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JACK'S CORNER

DA MA ZHONG

Thanks to Orca, Van, Amy and, of course, Marina for the day long lesson this weekend in "da ma zhong". For the uninitiated, "da ma zhong" simply means "playing ma zhong". For the completely uninitiated who didn't have a little Italian or Jewish Grandmother (strange bedfellows, eh?) playing on a daily basis, it is the exceedingly confusing tile game - similar to Rummy - that Hong Kong (and other) Chinese play for days without end and big dollars.

Beginners' luck, I won a few games. Still not sure how or why, but I would rather be lucky than good!

Give it a shot...but only with very good friends. Otherwise, the "tuition" could be, well, financially debilitating!

By the way, in true Hong Kong fashion, guess what you say upon winning a game?

"Eat". After all, Hongkies love food ;-)

UK POLITICS...

Yes, I have spent a bit of time listening to the three comedians - even the "bigot" - as they outlined their strategies to rescue the UK from the same difficulties every other European nation is suffering. Sadly, albeit not unexpectedly, they are moving their lips, mis-using valuable oxygen and largely communicating vacuous messages focused on ensuring they remain employed.

Sucks, folks, but such is politics....

PUSH TO BE "WHITE" (LISTED), BUT OFFSHORE AIN'T NECESSARILY ABOUT TAX...

2009 was a most interesting year in terms of the Organisation for Economic Co-operation and Development's ("OECD") successful push for offshore financial centers to enter tax information exchange agreements ("TIEAs"). It would appear that the OECD has been flexing its members' collective financial and political muscle to achieve their objectives.

This conduct smacks of might makes right in the push to be "white" (listed), but the real story of offshore is much more than tax!

OECD Global Forum - Conflicting Objectives with Offshore Financial Centers?

The OECD Global Forum was initiated in 2000 and is, to due significant pressure, a "...multilateral framework within which work in the area of transparency and exchange of information has been carried out by both OECD and non-OECD economies". This and the following required standards are clearly important and largely supported by offshore financial centers:

- Existence of mechanisms for exchange of information upon request.
- Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request in a timely manner.
- Respect for safeguards and limitations and strict confidentiality rules for information exchanged.

The difficulty arises when understanding the OECD's stated purpose for TIEAs, which is "...to promote international co-operation in tax matters through exchange of information to address ***harmful tax practices***.

FEATURES

- [Jack's Corner](#)
- [AOA](#)
- [Greater China](#)
- [Hong Kong](#)
- [Singapore](#)
- [International](#)
- [Anguilla](#)
- [Belize](#)
- [Cook Islands](#)
- [Samoa](#)
- [Tidbits](#)

PICTURE STORY



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That is, offshore financial centers do not seek to and do not exist to encourage nationals of OECD or other countries to violate the tax or other laws of those jurisdictions.

Equally, it is widely held that offshore financial centers do not believe their policies of zero or low tax on various entities and relationships in their jurisdictions are not "**harmful tax practices**". Competitive to be sure, but why is it that competition is necessarily "harmful"?

Substantial Implementation vs Commitment - Any Meaning?

The OECD began publishing progress reports in January 2010 the commitments made by various jurisdictions to tax information exchange. Since April 2009, it is rumored that nearly 300 TIEAs have been signed that meet OECD standards. The OECD states there is no "...hard and fast" line on how to measure progress in the implementation of the standard"...but "...a good indicator of progress is whether a jurisdiction has signed 12 agreements on exchange of information that meet the OECD standard." This distinguishes those jurisdictions in the progress report that are on the so called "white list" (substantially implemented the internationally agreed standard) from those on the so called "grey list" (committed to the internationally agreed tax standard, but have not yet substantially implemented).

The OECD analysis is quite interesting given it appears not to be evenly applied.

For example, the BVI, Samoa and the Seychelles, three well-known offshore centers, have emerged on the "white list". The BVI and Samoa have entered into the requisite number of TIEAs with OECD countries while the Seychelles has not entered into one.

Perhaps even more intriguing is the fact that several large OECD members such as France, Germany, the United Kingdom and the USA, have not entered into one TIEA with a fellow OECD member. One imagines if you are a member of the "team", then "standards" either do not apply or are assumed to have been implemented or, well, gee, no one really ever paid much attention. Equally, jurisdictions such as Anguilla and the Cook Islands have almost achieved the bright line number of 12 (why not 11 or "lucky" number 13?), but remain "grey listed" while Belize has only signed one TIEA and is accorded the same status.

This simple analysis begs the question - do the substantial implementation and commitment standards to determine the "white list" and "grey list" members have any meaning at all?

Innovations Abound

Regardless of whether or not the OECD "white list" demonstrates any shared objectives or has any meaning at all, offshore jurisdictions have been and will continue to create innovations to ensure their financial centers prosper. The innovations described below are not exhaustive, but clearly and bluntly demonstrate opaqueness and tax are NOT the only reasons for "going offshore".

- Wealth preservation structures, i.e. trusts, LLCs, foundations: Offshore jurisdictions such as Belize, Cook Islands, Anguilla, Nevis, St. Vincent, Samoa and the BVI have long distinguished themselves with entities and relationships that focus on wealth preservation, tax-neutral strategies. In fact, depending upon the nationality of the client, transparency is fundamental to the success of these structures.
- Funds: Cayman Islands, BVI, Anguilla and, more recently, Samoa have all enacted cutting-edge fund legislation that demands exacting due diligence, transparency and often higher standards than that imposed by OECD members.
- Captive Insurance: Largely designed to meet statutory definitions in the USA, captive legislation in the Bahamas, Anguilla, Bermuda, the BVI and the Cook Islands impose significant rules regarding paid up and unencumbered capital.
- Securities Trading License: Belize has created a list of activities, often dangling in the "grey" areas in both offshore and onshore jurisdictions, which now require licensing.
- Banks: Licensing in offshore jurisdictions for banking is exceedingly onerous. Jurisdictions such as Anguilla, Samoa and the Cook Islands still provide viable options.
- Shipping: Registering a seagoing vessel requires specialist skill sets and Panama, Liberia and the Marshall Islands are leaders in this regard.
- Retirement: Belize offers an opportunity to reside in cost-effective, offshore paradise via the Retired Persons (Incentives) Act.
- Economic Citizenship: Dominica and Nevis offer an opportunity to become a citizen in tax-effective jurisdictions with good visa-free travel.

Conclusion - It Ain't All About Tax

One cannot deny the fact that virtually all offshore jurisdictions offer competitive tax environments where international business people can avail of advantageous fiscal opportunities. Having said that, a brief review of what is on offer in the offshore world speaks loudly to the fact it ain't all about tax!

NO MORE GOLD IN THOSE STREETS?

I was not surprised to learn the Federal Register, a USA government publication that records certain information, recently confirmed 502 expatriates gave up their USA citizenship or permanent residency status during the last quarter of 2009. Although barely a blip on the radar of the 5.2 million Americans estimated by the State Department to be living abroad, it was the largest quarterly figure in years and

more than twice the total for all of 2008, i.e. 235 renunciations in 2008 and 743 in 2009. One is not required, as a matter of law, to disclose the reason(s) for renunciation. However, I have not doubt that political, social, tax and overseas banking difficulties all contributed to this increase. Watch this space folks as my crystal ball predicts many more Yanks and green card holders will opt out!

TAX JUSTICE NETWORK SPEAKS TRUE

Click on the link below to learn in a nice graphical representation of the top 15 secrecy jurisdictions according to opacity and scale of operation as determined by the Tax Justice Network.

<http://taxjustice.blogspot.com/2010/04/national-geographic-guarded-treasures.html>

GCSL NEWS

STEP CARIBBEAN CONFERENCE MAY 2010

GCSL Anguilla is proud to sponsor the Caribbean's premier trust and estate planning conference, STEP CC10. Alas, Jack will not be speaking due to health concerns. In any event, over 200 top offshore professionals will gather in Barbados under the theme, Positioning for Recovery, to discuss how best to take advantage of the opportunities which the current economic climate presents. For more information and to register, click on <http://www.stepcaribbeanconference.com/>

A BEAUTY...

Carlyle noticed this beautiful villa in Anguilla - Ultimacy Villa - is being offered for sale and thought our readers might want to have a look. Please browse <http://www.ultimacyvilla.com/> and let Carlyle (Carlyle@gcsl.info) know if you are interested!

PUBLIC HOLIDAYS JUNE 2010

ANGUILLA

14 June Queen's Birthday

COOK ISLANDS

6 June Queen's Birthday

HONG KONG

16 June Dragon Boat Festival

SAMOA

1 June Independence Day

SHANGHAI

16 June Dragon Boat Festival

AOA

AOA KUALA LUMPUR CONFERENCE, OCTOBER 17-19, 2010 AT THE MANDARIN ORIENTAL

The subtle mix of modern and traditional is the defining allure of Kuala Lumpur or, as most people say, KL. One also will find a culinary extravaganza as Malay, Indian, Chinese, Middle Eastern and Western chefs ply their trade from the streets to the five star hotels. When one combines the Asia Offshore Association's track record of interesting, fun and informative conferences with KL's unique blend of past, present and future, the Asia Offshore Association KL Conference will be again a most excellent event!!!

GREATER CHINA UPDATE

PROFESSIONAL BUSINESS SECRETARY

In Hong Kong and many commonwealth jurisdictions, engaging a professional firm to provide company secretary and registered office functions/services is common and often required when setting up a legal entity. The Chinese Company Act requires a legal entity to have a registered office address and the practice is it must be a "real" registered office address. The position of Company Secretary is not mentioned in the Chinese Company Act as it is not a requirement when setting up a legal entity in China.

Recently, I was reading a Shenzhen draft circular (hereinafter referred to as the "Suggestion"), which was prepared by the Internet Supervisory Bureau, and relevant news about "improving and servicing

Online Commerce Industry in Shenzhen". In the Suggestion, there are few interesting clauses. It is important to note the Suggestion has not yet been approved by the Shenzhen Municipal Government.

1. "Allowing one qualified address to be used by multiple companies engaged in online commerce business activities."
2. "Proposing Business Secretary (BS) to provide registered office address to online commerce companies."
3. "Options of registering with Permitted Business Activities or No Fixed Business Activities."

As mentioned above, China follows the "real" business office address. Points 1 and 2 above indicate a willingness to allow for the Virtual Office concept. In addition, point 2 above creates a brand new business of "Business Secretary. Point 3 would implement no restriction on business activities, which would be novel.

Of course, the Suggestion is for the Online Commerce Industry, which has unique factors that are unlike others such as Retail, Manufacturing, etc. However, ideas of a Virtual Office, Company Secretary and No Fixed Business Activities are the indication of improving the flexibility of business and commerce environment and requirements in Shenzhen, and perhaps China.

China Minimum wage adjustment

The minimum wage in China is usually reviewed annually. Depending on the local economic situation, the local government has the authority to make adjustments. For instance, in the year of 2009, there was no adjustment due to worldwide financial turmoil.

The labor department of local governments in all major cities and provinces of China usually will do calculations of the previous year of average wages of its local work force and come up with the minimum wage. This year, most of the local governments have increased their minimum monthly and hourly wages at the rate of at least 10%. For instance, Shanghai is 16.6%, Beijing is 10% and Guangzhou is 21%. The effective date for each of locations varies, ie Shanghai is April 1st, Guangdong province is June 1st; Beijing is July 1st.

China Foreign Investment Statistic Update

For the months of January and February, the total number of foreign invested companies was 3,163 entities with total investment amount of US\$14 billion.

During the same period, China's non-financial industry domestic company's foreign investment into 89 jurisdictions was made via 693 foreign entities with total investment amount of US\$4.66 billion.

*Contributed by Johnson Chien, Managing Director, GCSL Shanghai.
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HONG KONG MINIMUM WAGE LAW

Presently Hong Kong has no minimum wage law. The concept has been discussed since 1999 but until summer of 2009, there was no proposal put forth to the Legislative Council with definitive plans. The new proposal is thought to be put into effect either at the end of 2010 or the beginning of 2011. The new proposal for a minimum wage will cover all work groups except for domestic helpers (DH) and student interns and persons with disabilities (PWD).

It will be based on the number of hours worked multiplied by an hourly wage.

The calculation will include housing and travel reimbursements, but will exclude bonuses and end of year payments. It will make no difference whether a worker is paid weekly or monthly. Time spent traveling and on food breaks is not considered part of the hours being worked. It remains to be seen in the proposal if time spent at a client's location is to be considered as being "at work" or not.

It is anticipated that the Provisional Minimum Wage Commission, set up by the HK Government in 2009 will recommend the minimum wage to be in the range of HKD 24/hour (USD 3.08) or HKD 5,000/month (USD 644) for a 26 day work month.

Last week in HK saw trade union protestors and demonstrations which were calling for a minimum wage of up to HKD 33/hour (USD 4.25), or about HKD 7,000/mo (USD 902). How do these rate contrast to those in the US? Present rates in the US vary from USD 6.15 (Minnesota) up to USD 8.55 (Washington State) by individual states. The US Federal Minimum is USD 7.25 on certain jobs.

Mandatory Provident Fund calculations will have to be calculated AFTER accounting for additional reimbursements, and not just on the initial hourly wage rate.

It is believed that an employee who is under a HK Contract of Employment where the governing law is that of HK will be subject to the minimum wage requirement, even if the person is not a HK citizen or if the person works outside of HK.

One interesting note is that unlike in China, the US and the UK, the new law will NOT seek to regulate the number of hours to be worked. Employers who normally have employees work overtime at a regular hourly rate at their place of business will have to take into account these overtime hours in calculating whether they will be in compliance with the new law.

Several issues remain to be ironed out. First, there is a heavy burden of reporting which is being considered for ALL hourly employers which would require the hourly monitoring of hourly low-paid and high-paid employees equally, by such draconian methods as the old punch card system. Is there a better system? We suggest the Committee look at a minimum wage level under which hourly employees would have to account for their time but higher paid hourly workers would be exempt.

Second, students may not be in a "full time" accredited co-op program and may still be working at internships under part time programs. This means that some students are in co-op programs which require them to work under internships in order to graduate. Other students not in such a co-op program, still work under internships. The new law would prohibit the use of such student interns, under the guise of protecting paid workers. We disagree and hope that the Committee would re-look at the definition of Student Interns to broaden the definition to include more types of students under the plan.

Thirdly, the HK Confederation of Trade Unions (CTU) has asked for the inclusion of domestic helpers (DH) in the wage law. We disagree and think that it would be impossible to calculate the hours a DH works, plus the benefits of free live-in room and board and transportation. Inclusion might also reduce the ability of middle class HK families to afford to legally pay for a DH to live in their homes since in many middle class homes, both parents work full time.

Lastly, for PWD's only registration-card carrying persons with disabilities can be tested by an approved assessor for their productivity and if approved, can then be exempted from the new minimum wage requirements.

Employers who run afoul of the new laws could face penalties of up to HKD 350,000 (USD 45,000) and up to 3 years in jail.

It is difficult to strike a fine balance between the interests of free trade, competitiveness, loss of jobs to a lower cost region, social cohesion, and "jobs for everyone". It is anticipated that this bill once put into effect will help those in low paying jobs such as security guards, cleaning staff as well as staff in the retail and hospitality industries. Stay tuned for more.

HONG KONG IMPROVES ANTI-MONEY LAUNDERING EFFORTS

The Financial Action Task Force, known as FATF was formed by the G7 summit meeting in Paris in 1989. It develops international standards to combat money laundering and terrorist financing. It evaluates the adoption by countries and territories of its policies. FATF has 34 member countries.

Almost two years ago, in 2008 it found that Hong Kong was deficient in 20 of 49 areas measured. FATF generally gives countries two years to improve in the areas in which they are deficient.

Hong Kong was found to have a good legal structure in which to combat money laundering and terrorist financing. However of 16 priority areas it was found to be deficient in 6 areas. Deficiencies included lack of a law to ensure financial institutions perform due diligence checks on customers, minimal regulation and enforcement of recordkeeping by financial firms. Hong Kong also had significant shortcomings in implementing UN guidelines on the seizure of terrorist funds. The 2008 report found no evidence of terrorist financing running through Hong Kong.

I can assure you that there is no lack of due diligence efforts on the part of any of the banks we deal with in Hong Kong. Their due diligence requirements make those of the US look amateurish. So if the FATF cares to talk to the banks, it would find that the banks have taken it amongst themselves to follow very strict Due Diligence guidelines in dealing with new and existing personal and corporate clients. I'm happy to show the FATF what the bank requirements are any time. They don't have to call the Hong Kong government. They can call me.

Even with these listed deficiencies, Hong Kong ranks in the top 50% of countries evaluated by FATF.

Hong Kong has until June 2010 to make headway and to show progress in addressing the concerns of the FATF. Hong Kong officials will meet with the FATF in Amsterdam 21-25 June 2010. By contrast, countries such as Belgium, which had made much progress and were at the top end of the spectrum, were only reporting back every two years. Hong Kong was to report back on progress made after two years, with a follow up evaluation by the FATF in year 3. Countries at the low end of the spectrum include Iran, Sao Tome and Principe, Uzbekistan, Turkish Northern Cyprus, Pakistan and Turkmenistan.

To its credit, Hong Kong convicted 307 people of money laundering in 2009 (vs. 248 people in 2008) and froze assets worth HKD 1.5 billion, (vs. assets worth HKD 419 million in 2008).

However, when recently asked to list concrete examples of achievements in addressing the 49 points in the FATF 2008 report, the Hong Kong Security Bureau and Financial Services and Treasury Bureau were unable to list one single concrete example. The Hong Kong administration has consulted the public on plans to pass laws to regulate record keeping and due diligence but to date no bill has been proposed or passed. The government has announced that it plans to implement a disclosure system for cross border transportation of cash and bearer instruments- which would not limit the amount of cash any one person could bring in to Hong Kong. The Hong Kong tourism industry has already voiced

concerns over this suggestion. (Probably the licensed money changers in Sheung Wan should also as their livelihood depends on large numbers of mainlanders who come across the border with undeclared obscene amounts of Chinese RMB and convert them into Hong Kong Dollars which are then used to buy commercial and residential Hong Kong properties. Oddly enough this focus on the cross border transactions is not on the FATF list of the top 16 priority areas. So why is the Hong Kong government focusing on this item when it has failed to make headway on 16 other areas which FATF has listed? Possibly because a Legislative Council subcommittee has voiced concern over Human rights. There is a 2nd meeting scheduled for 6 May. Maybe we'll find out in June after the FATF meeting in Amsterdam. Watch this space.

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SINGAPORE UPDATE



OF ACRA AND HOUSEKEEPING

The Accounting and Corporate Regulatory Authority of Singapore (ACRA) recently announced its intention to introduce a suite of initiatives aimed at encouraging and cultivating a culture of voluntary compliance among Singapore companies.

Among these measures to be launched in April, is one which introduces a new colour coded compliance rating which will be made available in ACRA's free online Directory of Registered Entities.

Under this new rating system, companies with good annual general meeting, accounting and annual filing records for the year in question will receive a positive compliance rating and be eligible for the issuance of a Certificate of Compliance by ACRA.

ACRA's has stated that a good compliance rating translates into increased trust, thereby enabling companies to build on their brand equity within the business community. "It has always been our aim to promote compliance through education and awareness, instead of imposing penalties and taking up prosecution actions against defaulters."

Advisory Note on False Lodgments with ACRA

ACRA has issued an advisory note to remind professional service providers and the like that the use of the Professional Number is only for the purposes of transacting on behalf of companies or business entities for which the professional firm concerned has been authorised to do and solely for the purpose for which it was issued. Failure to ensure proper use of the Professional Number may lead to the same being revoked.

ACRA informed that it recently prosecuted a professional service provider for lodging false information with ACRA. The provider, by using the Professional Number to transact in BizFile for her clients, had changed the residential address of the foreign directors of companies in which she was the local director to that of the registered office of a consultancy company, without authorisation and knowing the information to be false. The provider was fined a hefty sum of \$21,000.

ACRA takes a serious view on false or fraudulent filings, especially by professionals, and will not hesitate to take strong measures, including court prosecution, to maintain public confidence in the integrity of information stored in its statutory registers.

Housekeeping

In the continuing pages that follow the minibond saga, the Monetary Authority of Singapore (MAS) has recently issued a consultation paper that sets out proposed enhancements to the MAS Corporate Governance (CG) Framework which comprises the Regulations and Guidelines for locally-incorporated banks, financial holding companies and direct insurers.

Since the implementation of MAS CG Framework in 2007, there has been increased emphasis on effective corporate governance internationally. The recent financial crisis has further highlighted the importance of effective risk management oversight at the Board level.

The main thrusts of the proposals emphasize the importance of the role of the Board of such entities and the need for directors to be equipped with the appropriate skills and have the commitment to oversee the operations of the financial institutions. In addition, independent directors play an important role on the Board as they serve as the check and balance to management and majority shareholders and protect the interests of the financial institutions as a whole. Accordingly, MAS has proposed including an additional criterion on the length of board service in the definition of independence and changes to the composition of the board and board committees. Specifically the key proposals in the consultation paper relate to:

1. Continuous Development

The Nominating Committee (the NC) must assess the current skills of the Board on an annual basis and should establish a continuous development programme for its directors;

2. Time Commitment
The NC should set internal guidance on the time commitment expected of each director to ensure that directors are able to devote the time needed to perform their oversight roles;
3. Director Independence
A director will be considered non-independent after he/she has served on the Board for a continuous period of nine years; financial institutions should consider appointing a lead independent director if the Board Chairman has other relationships with the financial institution; the financial institution shall not appoint a person who is a member of the immediate family of the CEO as the Board Chairman. This does not affect existing Board Chairmen who do not meet this requirement, subject to annual approval by MAS;
4. Composition of Board and Board Committees
To raise the number of independent directors on the Board, the NC and the Remuneration Committee (the RC) from one third to a majority;
5. Governance over Remuneration Framework and Practices
To include additional factors that the RC must consider in the design and operation of the remuneration framework and additional guidance for financial institutions to adopt the Principles and Standards on Sound Compensation Practices of the Financial Stability Board (FSB);
6. Governance over Risk Management
The Board must establish a dedicated risk management committee and financial institutions must seek MAS' approval for the appointment of the Chief Risk Officer. MAS will provide additional guidance on our expectations on roles, responsibilities and skills of the Board in overseeing the financial institution's risk management system.

MAS expects that most of the proposals in the enhanced CG Framework will take effect from the first Annual General Meeting of each financial institution held on or after 1 January 2011. Exceptions will be given to proposals on the introduction of a new requirement for a director to be deemed non-independent after he/she has served for a continuous period of nine years on the Board; and the raising of the number of independent directors on the Board, NC and RC from the current one-third to a majority. MAS proposes for these two changes to take effect no later than from the first Annual General Meeting of each financial institution held on or after 1 January 2012. This is to take into consideration that financial institutions may need time to reconfigure their Boards and Board Committees to meet the proposed requirements on independence and composition.

All these measures are well and good as we look forward to more robust corporate governance structures in financial institutions. But what about the other companies, especially public ones? Surely the investing public needs the protection as well?

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INTERNATIONAL UPDATE



DO YOU NEED TO PROTECT YOUR WEALTH?

The ultimate goal of asset protection is to give you and your family lifetime security - the comfort of knowing that you can't lose what you own regardless of the financial or legal problems you may face. A good asset protection plan will also help you achieve other important objectives:

1. Discourage lawsuits

One objective of asset protection is to discourage lawsuits. Discourage lawsuits, and your asset protection plan shields you from the costs to defend against lawsuits. A lawsuit can cost you tens of thousands of dollars to defend, even if you win the case. You can spend an enormous amount of money, time, and effort to win a lawsuit. Prevent even one lawsuit, and you pay for your asset protection many times over. A potential plaintiff must weigh the costs to sue you against the odds of winning *and* recovering based on your *exposed* assets. Are you even worth suing? Lawyers don't spend time on unproductive cases. It is not whether or not you have assets that determine whether you get sued; it's whether your assets are *exposed*. If you have good protection, you are in a far stronger position to negotiate a fast, inexpensive settlement.

2. Reduce insurance costs

A good asset protection plan will also save you money on liability insurance. We don't promote asset protection as a substitute for liability insurance, but insurance can be too costly for high-risk professionals and business owners. Asset protection can supplement their insurance.

3. Improve your financial planning

A good asset protection plan can also help you reduce your estate and income taxes (depending upon your nationality), improve your estate plan, and possibly even grow your investments. Asset protection is an essential component to any financial plan.

4. Become judgment-proof

The ultimate purpose of asset protection is to safeguard your wealth against the worst-case scenario -

you are sued and lose. And the odds are that you *will* someday be sued. Your asset protection plan then faces its ultimate test. Your asset protection plan may prove its benefit only after the plaintiff wins a judgment and has exhausted every collection attempt. Even with protection, *every* case has its settlement value. You don't want a judgment over your head for twenty or more years. Or a plaintiff may force you into bankruptcy. And a judgment against you won't improve your credit rating.

The success of your asset protection plan then is not whether you will avoid paying something if you are sued. You probably will. Your goal is not to lose significant assets.

*Contributed by Ooi Hoay Beng, Business Development Director, The GCSL Group of Companies Limited
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FORMAL EMBARGO ON PROTECTED CELL COMPANIES AND SEGREGATED PORTFOLIO COMPANIES

On April 7, 2010 the Securities and Exchange Board of India issued revised instructions for filling FII and sub-account registration applications, which expressly prohibits use of entities set-up as Protected Cell Companies ("PCCs")/ Segregated Portfolio Companies ("SPCs") at any level for registration as a Foreign Institutional Investor ("FII") or its sub-account. Also, entities set-up as Multi Class Vehicles ("MCVs") shall qualify for registration only if certain stringent restrictions are complied with which *inter alia* include that common portfolios shall be allocated across various share classes and it shall be broad based or if portfolios are segregated for each distinct share class, then each such share class shall satisfy the broad based criteria. Further, issuance of any new class would require a prior SEBI approval. Though the instructions were applicable to applications filed with SEBI after April 7, 2010, later SEBI *vide* its circular dated April 15, 2010 provided for applicability of the instructions on existing FIIs and sub-accounts as well. As per the Circular even existing FIIs and sub-accounts are required to furnish declaration on or before September 30, 2010.

Entities structured as PCCs or SPCs are widely used forms of collective investment vehicles in several jurisdictions. PCCs/ SPCs are statutorily authorized to segregate their assets and liabilities into cells, whereas a MCV is a conventional entity having the flexibility to issue multiple classes of shares due to the powers granted in their constitutions. In the Indian context such collective investment vehicles are eligible for registration as broad based funds under the SEBI (Foreign Institutional Investor) Regulations, 1995, which require the applicant to have minimum of 20 investors, where each investor is not holding more than 49% investments.

Despite satisfying the broad based fund criteria at the entity level, the collective investment vehicle has flexibility to pursue dedicated investment strategies for identified investors, which in view of SEBI goes against the basic essence of a broad-based fund. Also, SEBI had expressed concerns for MCVs adding new classes of shares after seeking registration with SEBI and the possibility of misuse of such additional class of shares for round-tripping.

SEBI has always been apprehensive in granting registration to entities structured as PCCs and SPCs. The instructions and the Circular for the first time candidly communicates SEBI's stand on the granting registration to entities registered as PCCs/ SPCs and their apprehension on entities structured as MCVs. The key implications likely to surface are lack of flexibility for fund managers to dedicate separate class of shares pursuing different investment strategies for each investor, unless each scheme is broad based. Also, this may hamper the ability of fund managers to offer shares on a non-discretionary basis.

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OFFSHORE UPDATE



ANGUILLA: WHITE (LISTED) WE ARE...

This month, I shall allow The Anguillian Newspaper to do the talking in announcing:

ANGUILLA REMOVED FROM OECD BLACKLIST

Publishing date: 06.04.2010 11:25

Anguilla has been removed from a blacklist of countries considered uncooperative by the Organisation for Economic Cooperation and Development, OECD. This was announced in a Government press release issued on March 25.

The Paris-based international economic organisation maintains a 'blacklist' of countries it considers uncooperative in the drive for transparency of tax affairs and the effective exchange of information, officially called "The List of Uncooperative Tax Havens."

Anguilla's Chief Minister and Minister of Finance, the Hon. Hubert Hughes, who was recently in Brussels, signed two Tax Information Exchange Agreements, one each with Germany and Australia on March 19. Anguilla has now signed thirteen agreements which exceed the twelve required by the

deadline of March 31.

In its March 22, 2010 publication titled "Promoting Transparency and Exchange of Information for Tax Purposes", the OECD lists Anguilla as being among some 23 jurisdictions in the Caribbean and worldwide which have moved to the new category of jurisdictions having substantially implemented the standard in the Progress Report.

These policy changes, according to the publication, represent a very significant step towards a level playing field as regards the exchange of information for tax purposes. However, these must now be followed up with swift and consistent implementation, which the OECD and the Global Forum will review and closely monitor.

France has also drawn up its own tax haven blacklist of countries which it deems to have not complied adequately with international taxation and fiscal standards. Anguilla is currently on this list of 18 countries and efforts are already in progress by the Ministry of Finance to address this issue.

As a follow-up to that press release, the island's Governor, His Excellency Alistair Harrison, issued a statement in which he congratulated the Government of Anguilla for concluding the Tax Information Exchange Agreements (TIEAs) with two more countries, Australia and Germany. He noted that as a result of the total of thirteen TIEAs signed, Anguilla had now been placed on the OECD's 'white list' of jurisdictions that had substantially implemented internationally agreed tax standards.

The Governor said he was delighted by the conclusion of the TIEAs, which were signed by Chief Minister Hughes. He congratulated the present Government, the previous Government and all public officials and others who had worked hard to conclude the thirteen agreements in less than a year. He observed that getting Anguilla's name on the OECD white list was very important for the island's financial services. The Governor also welcomed the fact that the Government was ready to negotiate a TIEA with France.

Note: The correct term was "grey list" which was the list of jurisdictions that were neither on the "white list" nor on the list of uncooperative jurisdictions.

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BELIZE: TIEAs

As we are all aware, the world has now evolved into an environment of "sharing". It almost smacks of something from the kindergarten era ("I will share my toys with you, S H A R E, share!), but it is what it is.

The Belize Government has been doing its best in recent months to fill its quiver full of TIEArrows (my coinage, of course). In fact, within the last 5 weeks, the government has been on a rampage, signing TIEAs with Australia and Britain. There has also been progress made in terms of an approach made to the Nordic Alliance, a group of eight countries (Denmark, Sweden, Norway, Finland, Iceland, Greenland, the Åland Islands and the Faroe Islands) with a possibility of signing coming soon. Belize has also initiated such TIEAs with Ireland, Italy, Mexico and Aruba. Indeed, the Italian Minister for Economic Development, His Excellency Claudio Scajola, at the beginning of April, paid a visit to the country of Belize, with intent to publicly declare the mutual desire to deepen the existing friendship between Belize and Italy, and the desire to "exchange information".

We have a Bel-Can bridge (built by cooperation between Belize and Canada) and a Bel-China bridge (well, you get the idea). Do you think in the near future we will have a Bel-Ital bridge? I just don't know where they would put it.

As most of us tuned into the world of the fiduciary services global industry are aware, the Organization for Economic Cooperation and Development (OECD) has flexed its muscle and gained political influence, sufficient to force the hands of many non-member governments to enter into TIEAs with its member countries. It is no coincidence that this has come about by the support of the American government, as the OECD did not gain traction with the previous US administration, but has found a friend in the present one.

We have no qualms about people having to pay their taxes. That I think is a general sentiment that if there is a tax to pay, let it be paid. However, to paraphrase Adam Smith, author of the financial classic "The Wealth of Nations", it is a man's right to arrange his affairs in such a manner as to pay the least amount of tax possible. He doesn't advocate the shirking of the responsibility, only the avoidance of a more onerous tax burden.

The problem arises in the use of information, by governments, so as to target their subjects who pay taxes, but may have offshore structures set up primarily for the purpose of asset protection or passive investment. Those countries that do so operate on the premise that investment outside of their own country is a crime.

We applaud the exchange of information, but I reiterate that the danger in this situation is such that one may get drunk with such power, if one is in the business of collecting revenue (and by this comment I

cast no aspersions on the character of the fine folks at the Income Tax Department of Belize...truly a great bunch of people whose focus is only to make life easier for the taxpayer; a great rarity). Coming to my mind, whenever I reflect on this point, is the punch-line from the old Pirelli commercial "Power is nothing without control". Do you believe that once equipped with the information and resulting knowledge that comes directly from activity arising from the exchange of information, the governments will be lenient in their desire to collect tax dollars? The answer to that lies in history, and seeing that I never did that great in history in high school, I will leave you to be the judge.

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COOK ISLANDS: PENAL SANCTIONS UNLIKELY TO SUCCEED AGAINST A COOK ISLANDS TRUST

Although we have covered this subject before, it is worth repeating some interesting aspects to Cook Islands jurisprudence, at least with respect to enforcement action against a Cook Islands trust.

The Cook Islands is a stable democracy, independent since 1964. It is true that it was a pioneer in the area of asset protection trusts, but without a doubt its greatest strength is not so much its legislation but rather the judiciary whose responsibility it is to adjudicate on that law. The Cook Islands has had, and continues to have today, a judiciary which stands out amongst "offshore jurisdictions", particularly those jurisdictions whose legal systems are based on English common law. The Cook Islands have been most fortunate to have had a long line of highly regarded judges appointed from the New Zealand Bench, some of them heavyweights in their own right in the world of jurisprudence.

Certainly it is true to say that the Cook Islands, in the middle of the South Pacific, continues to "fight above its weight", a comment often used to describe the impact this tiny nation has made on the regional and international stage.

In the Asset protection world, there is very little to dispute the definitive interpretations given by the Cook Islands courts to date. It would be true to say that case law in the Cook Islands has defined the jurisdiction. Such case law allows for the rule of law to take precedence in a world which requires clarity and certainty. Where matters have come before the Cook Islands courts, the judgements that have been delivered are a testament to how a tiny nation can certainly mix it with the proverbial bigger boys.

Agencies from the United States have certainly had this experience in their attempts to attack trusts in the Cook Islands. It is now settled law that certain types of creditor are specifically excluded as a matter of "public policy" in the Cook Islands.

This specific exclusion came before the High Court of the Cook Islands in December 2001, (in United States of America on behalf of its agency the Federal Trade Commission vs. "A" Limited), when it was argued, that the courts have no jurisdiction to entertain an action:

1. for the enforcement either directly or indirectly of a penal revenue or other public law of a foreign state; or;
2. founded upon an act of state.

That case highlighted the common law Rule as set out by Lord Denning in the Ortiz case (1982) 3 All ER 432 at 457:

"Applied to our present problem a class of laws which will be enforced are those laws which are as exercised by the sovereign government of its sovereign authority over problems in this territory and over its subjects where ever they may be. But other laws will not be enforced. By international law every sovereign state has no sovereignty beyond its own frontier. The Courts of other countries will not allow it to go beyond the bounds. They will not enforce any of its laws which purport to exercise sovereignty beyond the limits of its authority."

The High Court of the Cook Islands ruled that the principle, which had been followed in England, Australia and New Zealand, also applied in the Cook Islands. It further found that the action being taken by the Federal Trade Commission was to enforce regulatory rights and powers which were, at least in part, penal provisions and so falls within the Rule. The proceedings filed by the Federal Trade Commission in an endeavour to have a trust's funds repatriated to the United States were accordingly struck out.

Thus a Cook Islands Trustee was able to repel the full might of the FTC, by relying on well established principles of common law. This was yet another case where the High Court entrenched the integrity of Cook Islands law, but it also illuminates the strength of those whose role it is to adjudicate upon its laws.

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On the 17th April 2010, Fomalo and Fono of behalf of GCSL Samoa attended the "Alofa Aitutaki Fundraiser" held to raise funds in support of those impacted by the recent tropical cyclone in the Cook Islands. (Our very own Tai Ngari from GCSL Cook Islands hails from Aitutaki). The theme was centered on Wearable Arts and seen here are some of the outfits showcased on the night. It was a well attended function by some of the dignitaries' in the Samoan community and included other Trustee Agents. Previously, the Cook Islands Community donated NZ30,000 to Red Cross Samoa to assist with the Tsunami recovery effort so this was an appropriate reciprocal effort for our Pacific neighbors. After all, this is the Pacific Way of reciprocity and GCSL was happy to be a part of these efforts.



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TIDBITS



OUR MONTHLY QUOTE THAT MADE US SMILE

"Every man is a damn fool for at least five minutes every day; wisdom consists in not exceeding the limit." - Elbert Hubbard, USA novelist

THANKS, MOM!

We recently read about the mother who called her adult son screaming his little boy had gone missing all in the name of an April Fool's Joke. Yes, folks, the kid was sitting with naughty grannie in her sitting room. Well, the joke worked, as good ole dad was arrested for speeding, running a red light, driving with a suspended license and speeding to avoid arrest. Thanks, Mom said the not-too-pleased son as he was carted away to prison!!!

"YOU SHOULD HAVE SEEN THE ONE THAT GOT AWAY!"

We smiled when reading about the crook in Germany who fell onto a display of fish hooks when trying to steal stuff from a store and was caught due to his inability to run with the lil buggers stuck in all parts of his body...some so deep he required surgery. Imagine the one that got away 😊

ANOTHER FISHY STORY

We were even more impressed by the Texas fella who placed a one-pound lead weight into a fish he caught during a tournament where he won a fishing boat worth US\$55,000...only to get caught, spend 15 days in jail, get five years probation and suspension of his fishing license. Forget about the ones that got away. Y'all better focus on the ones he caught!!!

SPA TREATMENT?

Yes, folks, spa treatments are no longer about a good ole fashion rub in a serene environment by a person with divine hands. Check out the following treatments offered at excessive prices at spa retreats around the world:

- * Israel - Snake massages
- * Hawaii - nightingale dung mixed with clay or bran to rejuvenate a tired complexion
- * London - Bull semen as key ingredient in a conditioning treatment
- * Japan - Swimming in ramen noodle soup, green tea, sake, coffee and wine