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issue thirteen

Sovereign

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Firstly, and most importantly, we would like to wish all our clients, friends and colleagues a very happy Christmas and a prosperous New Year. Chinese New Year in 2003 falls from 31st January to 3rd February, so Kung Hei Fat Choi for then. 2002 was the year of the horse and 2003 will be the year of the goat.

Once again we will not be sending out Christmas cards but, like last year, will be making donations to charity instead. This year we have concentrated our efforts on assisting with the Hong Kong Rugby Bali Fund which is a charity set up to help the families of the victims of the bombing in Bali.

Malta proposes redomiciliation

We are pleased to report that our Malta office, with help from our legal team in Gibraltar, put up draft legislation allowing for the redomiciliation of foreign companies into Malta. This was primarily done in response to the new legislation in Portugal, which imposes an annual tax on companies incorporated in blacklisted countries, which own property in Portugal. Nearly all offshore jurisdictions appear on that list so large numbers of existing companies are faced with having to pay this additional tax. As previously reported, Malta is the only offshore jurisdiction which is not on the Portuguese blacklist. The legislation passed into law at the beginning of this month and we have already begun processing applications to redomicile a number of offshore companies to Malta to avoid the penal tax in Portugal.

Isle of Man licence

In the last issue we forgot to tell you that, after some bureaucratic delay, we were issued with our Corporate Service Providers licence in the Isle of Man.

Sovereign in Switzerland

We have recently been advised that an operation which bears the “Sovereign” name in Switzerland was put into liquidation amid allegations of money laundering. We would like to make it absolutely clear that this organisation had nothing whatsoever to do with The Sovereign Group. We were aware of their existence because we recently had cause to write to them claiming that they were infringing our Swiss-registered trademark.

Pre-UK Budget announcement

We were expecting an announcement regarding changes to the taxation of non-UK domiciled individuals. There was no announcement. We are advised that changes to the legislation are still under consideration and that something may happen in the main budget in April. We continue to process applications for UK nationals living abroad that are claiming non-domiciled status. The most recent application we did took only two weeks to be answered in the positive and we have maintained our 100% success record. The advantages of non-domicile status for UK nationals are immense and we would urge any long term expatriates to give urgent consideration to making application while it is still possible. This really is a planning opportunity that is too good to miss.

chairman

Sovereign in Denmark

We have been advised that one of our main competitors in Denmark, Sheltons, have gone into liquidation which leaves us as one of the few organisations which specialise in setting up Danish holding companies. Danish holding companies are a viable alternative to the Dutch participation exemption regime, the UK holding company or the Spanish ETVE.

International Initiatives Affecting Financial Havens

If you want a thorough and up-to-date picture of how ongoing initiatives by organisations such as the OECD, FATF, IMF, US and EU are affecting offshore finance centres then I can do no better than recommend the second edition of "International Initiatives Affecting Financial Havens" written by our good friend Tim Bennett, LLB, LLM, TEP, Solicitor. Tim is one of the founder members of Sovereign Law which is an international organisation of independent law firms that adhere to the Sovereign standard and operate under the Sovereign Law name. Although the subject material could in no way be described as undemanding, Tim has done a great job in giving us a comprehensive overview in as light and intelligible a manner as possible. This is definitely recommended reading for those with an interest in the subject. See page 10 for more details.

howard bilton BA(Hons)
Barrister-at-Law (England, Wales & Gibraltar)
Chairman of The Sovereign Group

Bahamas to table new financial services legislation

The National Strategy on Financial Services gives priority to new legislation on mutual funds and e-commerce. The government is also to review the existing "Know-Your-Customer" legislation and, where necessary, will table relevant amendments.

This follows a ruling by the Bahamas Court of Appeal, which ordered the Supreme Court to hear a court challenge to legislation designating law firms as financial services institutions under anti-money laundering rules. This requires lawyers to submit to routine inspection of their offices and client lists.

Two lawyers, supported by the Bahamas Bar Association, launched a challenge in the Supreme Court last December. They argued that the legislation placed them in direct conflict with their duties to protect a clients' confidentiality and that eight pieces of anti-money laundering legislation passed last year are in breach of the Bahamas constitution.

A key feature of the new mutual funds legislation will be to establish a series of classes of funds – Standard, Authorised, Professional and SMART funds – subject to varying regulatory oversight based on defined risks. The SMART (Specific Mandate Alternative Regulatory Test) fund will be a flexible vehicle with limited, defined participants and a detailed business plan offering a fast-track licensing and limited direct regulation.

The legislative agenda for the first quarter of 2003 includes protected cell legislation, amendments to the Perpetuities Act, purpose trust legislation, foundations legislation and legislation to encourage capital markets transactions.

Sovereign comment

The new government entered power on a promise of assisting the financial services sector and is undertaking a thorough review of all relevant legislation to try and make Bahamas more user-friendly and, in some cases, to roll back previously enacted legislation. Bahamas has seen a marked drop off in new business so we hope that these new regulations will redress the problems. Our Bahamas office remains one of the more active operations on the islands and we are committed to further development there. Bahamas is a good jurisdiction for offshore services with virtually every major bank in the world represented on the islands, a host of fund managers and investment advisors, a good range of legal services, excellent communications and regular direct flights to a variety of major US cities and to London. In theory this should make the jurisdiction much more attractive than the relatively underdeveloped services available in competing Caribbean jurisdictions (perhaps with the exception of the Cayman Islands) so we believe that it is only policy failures which hold the Bahamas back. We will advise you on the new legislation as and when relevant.

US issues amended regulations for disclosure of tax shelter transactions

The Treasury Department and Internal Revenue Service released on 16 October amended regulations to strengthen the rules for the disclosure by taxpayers of their participation in potentially abusive tax avoidance transactions and the maintenance of lists by promoters of taxpayers who have entered into such transactions.

In March the Treasury released Enforcement Proposals for abusive tax avoidance transactions and in June issued temporary and proposed regulations implementing some of the regulatory proposal, including the proposal that individuals, partnerships, S corporations and trusts be required to disclose on their returns specifically identified tax avoidance transactions. The previous regulations applied only to corporations.

The proposed regulations will amend the existing temporary regulations and will generally apply to transactions entered into on or after 1 January 2003. The existing temporary regulations will continue to apply until that time.

Treasury Assistant Secretary for Tax Policy Pam Olson stated: "The amended regulations improve the rules requiring taxpayers to disclose potentially questionable transactions on their returns and requiring promoters to maintain customer lists for the same transactions."

Sovereign comment

The promotion of tax shelters in the US has been the big issue in recent months. The new regulations effectively close the door on structured finance transactions aimed at saving tax. Many tax professionals in the US have been extremely active in this area in recent years but the focus must now change to more traditional tax planning methods using well thought out offshore structures such as insurance, hybrid companies, rabbi trusts etc. Contrary to popular opinion it is still possible to plan effectively against US tax – particularly for US persons living abroad. We have particular expertise in this area so any US nationals who don't enjoy paying large amounts of tax should not hesitate to contact us.

BVI to impose restrictions on bearer shares

The BVI government is to restrict the transferability of bearer shares. An International Business Companies (Amendment) Act 2002 will provide that when bearer shares are issued they must be held by an approved custodian within a licensed financial institution and be subject to anti-money laundering and customer due diligence obligations.

The proposed legislation will allow a two-year transition period to facilitate the transfer of existing bearer shares from the old to the new regime and will provide for the Commission to apply to the court to wind up a company where a company still has bearer shares that are not held in accordance with the bill's provisions.

Details of IBC directors must be kept in the BVI at the registered office of the company but accessible exclusively to law enforcement and regulatory officials under relevant legislation or by court order.

Sovereign comment. Bearer shares, in our opinion, are a distraction and effectively useless. The requirement to deposit bearer shares with a licensed custodian means that they offer no greater confidentiality than registered shares, but do involve greater costs. We strongly recommend using registered shares only and this has been our stated position for some time. Those clients who are holding bearer shares in a BVI company (or any other offshore company for that matter) are strongly advised to contact us as soon as possible so that we can discuss alternative arrangements with them.

South Africa brings Financial Intelligence Centre Act into force

The Financial Intelligence Centre Act, gazetted in March, refers specifically to suspicious and unusual transactions that "may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy" imposed by the SA Revenue Service (SARS). A wide range of financial institutions and businesses including banks, finance houses, investment brokers, attorneys, estate agents, car dealers and small money lenders, will be compelled to report suspicious transactions and deposits and supply details of clients to the Financial Intelligence Centre. The centre will process and analyse information and pass on the results to investigating authorities, including SARS.

Under the Act, accountable institutions must: verify the identity of their clients or clients' agents and representatives; keep detailed record of transactions for at least five years after the business relationship with a client is terminated; allow officials or representatives of the Financial Intelligence Centre access without delay to client information and business records; and report to the centre suspicious or unusual transactions or deals about to take place, including money transfers abroad.

This may create problems for any South African investors with assets offshore. If they are in contravention of exchange controls and income tax regulations and, if SA regulatory authorities identify such assets, they could face criminal proceedings.

Unless government declares an amnesty on offshore money, taxpayers who have banked traveller's cheques in foreign accounts will be in contravention of exchange control regulations and also the recently introduced residence-based income tax laws.

If such money is brought back into South Africa without being disclosed it could be identified by the institutional mechanisms that are being put in place to enforce the new money laundering legislation. According to exchange control regulations, "the unspent portion of the overseas holiday or business allowance should have been changed back into SA rand and deposited into a local bank account".

Sovereign comment

For individuals who have left savings overseas after working there or who inherited money from relatives overseas and left it there, it would be appropriate to disclose the funds and pay any tax on the investment income earned. Failure to do so could amount to tax evasion. SA residents who have offshore trusts and companies should urgently look into the legitimacy of these structures. Trusts that were settled with funds originating from SA may have a tax problem, but trusts settled from funds originating overseas may be in the clear as exemptions could apply. It would appear that for the moment companies like Sovereign are not designated as "accountable institutions" under the Act, even though we do conduct local trust business, which would trigger accountability.

asia+ pacific

Hong Kong & Netherlands sign Mutual Legal Assistance Treaty

Hong Kong and the Netherlands signed an agreement to provide mutual legal assistance in criminal matters on 26 August 2002. It will enter into force on the first day of the second month after ratification by both governments.

Under the agreement both jurisdictions will assist each other's investigators in: identifying and locating persons; obtaining evidence; executing requests for search and seizure; ensuring the personal appearance of persons to act as witnesses; identifying, tracing, restraining, and confiscating proceeds of crime; and serving documents.

Sovereign comment. For some time it was rumoured that the Hong Kong authorities were negotiating a tax treaty with the Netherlands. It was thought that Hong Kong was attempting to negotiate an agreement whereby Hong Kong companies might be exempt from withholding tax on dividends paid by Netherlands companies thereby making Hong Kong a suitable jurisdiction through which to own the shares in Dutch participation exemption companies. At the time of writing we have not been able to ascertain whether negotiations for a tax treaty are ongoing but clearly some discussion has taken place and this MLAT has resulted.

Singapore moves to one-tier corporate tax system

With effect from 1 January 2003, a one-tier corporate taxation system will be adopted in place of the existing full imputation system. Corporate income will be taxed at the corporate level and this will be a final tax. Singapore dividends will be tax exempt.

The change, announced in the Budget speech on 3 May, will remove restrictions on the distribution of dividends from capital gains and will allow the unlimited flow-through of exempt dividends to all tiers of shareholders, regardless of shareholding level. Expenses incurred by shareholders will continue to be attributed to the exempt dividends received under the new system.

There will be a five-year transitional period to 31 December 2007 to allow companies with unused tax credits to remain on the old system. Other Budget measures include a reduction in the general corporate tax rate from 24.5% to 20% over three years and tax incentives for the asset management sector, mutual funds, derivatives market, equity capital market and insurance companies.

On 22 October, the government approved the recommendations put forward by the Company Legislation & Regulatory Framework Committee. Proposed changes include the introduction of limited partnerships and limited liability partnerships, and simplification of procedures for incorporating private companies.

Sovereign comment

For a long time Singapore has been a potentially interesting jurisdiction for tax planning purposes. It has a decent range of tax treaties and allows for the possibility of setting up companies which are not subject to Singapore tax. The problem has been that Singapore companies are extremely bureaucratic and expensive to operate so we have usually advised against using them. Hong Kong has always seemed a better alternative. These new changes may make Singapore much more user-friendly. The advantages of Singapore are that it is not a member of the OECD nor is it listed as a tax haven. But utilising the Singapore tax treaty network is not as easy as it seems. If profits are remitted to Singapore they are taxable at 26%. If profits are not remitted to Singapore they remain outside the scope of Singapore tax but most tax treaty partners require a certificate of tax residency before they will extend treaty benefits to the Singapore entity. Singapore will not usually issue the required certificate unless the company guarantees that it will remit profits to Singapore making the treaty network difficult to utilise effectively in a tax planning structure.

FATF removes Russia, Dominica, Niue & Marshall Islands from NCCT list

The FATF removed Russia, Dominica, Niue and the Marshall Islands from its list of Non-Cooperative Countries and Territories (NCCTs) in light of the progress they have made in improving their anti-money laundering systems. Russia, it said, had given strong assurances that it will bring to a completion this reform process and the implementation of its anti-money laundering framework.

But the FATF has also recommended that its 29 members impose counter-measures against Nigeria, unless it enacts legislation that significantly expands the scope of the 1995 Money Laundering Law, and the Ukraine, unless it enacts comprehensive legislation that meets international standards, as of 15 December 2002.

The current list of NCCTs is: Cook Islands, Egypt, Grenada, Guatemala, Indonesia, Myanmar, Nauru, Nigeria, Philippines, St Vincent and the Grenadines, and Ukraine.

The FATF called on members to update their advisories requesting that their financial institutions give special attention to businesses and transactions with persons, including companies and financial institutions, in listed countries or territories to take into account the changes in the list. It would, it said, continue to monitor developments in delisted jurisdictions and review the situation of each NCCT again at its plenary meeting in February.

The FATF said more than 120 countries had participated in the self-assessment exercise on terrorist financing to identify jurisdictions for priority technical assistance. In October 2001, the FATF took a leading role, in conjunction with the IMF, World Bank, and United Nations, in developing Eight Special Recommendations on Terrorist Financing.

Having endorsed the FATF's Forty and Eight Recommendations, the IMF, World Bank and the FATF have developed a common methodology to assess the countries in compliance with the FATF Recommendations. The FATF also said it would complete a review of its Forty Recommendations during the first half of 2003 and would then issue updated Recommendations.

Sovereign comment

We are seeing concrete evidence of the effect of being on the list of NCCTs. Banks around the world are now refusing to open accounts for any entities incorporated in an NCCT or any entity beneficially owned by a person from an NCCT. The pressure will continue to mount and it will become increasingly difficult for any resident of an NCCT country to participate in the world banking system. Our advice is to avoid doing business with or through an NCCT country where possible.

Guernsey court establishes significant new rights for beneficiaries

In Alan Stuart-Hutcheson v Spread Trustee Co. Ltd (2002) (Guernsey Court of Appeal), the applicant was a discretionary beneficiary of a settlement whose assets were mainly held through a company. The settlement held 50% of the shares in the company whilst the other 50% were held by a companion trust, under which the applicant was not a beneficiary.

The applicant sought to inspect the formal trust documents, the trust accounts, and the accounts and the minutes of the company. The Royal Court had held that he was not entitled to because rights of inspection were governed by section 22(1) of the Trusts Guernsey Law 1989 and the applicant, as a discretionary beneficiary of a settlement created before the law came into force, had no rights as Section 22(2) expressly precluded reliance on sub section 22(1) for such beneficiaries.

In reversing this decision, the Court of Appeal held that the basic duty of trustees is to account to beneficiaries and to be effective it must be possible to scrutinise what the trustees have done. It also took a realistic view of the underlying company. On the facts, the trustee company provided officers for both trusts and the company. The right to access the company accounts and minutes arose because these documents were in the hands of the trustees, as trustees of the trust, and thus the beneficiary could inspect them.

Sovereign comment

This is a slightly surprising decision. It is clear that the primary duty of the trustee is to protect and promote the interests of the beneficiaries (not to protect the settlor as many settlors assume) so enforcing the right of the beneficiary to examine trust documents to establish whether that duty has been correctly carried out or not is reasonable. What is surprising is that the court has given the beneficiary the right to look into documentation belonging to the company which was part owned by the trustees. Under normal commercial law it is only the directors and shareholders who would have access to corporate records and clearly the beneficiary is not a shareholder of the company.

Isle of Man directors settle breach of duty suit

Two Isle of Man directors paid nearly £3 million to settle an action case for breach of duty brought against them in the High Court by the liquidators of Asset Management Ltd (AML). AML was put into liquidation in 1992 at the request of the regulator. It's beneficial owner, Robert Shrubb, had been offering unlicensed investment and deposit services.

Shrubb was convicted in England for fraudulently using monies paid to the company to buy property, cars and boats. He was subsequently bankrupted. When his assets were recovered, AML was missing £2.6 million. During the period under investigation, John Solly and his wife, Alex, two of the directors of AML, had been the only signatories to the company's bank account, but had signed blank cheques drawn on the account which were sent to Shrubb, allowing him to withdraw the funds that went missing. The liquidators alleged that this was a serious breach of duty, which was compounded by their failure to keep any company records.

Sovereign comment. This is just another of the many recent cases which illustrates that directors will be held accountable for the actions of the companies which they purportedly control and manage. Corporate service providers should know the business of their clients and, if they provide directors, they must act like directors and control and manage the affairs of those client companies accurately and in full knowledge of what is going on.

EU threatens Swiss sanctions to save Savings Tax Directive

UK Chancellor Gordon Brown issued a guarantee to fellow EU finance ministers that Jersey, Guernsey and the Isle of Man, would fully participate in a new system of automatic exchange of banking information between countries – as will the Cayman Islands, Montserrat, the British Virgin Islands, Anguilla and the Turks & Caicos Islands. But Brown had to back down from his insistence that the Swiss would also have to exchange information or face EU sanctions.

Switzerland says it will levy a 35% "withholding tax" on the savings interest of non-residents and pass it on to the relevant tax authority – but under no circumstances will it exchange information about its bank customers. Brown has opposed the withholding tax option, insisting that: "A withholding tax on cross-border income flows will almost invariably result in the wrong amount of tax being paid, and in the wrong country".

And in November he threatened there would be sanctions if Switzerland – a key financial centre and crucial to effective action against tax evasion – did not agree to an information exchange system. EU Finance Ministers have also discussed the possibility of an EU-wide tax amnesty as a way of undermining Swiss banking secrecy.

After talks in Brussels on 3 December, the European Commission said it would continue negotiating with the Swiss, but Brown made it clear he was ready to settle for the Swiss agreeing to hand over 35% tax on savings interest accruing to EU citizens keeping money in Switzerland. Earlier Brown told the talks that Jersey, Guernsey, the Isle of Man and the UK's Caribbean Overseas Territories would apply automatic exchange of information at the same time as the EU member states, who are set to agree to implement the new rules by the start of 2011 at the latest.

Three member states – Luxembourg, Austria and Belgium – are opting to levy a withholding tax for a seven-year transition period from 1 January 2003 – but Luxembourg in particular is opposing a rate of anything above 20%.

Discussions are still ongoing with other key non-EU countries, including Monaco, Andorra, Liechtenstein and San Marino. EU finance ministers are now due to meet again before the end of the year in a bid to finalise the deal.

Sovereign comment

This proposal rumbles on. Clearly the Swiss are being put under intense pressure by the EU to agree to implement these proposals and are finding it increasingly difficult to resist. But the US also now seems reluctant to implement the automatic exchange of information. Comments made by former Treasury Secretary Paul O'Neill suggest that the US may not agree to the erosion of privacy, which this automatic exchange of information would bring. We are closely watching developments but at the moment it seems that this is far from being a done deal.

13 fiscal

Crown Dependencies sign Tax Information Exchange Agreements with US

Guernsey, Isle of Man and Jersey have each signed bilateral agreements with the US to provide for the exchange of information on tax matters. Based on the OECD's Model Tax Information Exchange Agreement, a request must be made on an individual case basis and the subject of the request must be under investigation in the requesting jurisdiction.

Other safeguards are included to prevent 'fishing expeditions' such as that the requesting party must first take all means available in its own jurisdiction to obtain the information. No information exchanged may be passed on to third parties and there are strict confidentiality measures. The Guernsey agreement was signed on 19 September, the Isle of Man agreement on 4 October and the Jersey agreement on 4 November. They will have effect from 1 January 2004 or sooner with respect to criminal tax matters and from 1 January 2006 with respect to all other tax matters.

Sovereign comment. These tax exchange agreements have largely removed any confidentiality that currently exists. The US has made it clear that it is determined to sign TEAs with all the major OFCs by the end of the next year. It can therefore obtain any information it requires about an offshore structure and then, potentially, may exchange that information with any of its treaty partners under the provisions of the exchange of information provisions in the relevant tax treaty.

Cyprus enacts a new Income Tax Law

The House of Representatives enacted a new Income Tax Law (No. N118 (I) 2002) on 1 July designed to comply with the OECD tax criteria and the EU Code of Conduct on business taxation. The main feature is the integration of corporation and withholding taxes with income tax on distributed profits.

The Law introduces a uniform corporation tax rate of 10%, payable by local and international business companies, as from 1 January 2003. The preferential tax rate of 4.25% for international business companies has been eliminated. Existing IBCs may opt to retain the 4.25% rate until 2005 provided income comes entirely from sources outside Cyprus.

This is combined with a 15% withholding tax on dividends paid to Cypriot tax residents, to give a total of 19.45%. Dividends paid to foreign corporations and foreign individuals are exempt from withholding tax.

The remittance-based system is replaced by a system of taxation of worldwide income for residents in Cyprus and of Cyprus-source income for non-residents. An individual will be deemed to be resident in Cyprus if he stays for more than 183 days in a calendar year. For companies, residence is deemed to be where management and control is based.

Companies registered in Cyprus but managed and controlled from abroad will only be taxed in Cyprus on their Cyprus-source income. They will enjoy exemption from tax of foreign dividends and interest and income from any permanent establishment abroad, as well as all foreign tax credits and offsets of losses incurred abroad. But they will not be entitled to benefits under double taxation treaties.

Sovereign comment

Cyprus is removing the distinction between "offshore" and onshore companies but, for most non-residents doing business through Cyprus, a low tax solution will still be offered and the new proposals are, hopefully, going to mean that the range of tax treaties signed by Cyprus will apply to all Cyprus entities. At present, some treaty partners specifically exclude offshore companies incorporated in Cyprus from gaining tax treaty benefit. In short, we believe that the new proposals will enhance the position in Cyprus as a leading OFC.

New acquisition strengthens Sovereign Asset Management

Sovereign Asset Management (SAM) has been further strengthened by the acquisition of specialist asset manager, Labrow International Asset Management Limited and the appointment of Christopher Labrow as its new managing director of the enlarged entity.

Established in Gibraltar in 1987, Labrow International specialises in advising clients on the bespoke management of assets by applying an independent, informed approach to client portfolios. Working in close co-operation with external investment managers, but imposing its own risk management and asset allocation criteria, it has substantially out performed more conventional 'managed' portfolios.

Christopher Labrow has gained over 30 years of experience in the investment field in a career that has embraced both institutional and private clients. He is a member of the Securities Institute and a fellow of the Pensions Management Institute in the UK, while in Gibraltar he is chairman of the Gibraltar Association of Stockbrokers & Investment Managers and sits on the Finance Centre Council.

He is also familiar with the creation and operation of mutual funds, having successfully developed a Guernsey fund management company that was eventually acquired by a leading UK stockbroker. Labrow International is currently manager to a number of funds with others in the pipeline.

SAM will be announcing several new initiatives over the coming months. The first of these, the Sovereign Enhanced Deposit Account, is seen as an important step forward in providing demonstrable added value to Sovereign clients.

Sovereign Enhanced Deposit Account

Given current market conditions and the simultaneous low interest rates, SAM has been reviewing bank deposit accounts to see how it can leverage the collective volume of Sovereign client money to improve both returns and terms. As a result, it has created the Sovereign Enhanced Deposit Account in conjunction with ABN AMRO Bank in Gibraltar.

This account retains all the safety of a major bank deposit and sets out to provide interest in excess of money market rates by employing various money market instruments and the expertise of the ABN AMRO treasury team in Luxembourg. All account holders, irrespective of the size of their balance, will receive the maximum interest rate.

Account-opening procedures for clients of The Sovereign Group are simplicity itself. There is no requirement for form filling, because ABN AMRO will rely on Sovereign's due diligence procedures.

Further key features of the Enhanced Deposit Account are:

- no requirement to set time deposit periods thereby reducing administration and decision taking and no missing of rollover dates;

> "The Sovereign Enhanced Deposit Account, is seen as an important step forward in providing demonstrable added value to Sovereign clients".

- no notice or charges for withdrawals of less than Euro250,000 or currency equivalent. For sums in excess of this, 30 days notice is required or, in emergencies, the client can elect to pay a 0.5% penalty in lieu;
- interest rates based on market rates are determined quarterly in arrears. Interest is accrued daily but credited semi-annually. An indicative rate is available on a daily basis.
- three currencies: US$, Euro and £ Sterling.

The 'Planetary Fund'

With many equity investors licking their wounds after nearly three years of disastrous markets, SAM is also excited to have discovered an investor who has managed to achieve success over the same period. A 20% return this year to date on a 'long only' equity portfolio when the major markets have gone in the opposite direction is compelling stuff. So who is this investor and how does he achieve his results?

Pierre Fabry, a somewhat unconventional character, has a close following. Born in Austria, he worked as a stockbroker in London where he managed several equity funds. After further spells in Monaco and Australia, he settled in Thailand some 20 years ago and has been based there ever since.

Numbered among his clients are several friends who approached Labrow International Asset Management Limited with a view to harnessing these qualities to the formal organisation of a fund. As a result we are pleased to announce the launch of Planetary Fund PLC, a Gibraltar-based and regulated fund with Labrow the appointed manager and Pierre Fabry acting as the investment advisor.

Planetary Fund will follow Fabry's highly successful investment formula of selecting companies that are undervalued, have good balance sheets and are likely to be successful in their business. Unlike most global funds, Planetary Fund will not be governed in its equity asset allocation by obsessive adherence to the geographical weightings of a benchmark index.

Target companies will primarily be medium-sized and a proportion will be operating in emerging markets. The fund will also be well diversified, aiming at around 100 holdings. Fabry is confident that the volatility of Planetary Fund will be substantially lower than most equity funds while the performance should be higher.

If the past results of Fabry's investment management are anything to go by this is precisely the type of fund that investors are looking for and, with prices significantly lower than even six months ago, the timing could not be better.

You can contact Christopher Labrow at Sovereign Asset Management Limited in Gibraltar using e-mail clabrow@SovereignGroup.com or through any Sovereign office.

Investors should be aware that past performance is no guarantee of future performance. The price of shares can move down as well as up and this may result in loss of capital. No investment should be made without reading the Fund Prospectus.

While the number of high/ultra high net worth individuals around the globe has risen dramatically in recent years, and led to parallel growth in the trust and company structures established in offshore havens, the last four years have cast the future of the world's offshore financial centres in the balance, as a result of a number of initiatives and reports published by supranational bodies and governmental organisations.

Tolley's International Initiatives Affecting Financial Havens is an essential handbook for all those working with (or from) offshore financial centres. The book analyses the recent reports and initiatives, providing the materials and commentary to enable professionals and practitioners to keep their existing client structures and relationships properly under review. The book identifies the changes that are under way, and will help professionals and practitioners to address and refocus their business strategies to take account of these changes. It is also an important tool for regulators and supervisory bodies, and for in-house compliance officers and legal or compliance departments.

Contact your most convenient Sovereign office for more details.

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Bahamas: Tennille Darville
Tel: +1 242 322 5444
Fax: +1 242 325 8445
bh@SovereignGroup.com

British Virgin Islands: Susannah Musgrove
Tel: +1 284 495 3232
Fax: +1 284 495 3230
bvi@SovereignGroup.com

Cyprus: Vassos Hadjivassiliou
Tel: +357 22676519
Fax: +357 22679079
cy@SovereignGroup.com

Denmark: Jan Eriksen
Tel: +45 44920127
Fax: +45 43690127
dk@SovereignGroup.com

Germany: Dr Norbert Buchbinder
Tel: +49 (0)911 92668–30
Fax: +49 (0)911 92668–39
de@SovereignGroup.com

Gibraltar: Stuart Stobie
Tel: +350 76173
Fax: +350 70158
gib@SovereignGroup.com

Sovereign Asset Management Ltd
Andrew Tucker
Tel: +350 41054
Fax: +350 41036
sam@SovereignGroup.com

Hodgson Bilton
John Hodgson
Tel: +350 76498
Fax: +350 76487
hb@SovereignGroup.com

R. A. Triay & Co.: Raymond A. Triay
Tel: +350 44610
Fax: +350 44193
rat@SovereignGroup.com

Hong Kong: Michael Foggo
Tel: +852 2542 1177
Fax: +852 2545 0550
hk@SovereignGroup.com

Isle of Man: Paul Brennock
Tel: +44 1624 699800
Fax: +44 1624 699801
iom@SovereignGroup.com

Malta: Mark Miggiani
Tel: +356 21 339 218
Fax: +356 21 322 531
ml@SovereignGroup.com

Mauritius: Ben Lim
Tel: +230 208 1747
Fax: +230 208 1736
mu@SovereignGroup.com

Netherlands: Susan Redelaar
Tel: +31 (0)20 330 4985
Fax: +31 (0)20 330 4896
nl@SovereignGroup.com

Portugal: Nigel Anteney-Hoare
Tel: +351 282 340480
Fax: +351 282 342259
port@SovereignGroup.com

South Africa, Cape Town: Timothy Mertens
Tel: +27 21 418 4237
Fax: +27 21 418 2196
sact@SovereignGroup.com

South Africa, Johannesburg: Paul Woods
Tel: +27 11 886 7728
Fax: +27 11 781 3083
sajb@SovereignGroup.com

Spain: Richard Melton
Tel: +34 952 764168
Fax: +34 952 825637
spain@SovereignGroup.com

Turks & Caicos Islands: Paul Winder
Tel: +1 649 946 2050
Fax: +1 649 946 1593
tci@SovereignGroup.com

United Arab Emirates: Kevin O'Farrell & Cecilia D'Cunha
Tel: +971 4 3976552
Fax: +971 4 3978355
dubai@SovereignGroup.com

United Kingdom: Simon Denton
Tel: +44 (0)20 7389 0555
Fax: +44 (0)20 7930 1151
uk@SovereignGroup.com

Sovereign Group Partners LLP
Gerry Scanlon, Neil Pidgeon & Hugh de Lusignan
Tel: +44 (0)20 7389 0655
Fax: +44 (0)20 7930 0502
capital@SovereignGroup.com

Sovereign Accounting Services
Stephen Barber
Tel: +44 (0)20 7389 0644
Fax: +44 (0)20 7930 4749
sas@SovereignGroup.com

United States of America: William H. Byrnes
Tel: +1 305 579 5344
Fax: +1 305 579 5345
usa@SovereignGroup.com

Sovereign Education
William H. Byrnes
Tel: +1 305 474 2468
Fax: +1 305 474 2469
edu@SovereignGroup.com

Uruguay: Walter Otero
Tel: +598-2 900 3081
Fax: +598-2 900 1932
uy@SovereignGroup.com

Gibraltar rejects UK proposals for joint sovereignty with Spain

A UK proposal to share sovereignty of the disputed colony with Spain was overwhelmingly rejected in a referendum on 7 November. Asked by the Gibraltar government to vote on whether they agreed in principle to joint sovereignty, almost 99% voted to reject the plan. The turnout was 88%. The UK and Spain insisted that no final deal had yet been struck and said they would not officially recognise the outcome of the referendum.

Gibraltar remains a crown colony but was granted partial self-government by the UK in 1964 and has exercised control over most internal matters since 1969. But even before the vote, UK government policy was criticised by the foreign affairs select committee, which said ministers were guilty of a "serious failure" by hiding their true plans when forming policy over Gibraltar. It also rejected Foreign Secretary Jack Straw's view that it was "eccentric" for the government of Gibraltar to hold its own referendum on joint sovereignty and said it was of "great importance" for overseas territories to decide themselves when they could express a democratic view and ministers should take full account of the result of the referendum.

After the referendum, the UK government said there were "real issues that can't be run away from and have to be discussed" but it added that no agreement would be imposed on the people of Gibraltar without their support.

Peter Caruana, Gibraltar's chief minister, claimed that the result of the referendum had sent talks between London and Madrid "into the long grass".

Sovereign comment

We have written much about the UK/Spain negotiations over Gibraltar in previous reports but it is still hard to understand what the UK is hoping to achieve. It was, and always has been, absolutely clear that the Gibraltar people would almost unanimously reject any proposal which ceded any part of its sovereignty to Spain. Despite this, the UK pressed ahead with talks with Spain and then indicated that it would put the question to a vote of the Gibraltar people. Gibraltar has pre-empted that vote and it is hard to see how those talks can now progress meaningfully. Whatever the outcome of these negotiations we would again stress that the future of the financial services industry is not in doubt. Under the joint sovereignty proposals, Gibraltar got more autonomy, not less, and the government has repeatedly stressed that the cornerstone of its economic policy is the success of financial services. Clients with Gibraltar structures need have no doubts about their security.

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EU select Cyprus and Malta

The European Commission recommended on 9 October that ten candidate countries, including Cyprus and Malta, would be ready to complete enlargement negotiations at the European Union's summit in Copenhagen in December. This was confirmed when Ireland ratified the Nice treaty at the second attempt.

The Commission said Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, would be ready to join the EU in 2004. But Turkey was excluded from the group because it failed to meet political and economic membership criteria. A candidate since 1999, Turkey has yet to be given a date for starting accession talks. The Commission said it would admit Cyprus even if the island was still divided.

Sovereign comment. Some time ago Malta revised its tax laws to remove the old "offshore" company. Cyprus is currently mending its own tax system in preparation for EU entry – see *Fiscal News*. Both jurisdictions still provide good opportunities for tax planning but they are no longer considered as tax havens. Rather they are low tax jurisdictions or even onshore jurisdictions with low tax possibilities. Malta, in particular, as has been explained in earlier editions of the *Report*, is now the best jurisdiction through which to own Portuguese property. Malta and Portugal have recently signed a new tax treaty and Malta is one of the few "OFCs" which does not appear on the Portuguese blacklist.

Jersey and Isle of Man move on companies legislation

The Companies (Amendment No. 6) Law 2002, which provides for four new types of capital class and the redomiciliation of companies, was brought into force on 1 September. The amendment extends incorporation to companies with no par value share capital, guarantee companies, unlimited liability companies and single member companies. Previously the only type of company that could be incorporated in Jersey was a company with par value share capital, whose members had limited liability through holding shares.

The amendment also introduces provisions that allow a company incorporated in another jurisdiction to apply to continue in existence as a Jersey company, or for a Jersey company to re-domicile to another jurisdiction. Previously, a foreign company had to be liquidated before it could transfer its assets and liabilities to a new company incorporated in Jersey.

The Isle of Man Financial Supervision Commission has issued a consultative paper on a Companies, etc. (Amendment) Bill. The proposed Bill includes new measures covering: corporate governance; use of company names; prohibition of bearer shares; annual return requirements for companies limited by guarantee both with or without share capital; disclosure of information on company directors; procedural requirements for dissolving solvent companies; registration of foreign companies; and requirements for foreign companies to make an annual declaration and to disclose information about directors.

Sovereign comment

Most Jersey professionals have previously advised clients to incorporate in BVI or other more user-friendly jurisdictions. Jersey companies have become expensive and cumbersome to administer so these new proposals may mark a change of direction in the attitude of Jersey professionals. For our part we generally advise that the Isle of Man offers all the advantages of Jersey, and more, but at a lower price.

The proposed amendments to the Isle of Man's Companies Act are at an early stage. Our office will be watching developments closely and will advise clients if and when any of the new proposals make it into law and are likely to effect Isle of Man structures.

Editor: Christopher Owen
Publisher: Kamilian Limited
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