. This case reflects the expansive theories of liability that the DOJ is now using to prove FCPA violations.

*Contributed by Jonathan S. Feld, Attorney at Law, Katten Muchin Rosenman LLP
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LABUAN HOLDING COMPANIES WILL BE ALLOWED TO ESTABLISH THEIR OPERATIONAL AND MANAGEMENT OFFICE IN KUALA LUMPUR FROM 1 JUNE 2009

The new flexibility will make it attractive for multinationals to enhance operating efficiencies by relocating their corporate headquarters to take advantage of Kuala Lumpur's competitive offerings of first-grade facilities and infrastructure in a low-cost operating environment with quality human capital and professional services.

The Labuan Holding Companies will primarily deal with non-residents, deal in non-Malaysian Ringgit business and pay tax under the rules of the Malaysian Income Tax Act (1967). The flexibility is granted by both Labuan Offshore Financial Services Authority (LOFSA) and the Companies Commission of Malaysia [Suruhanjaya Syarikat Malaysia (SSM)]. A joint LOFSA / SSM working group will oversee the smooth implementation of this initiative.

The general criteria of Labuan Holding Companies that choose to locate in Kuala Lumpur include the following-

1. The applicant-
 - a. Is or will be, a company incorporated under the Offshore Companies Act 1990; or
 - b. Is a company incorporated in other jurisdictions and to be redomiciled to Labuan and incorporated under the Offshore Companies Act 1990.
2. Approval needs to be obtained from LOFSA prior to the establishment of the office.
3. The Labuan Holding Companies cannot use the same name as of domestic company incorporated under the Companies Act 1965.
4. The Labuan Holding Companies will be allowed to carry on one or a combination of the following activities from its office in Kuala Lumpur:-
 - a. Holding of investment in securities, stocks, shares, loans, deposits or immovable properties.
 - b. Providing management services including administrative, human resource, accounting and backroom support services to:-
 - i. Related companies within Malaysia; or
 - ii. Related or non-related companies outside Malaysia.
 - c. Managing surplus funds and providing credit facilities to related companies within the group in and outside Malaysia.
 - d. Trading or re-invoicing activities outside Malaysia.
5. All business must be in non-Ringgit.
6. The office must be independent of any other entity and employ its own personnel with independent books and records.
7. The Labuan Holding Companies must have sufficient paid-up or working capital to support their operations and activities in Kuala Lumpur.
8. The Labuan Holding Companies must make an irrevocable election to be taxed under the Income Tax Act 1967 pursuant to section 3A of Labuan Offshore Business Activity Tax Act 1990. Hence, the Labuan Holding Companies are required to-
 - a. Comply with the provisions of the Income Tax Act 1967;
 - b. Submit annual audited accounts to LOFSA; and
 - c. Conduct Annual General Meeting in Malaysia.
9. The Labuan Holding Companies must comply with other requirements of the relevant laws in Malaysia in regard to the operation of the office in Kuala Lumpur, whichever applicable.

OFFSHORE UPDATE



ANGUILLA: UNDER DURESS, ANGUILLA SIGNS THREE TIEAS

On 20 July 2009, the Chief Minister of Anguilla, the Hon. Osbourne Fleming, signed Anguilla's first Tax Information Exchange Agreement ("TIEA") with, of course, the United Kingdom (the "UK"). It is safe to say that this was done at the request of the UK government in keeping with its demands on the offshore centers. Two days later, similar TIEAs were signed with the Republic of Ireland and the Kingdom of The Netherlands. I have not had a chance to read the specifics of each TIEA, but I understand that they are based on the OECD Model. Sitting here in Havana, Cuba, from where I am writing this article, I would submit that Castro himself would be proud of this exercise of power and control over a dependency.

I will have more to say about this and other matters once I return from this communist "paradise" where the American cars are classic, the heat and humid are stultifying but the mojitos are great. Especially on this national day which commemorates Fidel's assault on the Moncada Barracks of Batista in 1953 which signaled his first attempt at overthrow of that puppet USA regime which made Marcos in Manila look like a liberator.

Long live los mojitos!!!! Anything to forget Obama, the G20, OECD and now Anguilla's TIEAs.

*Contributed by Carlyle Rogers, Managing Director, GCSL Anguilla
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BELIZE: THE COMPLIANCE ISSUE

GCSL Belize is in the midst of a compliance audit presently. No, this is not some Belizean attempt at copying the American government in its Swiss fishing expedition. GCSL has always been serious about ensuring that our records are up to date and accurate. As such, we insist on getting the necessary due diligence for each person who is directly involved in the structure in question. If we opt not to have that sort of vigilance and standard, we open ourselves to all sorts of situations that potentially would cause us to lose our licence. What use would we be to our clients then?

I will then quickly and succinctly highlight all of the normal due diligence requests that are normally made. We at GCSL have found that it makes sense to always request these items, because most times, be it a company or a trust structure, there is the need to open a bank account. As the banks routinely ask for these items, and we are obligated by law, in any event, to know who our clients are. If the regulatory authority comes knocking, we need to have the proper information on file so that we have no difficulties.

The first and most important of items needed is the passport. Some service providers ask for notarized copies, but we have found that that is not necessary, and causes the Settlor or Beneficial Owner unnecessary expense. But sometimes it does pay to have it. This is required.

The next item which we require is some sort of address proof, such as a utility bill or a bank statement which has the stated residential address as the mailing address. That usually suffices for our purposes, for it to be evidenced that there indeed is a residential connection between the individual and the premises in question.

While we do not usually ask this next one for our benefit, when opening a bank account, it is ALWAYS required. That more specifically is the bank letter, which must state the following:

- The name of the individual (director, beneficial owner, settlor, protector, trustee);
- The length of time of the account's existence;
- Whether or not the account has been operated by the account holder to the satisfaction of the bank.

While some banks will want details, such as average balance and available balance at the time of the writing of the bank letter, generally speaking, the bulleted items above are generally what is required. Finally, what is requested by the banks sometimes, in conjunction with the aforementioned, is the professional reference letter. This is usually done by an attorney or accountant, stating how long they have had a professional relationship with the individual, and whether or not that person is a person worthy of having as a client..

And there you have it, the main ingredients of due diligence. Enjoy...but always remember too, if you can't give it to us, when you want us to help, we can't do it.

*Contributed by Carlo Mason, Managing Director, GCSL Belize
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COOK ISLANDS: LEADING THE WAY IN AML COMPLIANCE

Its official, the Cook Islands has achieved a top three rating in the Pacific region (out of 40 countries) where it received a fully compliant rating from the country evaluation conducted by the Asia Pacific Group on Money Laundering. The annual meeting of the Asia-Pacific Group on Money Laundering (APG) wound up in Brisbane, Australia last month after a week of talks involving 300 officials from 40 countries.

The Cook Islands is one of the few countries in the region to achieve its current rating, and only confirms what many practitioners in the industry have known for some time - the Cook Islands is a well regulated jurisdiction where it is safe and secure to conduct international business, knowing that it not only has good anti money laundering laws but it also has the infrastructure to enforce those laws.

Full credit yet again, needs to be lauded in the direction of Lorraine Allan, who led the Cook Islands delegation to Australia and argued the case of the Cook Islands on certain technical aspects of our country evaluation. This result is a testament to the tireless work that has been put in by the Financial Supervisory Commission of the Cook Islands and in particular Lorraine who has led that effort.

The Cook Islands now have an assessment with NO Non Compliant ratings - one of the few countries in the world to achieve such a rating.

In fact the Cook Islands is being held up as one of the APG's success stories in having moved from the NCCT list to one of the best in the world regarding AML compliance. In a recent news release, APG Executive Secretary, Gordon Hook said over the past decade the Cook Islands had emerged as a leader in the battle against terrorism funding and money laundering.

*Contributed by Puai Wichman, Managing Director, GCSL Cook Islands
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SAMOA: H1N1 INFLUENZA

Unprecedented in Samoa is the sight of masks being worn by people in and around the country due to the spreading H1N1 influenza. The latest report confirmed 67 cases in Samoa so far and certain more are already infected. The World Health Organization has already donated boxes of Tamiflu pills to fight the disease and currently, all schools around the country have been asked to close for 1 week and until further notice. The Health Department have tried their best to stop, or at least minimize the spread of the disease on the island, seeing that Samoa lost a third of its population in 1918 to the Spanish Influenza. With a population of approximately 180,000, it is a frightening reality.

When I travelled to Fiji recently, it was business as usual at the airport in Nadi – there were no checks for the disease although Air Pacific had assured it's passengers that the airplane has been fitted with a special filter to help minimize the spread of the disease. When I arrived back in Samoa, masked men and women entered the plane before we disembarked with forms for every passenger to complete. Anyone with flu-like symptoms is asked to stop at the make-shift clinic outside of the terminal for further checks. As more and more people are suffering from the common symptoms of the flu, the hospital has been inundated with people lining up for checks. The Ministry of Health as a precautionary measure has erected a make-shift H1N1 clinic in the town of Apia behind the Government Building, away from the National Hospital. Television and radio advertising are sending the message out about what to do to avoid catching the flu or rather, where to go for assistance, etc. So far, there are no fatalities in the country. Kudos to the Health Department for their efforts thus far.

Stay healthy everyone!

*Contributed by Laura Fepuleai, Manager, GCSL Samoa
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TIDBITS



OUR MONTHLY QUOTE THAT MADE US SMILE

"I will never forget the first time we met...although I will keep trying." - Anon

UNFRIENDLY FRENCH...THE SINGAPORE SOLUTION

We recently read about the world renowned unfriendly French efforts to stem the fall in tourist numbers by initiating a smile campaign including requesting Parisians to smile, setting up stands manned by teams of "smile ambassadors" and organizing hundreds of roller-skaters to form a giant smile in Place Vendome in the city center. Call us crazy – CRAZY – but it sounds like a classical Singapore solution, i.e. tell 'em what to do and they will do it. Yeah, right, have the members of the Paris Tourist Board ever visited Paris!? They better start importing Singies if they expect any success!!!

WORKING NO DOUBT VERY HARD TO KICK GOLD

We were not fooled by the cash-strapped Olympic hopeful in New Zealand, who claims he was forced to

open a brothel to finance his efforts for taekwondo glory in 2012. C'mon matey, we support your efforts (well, not since marriage), but speak true...plenty of ways to make a buck, but 'fess up to the fringe benefits 😊!!!

ALL YOU CAN EAT GERMAN...BROTHEL?

Yes, we recently read about German brothels suffering from the global financial crisis offering the following "all you can eat" style promotions:

- chance to sleep with as many prostitutes as they like for a single fee
- rebates for pensioners and people on benefits,
- 10% discounts for men who arrive by bicycle or public transport, and
- free shoe-polishing for customers who stay overnight.

And who said Germans are not creative 😊!?

AND WHY DID THEY LET HIM OUT?

We were disappointed with the German police who had to rescue a 20-year-old man from a train station suitcase locker after he shut himself in for fun and began to suffocate. Heck, why did they let him out!?

INSPIRING!!!

We were knocked off our stationary bicycle when recently reading about the Japanese marathon runner (won the Boston Marathon, represented Japan in the Olympics and ran three marathons this year) who hung up his sneakers at the grand old age of 81 while indicating he could be tempted back to run the odd half marathon. One of those fellas who makes us want to be better, but probably will not get us on the track!!!

YICK, YICK AND TRIPLE YICK

Here ya go, it had to happen, but did we really have to read about the world's first brand of chocolate made with camels' milk!? Yick, Yick and Triple Yick is all we can say!!!

NO NONSENSE TEACHER...OR PERHAPS FLIGHT ATTENDANT?

We recently read about a teacher in China who taped shut the mouths of three naughty, talkative fellas who were disrupting class. She was an intern and quit. We think all schools and, what the heck, major airlines should hire ladies with such no nonsense skill sets to achieve such noble objectives quickly and with no pain!