31
issue thirty-one
december 2008

report

Bahamas British Virgin Islands China Cyprus Denmark Dubai Gibraltar Hong Kong
Isle of Man Malta Mauritius The Netherlands Netherlands Antilles Portugal Seychelles
Singapore South Africa Switzerland Turks & Caicos Islands United Kingdom Uruguay

contents

introduction 3

4 european news

6 usa + caribbean news

7 asia + pacific news

10 fiscal news

12 legal news

13 profile: **OECD expands tax information exchange**

14 contact + info

Editor Christopher Owen
Design Alan Pitchforth
Publisher Kamilian Limited
enquiries@kamilian.com
www.kamilian.com
Printer Pioneer Printers Limited
www.pioneerprinter.com

© The Sovereign Group 2008

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of The Sovereign Group.

The information provided in this report does not constitute advice and no responsibility will be accepted for any loss occasioned directly or indirectly as a result of persons acting, or refraining from acting, wholly or partially in reliance upon it.

Sovereign Trust (Bahamas) Limited is licensed as a Financial Corporate Service Provider – Licence No: 153 / File No. 157.

Sovereign Trust (Gibraltar) Limited is licensed by the Financial Services Commission of Gibraltar – Licence No: FSC 00143B.

Sovereign Asset Management Limited is authorised by the Financial Services Commission of Gibraltar to conduct investment business.

Sovereign Insurance Services Limited is authorised by the Financial Services Commission of Gibraltar as a general and life insurance intermediary.

Sovereign Trust (Isle of Man) Limited is licensed by the Isle of Man Financial Supervision Commission as a Corporate Service Provider (Licence No. 43,215) and as a Trust Service Provider (Licence No. 43,521).

Sovereign Trust (Malta) Limited is authorised to act as a Licensed Nominee.

Sovereign Trust (Mauritius) Limited is licensed as a Management Company – Management Licence No. MOBAA/6831.

Sovereign Trust (Netherlands) BV is licensed as a Trust Company by the Dutch National Bank – Licence No. 34108349.

Sovereign Trust (TCI) Limited is licensed by the Financial Services Commission of the Turks & Caicos Islands – Licence No: 029.

Sovereign Group Partners LLP is regulated by the FSA – No. 208261.

The Sovereign Art Prizes

The 2008 Sovereign European Art Prize was won by Berlin-based British artist Nadia Hebson. The quality of all the submissions was exceptionally high, but she was the judges' unanimous choice to win the €25,000 first prize. Her elegantly melancholic painting of a sinking ship, 'Valzer', also seems an especially fitting image for the current economic turmoil!

Meanwhile the 2008 Sovereign Asian Art Prize was won by Hong Kong-based Chow Chun Fai for 'Once A Thief – "Any self-respecting thief would be proud to steal this painting"'. Receiving the US$25,000 cash prize from the Foundation was a tribute to his persistence, after being previously selected as a finalist in 2004, 2005 and 2006.

The public vote prizes – collected both from the exhibition and online – were won by in Europe by Doug Fishbone with 'Untitled (Banana Project)' and in Asia by Mor Mor, from Myanmar, for her painting, 'Next'.

The exhibitions for the 30 finalists in the respective competitions were staged at Somerset House in London and at the Grand Hyatt Hotel in Hong Kong and all the works, except for the winning entries, were auctioned in association with Sotheby's with the proceeds being split 50:50 between the artists and the Sovereign Art Foundation.

This year the Foundation will be using the proceeds of the auctions to support Kids Co, a charity that provides invaluable support to London's vulnerable inner-city young people, and to fund the first International Artist's Residency Programme in Hong Kong set up by Asia Art Archives. The Foundation will also fund other charitable arts related programmes in both regions. In total, the Foundation has now raised over US$1.5 million.

We would like to thank all our sponsors, patrons, judges and artists for making this year's prizes so memorable. But most of all we would like to thank everyone who supported the Foundation by bidding for the paintings, coming to the exhibitions or by voting online. To view the works online or to find out more about the prizes and the Foundation, log on to the website at www.SovereignArtFoundation.com.

chairman

Banking secrecy?

It's an old theme of ours, but recent events have again illustrated why banking secrecy no longer exists. Various governments around the world have paid for information stolen from a Liechtenstein bank and executives of UBS have been arrested in the US and charged with assisting US nationals with tax evasion.

If it wasn't already crystal clear that revenue authorities will find ways to obtain information about taxpayers who 'fail' to declare their assets, then it should be now. But it is possible to use compliant and legal structures to achieve substantial tax savings without breaking the law. It may be a little more expensive than simply opening an offshore account but it should help you sleep better at night.

Sovereign Asset Management

We are pleased to announce the appointment of Paul Giles as a new member of the board of SAM. Chris Labrow remains as non-executive chairman and will continue to be involved, but is now enjoying a well-earned retirement. Paul brings a wealth – and I use that word advisedly – of experience in managing the assets of high net worth clients in a demanding environment. He believes in maintaining close contact with clients and colleagues alike, and he will be a regular visitor to many of our offices.

Paul's focus will be on creating opportunities in difficult markets as the credit crunch continues to bite and as we see the number of bank failures rise around the world. SAM can help. By careful selection and monitoring of the best banks – a service offered at no charge to SAM clients – SAM can help you spread your risk and avoid such problems.

Howard Bilton BA(Hons)
Barrister-at-Law (England, Wales & Gibraltar)
Professor of Law, St. Thomas School of Law, Miami, USA
Chairman of The Sovereign Group

UK Pre-Budget Report announces offshore centre review

The 2008 UK Pre-Budget Report, issued on 24 November 2008, announced a review into the long-term opportunities and challenges for the UK's crown dependencies and overseas territories as offshore financial centres.

The review will cover: financial supervision and transparency; fiscal arrangements; financial crisis management and resolution arrangements; and international cooperation. The review will not consider changes to the UK's constitutional relationship. Interim conclusions will be produced for Budget 2009, with fuller conclusions later in the year.

The UK government subsequently announced that the review would be headed by Michael Foot, who, after a 20-year career at the Bank of England and the UK Financial Services Authority (FSA), was Inspector of Banks & Trust Companies at the Central Bank of The Bahamas from 2004 to 2007.

Only those Crown Dependencies and Overseas Territories with significant financial sectors are included in the scope of the review. These are: Jersey, Guernsey, Isle of Man, Bermuda, Cayman Islands, Gibraltar, Turks & Caicos Islands, British Virgin Islands and Anguilla.

Paul Myners, the UK Financial Services Secretary, said: "I welcome the appointment of Michael Foot who brings significant experience in financial regulation to this task. Offshore financial centres must play a responsible role in the global financial system. This review will take a serious and constructive look at the challenges these centres face in the current economic climate, and how they can best respond to these."

The Pre-Budget Report also included provisions to reduce the VAT rate from 17.5% to 15% through to the end of 2009, to limit personal income tax allowance for those with income above £100,000, and to create a new 45% top income tax rate as of April 2011.

The government further announced corporate tax reforms to make the UK a more attractive location for multi-national business. It will bring forward a package of reforms to the taxation of foreign profits in Finance Bill 2009 to deliver an exemption from tax for most foreign dividends received by large and medium-sized groups, regardless of the level of shareholding. It will also continue to examine options for reform of the CFC rules. This represents a clear move towards a territorial approach to taxing foreign subsidiaries so that a new CFC system should not tax profits that are genuinely earned in overseas subsidiaries. There will be continued consultation through 2009.

31 europe

Portuguese civil companies

Following the municipal tax increases imposed on corporate held offshore property in Portugal during the period 2002 to 2004, there was a rush to alter the characteristics of those companies listed on the Portuguese Finance Ministry "blacklist" in order to avoid the penalty taxes.

Following advice given by Sovereign, many clients opted to re-domicile their companies to non-blacklisted jurisdictions, such as Malta or Delaware. We believe that this was the correct move because it left title to the property unaltered, continuing to provide the benefits of corporate ownership but avoiding the higher tax cost.

Some Portuguese advisors recommended transforming blacklisted companies into so-called Portuguese "nominee" companies, companies formed for non-commercial purposes under the Portuguese Civil Code. The selling point was that they were "cheap and easy to run" but, as many have subsequently found, the lack of registration of ownership makes it impossible to perform due diligence searches on transfer. For this reason many such owners have been obliged to transform their "nominee" companies into Portuguese limited companies simply to satisfy a buyer.

Sovereign Comment

Looking at Portuguese nominee companies in more detail, it is Sovereign's view and that of Portuguese lawyers whose advice we have obtained, that it is not permitted to transform a commercial company into a civil form under Portuguese corporate law. Thus any commercial companies that have been brought to Portugal and converted to civil form could be illegal. Our advice is to treat any such recommendation with great care and consult a lawyer before committing to such a move.

WPP to quit UK for Ireland

WPP, the world's second-biggest advertising and marketing group, confirmed on 29 September 2008 that it plans to redomicile its official headquarters from the UK to Ireland because of planned tax changes on foreign earnings under the UK tax regime.

"The board of WPP believes that the most appropriate structure ... is to introduce a new Jersey incorporated parent company for the WPP Group, that will be tax resident in the Republic of Ireland," the company said.

The UK's "controlled foreign companies" (CFC) rules have been tightened in successive Budgets, and this has curtailed the ability of companies to effect international tax planning. Ireland has no CFC rules.

There is also a fear that the UK's CFC rules will become even tougher. This prospect was raised by a Treasury consultation, launched last year, on how to reform the taxation of foreign profits. After an outcry, it told businesses in July that it had dropped proposals to sweep all their overseas income relating to intellectual property into the UK tax net through a new "controlled companies" regime.

WPP is the fourth major UK company to redomicile its headquarters to Ireland this year, following asset manager Henderson Global Investors, media group United Business Media and Shire, the pharmaceutical giant. Historically, the UK won more than 40% of headquarters investment in Europe; last year it fell to 30%.

Sovereign Comment

Naturally these high profile cases are highlighted in the press and it is to be hoped that the UK government will act (see story above) in order to prevent a trickle of large companies considering re-locating to Ireland and elsewhere from becoming a flood. Not only does the UK lose vital corporate tax income, but relocation of staff and such, also reduces the tax take at a time when the exchequer needs to maximise its income given high government spending at a time of financial uncertainty. UK corporation tax and the VAT regime is however a complex area and clients still considering setting up in the UK should obtain solid, meaningful advice beforehand. Stephen Barber, Sovereign's Group Tax Manager is based at our London office. Contact should be established at the earliest opportunity by e-mail to sas@SovereignGroup.com.

New Guernsey Companies Law comes into force

The new Companies (Guernsey) Law was brought into force on 1 July 2008, the. The Law consolidates existing company legislation and introduces substantial changes following consultation within Guernsey and consideration of the development of company law in other jurisdictions, including New Zealand, Jersey, the Isle of Man, the Cayman Islands and the UK.

The key changes include streamlining the incorporation process through the new Companies Registry. The requirement for advocates to incorporate companies is removed. Company formation agents are to be designated Corporate Service Providers (CSP) and must be licensed by the Guernsey Financial Services Commission. The "pre-vetting" regime of the beneficial ownership and objects of a company prior to incorporation is to be abolished. Guernsey companies must instead have a Resident Agent in Guernsey, either a CSP or a locally resident director, who must determine the beneficial ownership.

The incorporation process is simplified by the creation of standardised articles of incorporation that apply unless the company specifically chooses to adopt different articles. Single member companies are permitted. A company has unlimited objects as a default position unless it elects specifically to limit its objects.

Options are available under the new Companies Law to convert, amalgamate and migrate companies. Companies can be converted quickly from one type of company to another in a single process. Members may also, by resolution, waive the requirement to hold an annual general meeting.

The Law will also introduce the UK concept of a "shadow director" – a person who is not a director but whose directions or instructions the directors of a company are accustomed to follow and who is treated as a director for certain purposes under the Law.

Sovereign Comment
We reported on these possible changes in the last issue of Sovereign Report. It is reassuring to note that in bringing in these changes, the Guernsey authorities have listened to the industry's concerns and acted upon them. These amendments should help to consolidate the island's position as one of the blue chip international finance centres.

Guernsey already has impressive legislation in several related areas, notably QROPS, that allows for the transfer of UK pensions abroad for non-UK residents. For further information on Guernsey, including comparing options with nearby Jersey, contact our Channel Island team on Guernsey@SovereignGroup.com.

Since 1856, we have focused on bringing new perspectives to our clients. Understanding the past, but shaped by the future. Always looking at opportunities and challenges from a different point of view. Bringing together new partners to achieve results that can make the difference for our clients. Because our sole ambition is to turn your vision into a reality.
www.credit-suisse.com

Thinking New Perspectives.

Netherlands Antilles protests inclusion on EU “tax haven” lists

State Secretary of Finance of the Netherlands Antilles, Alex Rosaria, wrote to the Tax Directorate of the European Commission (EC) on 11 August 2008 seeking the removal of the Netherlands Antilles from the “tax haven” lists of various EU member states.

The letter was a follow-up to a meeting between Rosaria and representatives of the EC earlier this year. Among others, Portugal, Poland, Greece and Italy consider the Netherlands Antilles as a tax haven and have included the Netherlands Antilles on their “blacklists”.

According to Rosaria, the Netherlands Antilles is committed to providing supervision in line with international standards to protect the consumer and is a complying member of various international organisations such as the OECD, the Egmont Group, the Financial Action Task Force (FATF) and the Caribbean Financial Action Task Force (CFATF).

Rosaria said: “Any reference to us being a ‘tax haven’ is totally misguided, contradictory and unjust. If we were a tax haven Spain would not have concluded a Tax Information Exchange Treaty with us in June 2008”.

“The EC claims it cannot intervene on our behalf to correct the above mentioned unjust inclusion on blacklists of some EU members because EU Members are autonomous in their tax matters. This statement seems very curious especially when we note that in the case of imposing actions to promote what the EU calls good tax governance the EC does have the authority to act on behalf of the EU Members”.

Rosaria said that he expects the elimination of the Netherlands Antilles from EU black lists. “The EC must understand that we demand a level playing field, that we can not be held to higher standards than is demanded of other OECD Member and especially that I must do everything in my power to guard our international financial services industry from further erosion. Black listing seriously undermines the competitiveness of the Netherlands Antilles’ financial services sector and consequently the well-being of our people,” he said.

Sovereign Comment
The Netherlands Antilles has recently concluded a wide-ranging TIEA with Spain. It is interesting to note that it is now using this accord to bring pressure to bear on the EU and its Member States for its removal from other blacklists and developments are awaited. Netherlands Antilles’ legislation allows for innovative, robust tax planning opportunities at relatively modest cost. And given the islands’ location, structures can be established that are particularly useful for trading businesses active between Europe and Central and South America. Sovereign has a full office in Willemstad and clients interested in the advantages of using this jurisdiction should contact our office – details are to be found on the contacts page of this Report.

31 usa + caribbean

Cayman hedge funds rise to over 10,000

The number of hedge funds registered in the Cayman Islands exceeded 10,000 in June for the first time, according to figures released by the Cayman Islands Monetary Authority (CIMA) on 28 July 2008. At the end of June, there were 10,037 active hedge funds and fund-of-hedge-funds registered, up from 9,413 at the end of 2007.

About 10% of the increase was driven by so-called vulture funds – funds formed to buy securities and assets at bargain basement rates, a trend emerging from the ashes of the subprime mortgage meltdown in the US. In the first six months of this year, 100 new funds were registered in the Caymans with terms such as "distressed debt" and "special opportunity" included in their titles.

US and European hedge funds register in the Cayman Islands to attract global investors, as it is often more tax efficient for them to invest through offshore locations than to invest directly in a domestic hedge fund.

Cayman's nearest offshore competitor, the British Virgin Islands, has less than a third of the number of hedge funds.

Sovereign Comment
Perhaps of most interest is the fact that Cayman continues to attract fund establishment and on-going administration in such an impressive way despite the global downturn. This is a testament to the available infrastructure and unrivalled knowledge base. It can justifiably boast of a world-class local industry where many blue chip law firms, bankers and other professionals are represented. Sovereign is developing ever closer links in Cayman and further details will be announced in future editions.

IRS to tighten Qualified Intermediary programme

The Internal Revenue Service issued new rules, on 13 October 2008, to tighten up its Qualified Intermediary (QI) programme that allows participating foreign banks to withhold tax overseas on behalf of US clients without disclosing their names to the IRS.

More than 7,000 foreign banks participate in the QI programme, which was established in 2001, but it came under scrutiny as part of a US inquiry into the Swiss bank UBS, which has been accused of deliberately selling US clients “undeclared” offshore banking services.

Under the new rules, which will go into effect in 2010, banks in the QI programme will be required to determine whether US investors are behind foreign accounts they set up and to alert the IRS to any potential fraud that they detect, whether through their own internal controls, complaints from employees or investigations by regulators.

The IRS will also begin auditing small samples of individual bank accounts in the QI programme to determine whether US investors actually control foreign entities set up by the banks. Banks using foreign-based external auditors, including foreign branches of US auditors, will have to work with an US auditor, which in turn will accept joint responsibility for the audit.

UBS's violations of the QI programme were brought to light in testimony from Bradley Birkenfeld, a former UBS private banker who pleaded guilty to helping a US billionaire evade $7.2 million in taxes by hiding $200 million overseas. At his criminal hearing in the US District Court for the Southern District of Florida on 19 June, Birkenfeld said UBS had approximately $20 billion of assets under management in "undeclared" accounts for US taxpayers. To help US clients hide those assets, UBS employees created sham offshore entities and then completed IRS forms that falsely claimed that the offshore entities owned the accounts, Birkenfeld said.

Birkenfeld also provided US investigators with a letter UBS sent to its US clients after the bank's 2001 entry into the QI programme. The letter assured clients who did not want to provide forms identifying themselves as US account holders that they would continue to remain anonymous.

Hong Kong urged to adopt exchange of information

Hong Kong should move towards a more liberal exchange of information provision in order to secure a more comprehensive tax treaty network, according to a report by accountant KPMG published on 4 August 2008.

"The government has announced its intention to enter into CDTAs with Hong Kong's major trading partners, but so far we have only concluded three CDTAs with Belgium, Thailand and China, and have signed a CDTA with Luxembourg which is awaiting ratification," said Ayesha Macpherson, a tax partner at KPMG China.

"Hong Kong is currently adopting the Exchange of Information (EOI) clause based on the 1995 version of the model tax convention of the OECD. As a result, Hong Kong may face some difficulties during CDTA negotiations with OECD member countries which have adopted the 2004 version of EOI clause."

According to the report, the EOI clause in the OECD 2004 version stipulates that domestic tax interest requirements cannot hinder the exchange of information. Hong Kong cannot adopt this version without amending its legislation to expand the information seeking power of Hong Kong's Inland Revenue Department (IRD) to allow it to gather information requested by a DTA party solely for exchange purposes.

"A CDTA network would clearly enhance Hong Kong's position as an international and regional business centre. A reason commonly cited by multinationals for selecting Singapore over Hong Kong for the establishment of regional operations is Hong Kong's lack of a CDTA network," said Macpherson.

She also believes that an effective CDTA network is all the more important if Hong Kong is to capitalise on the mainland's outbound investments. The mainland currently has more than 80 CDTAs and, if Hong Kong is to establish itself as a wealth management centre for mainland's global investments, activities or income routed via Hong Kong must be entitled to at least the same, if not additional, tax benefits.

Sovereign Comment
For many years, we have been establishing companies in Hong Kong for international clients precisely because it does not normally feature on the usual lists of “offshore tax havens”. Over many decades, it has become an established international finance centre in its own right and it is vitally important that Hong Kong’s reputation continues to develop in this way. The ever increasing focus on inward investment into China means that Hong Kong will want to avoid any international concern that she is seen as being “unco-operative”. This story is therefore of some concern and developments in this area will be communicated in future editions.

The Seychelles updates Mutual Funds legislation

The Central Bank of the Seychelles said, on 8 July 2008, that the Mutual Fund Act had been redrafted to plug the gaps in the previous legislation and allow local financial service providers to tap into the multi-trillion dollar mutual funds industry.

“The original legislation came into force in 1997 when the whole of Seychelles’ financial services sector was in its infancy,’ said Conrad Benoiton, Director General of the Central Bank’s recently created Securities and Financial Markets division.

“Since then the industry has become far more advanced and sophisticated and it is essential that our legislation caters for these developments and allows us to keep pace with other jurisdictions around the world.”

The redrafted legislation has extended the powers of the regulator by providing it with new rights to request periodical audits and request information for inspection. It also grants the regulator powers to enter, search and take copies from premises of any licensed operations, thereby guaranteeing compatibility with international standards.

“The global mutual funds industry is worth trillions of dollars and, as Seychelles’ financial services sector continues to develop, it is essential that we position ourselves to access this industry,” said Benoiton in a statement.

The redrawn legislation will also allow expatriate employment levels of up to 50%, replicating existing regulations for the offshore sector. Increasing international concerns over money laundering and terrorism funding has led to additional security measures being introduced into the new legislation.

Sovereign Comment
Seychelles continues to build an international reputation and it is pleasing to see these developments concerning mutual funds although there is a long way to go (see separate report on the Cayman Islands on page 6). We are confident that Seychelles has a bright future and have recently opened an office in the jurisdiction. Please contact our Seychelles office for further information.

New Dubai property registration law to curb speculation

Dubai issued, on 26 August 2008, a new law to regulate the sale of real estate still under construction in an effort to curb speculation that has sent property prices in the emirate skyrocketing.

Under the law, sales of off-plan properties in Dubai must be registered with the Land Department before they can be resold, said Marwan bin Ghalita, chief executive of the Dubai Real Estate Regulatory Authority (RERA). The information must include the identity of the owner and seller, the value of the property, its location, the mortgage arrangement, the payment history and applicable fees. Sales that have not been registered at the Land Department will be considered void.

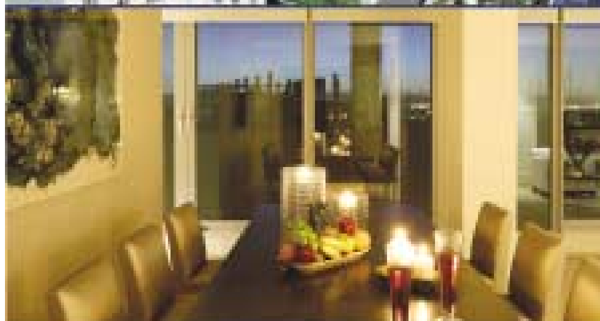
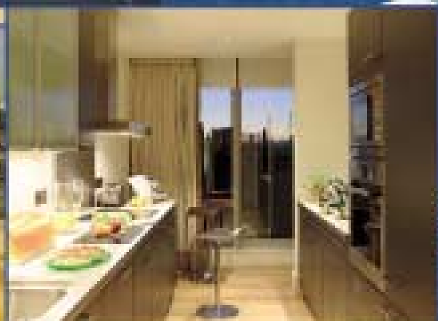
Standard Chartered Bank warned in July that Dubai’s property market showed signs of overheating as speculators betting on quick gains inflate prices of units still under construction. Dubai property prices have surged 79 per cent since the beginning of 2007.

The bank recommended imposing a gains tax on properties in Dubai that were sold within 12 months of their purchase and the regulation of payment plans offered by developers in order to prevent the property market overheating.

Demand for real estate in Dubai has surged since the government first allowed foreigners to invest in properties in 2002. In 2006, the government passed a freehold property law granting foreigners the right to own properties at selected developments.

The new off-plan law, which follows the issuance of mortgage law last week, will also prevent master and sub-developers from charging transfer fees on off-plan sales.

Non-domiciles Delight... ...Sunshine Attached

The Crown Colony of Gibraltar offers one of the best relocation solutions for non-domiciles under tax threat in the UK.

Designer Gibraltar

- Excellent Tax residency scheme for qualifying individuals
- Comparatively low stamp duty (2.1%) and lower buy in costs
- Proven capital growth and excellent rental returns driven by a thriving business and international gaming centre
- No capital gains tax
- No inheritance tax
- UK law and English language administration
- Land linked to Spain, international airport
- Warm all year round Southern Mediterranean climate
- Secure environment
- Limited inventory with proper planning controls

TAKE A CLOSER LOOK

- A few remaining luxury 3 bedroom apartments
- Beautiful Marina facing living space with copious light Stunning Glass Tower flagship highly successful development, 98% sold
- Dual aspect... Marina and Rock views
- Beautiful interior finishes
- Poggenpohl kitchen, wooden floors

Prices from £675,000

Contact +350 200 78780
or info@gi.taylorwimpey.com

Sarkozy targets "tax havens" for global financial crisis summit

US President George Bush, French President Nicolas Sarkozy and European Commission President Jose Barroso announced, in a joint statement following a meeting at the Camp David presidential retreat on 18 October 2008, plans for a series of summits to discuss the global financial crisis.

The first summit will be held in the US sometime after November's presidential election and will seek to "review progress being made to address the current crisis and to seek agreement on principles of reform needed to avoid a repetition," said a joint statement. There would be later summits "designed to implement agreement on specific steps to be taken to meet those principles".

President Bush said: "Together we will work to modernise and strengthen our nations' financial systems so we can help ensure this crisis doesn't happen again." But he asserted that any plan to re-think the mechanisms of the global financial system could not be allowed to undermine the free market. "It is essential that we preserve the foundations of democratic capitalism - a commitment to free markets, free enterprise and free trade," he said.

Differences in their approach, however, are already apparent. Sarkozy and Barraso are pressing Bush for a G8 agenda that includes stiffer regulation and supervision for cross-border banks, a global "early warning" system and an overhaul of the International Monetary Fund.

Talks may also encompass tougher regulations on hedge funds, new rules for credit-rating companies, limits on executive pay and changing the treatment of tax havens. Sarkozy said the crisis could offer a "great opportunity" to build the capitalism of the future and leave behind the "hateful practices" of the past.

Sarkozy said the hedge funds, tax havens and financial institutions operating without supervision should all be re-thought. "This is no longer acceptable," he added. "This sort of capitalism is a betrayal of the sort of capitalism we believe in."

Speaking before the meeting the French leader said. "Will we continue to work with tax havens? It's a valid question. We've passed into a new era. It's a question we'll put on the table and immediately."

A global summit would echo the Bretton Woods conference after World War II at which world leaders agreed to establish the International Monetary Fund and the International Bank for Reconstruction and Development, the original institution of the World Bank Group, in an effort to prevent a repeat of the depression of the 1930s.

31 fiscal

OECD to speed up Model Treaty revision process

The OECD said, on 9 September 2008, that it means to speed up the process of modifying the OECD model treaty and getting changes into bilateral tax treaties.

Speaking at a special conference in Paris to celebrate the 50th anniversary of the OECD model income tax treaty, Jeffrey Owens, director of the Centre for Tax Policy and Administration, said the current process took too long.

"The very fact that we have almost 3,000 tax treaties around the world makes it much more difficult to get changes in the model into that network," he said. He praised a recent proposal to have a multilateral framework within which countries could have single-issue protocols to implement changes they have agreed to at the OECD.

The OECD published the 2008 update to the model tax convention on 18 July 2008, the day after approval by the OECD Council. The revised version of the convention incorporates changes on resolving tax treaty disputes, interpreting article 24 on non-discrimination, handling treaty issues related to real estate investment trusts and changes to the commentary on treatment of services.

The update also makes technical changes to the commentary on the "place of effective management," dual-resident persons who are treaty non-residents under the tiebreaker rule, the definition of royalties, and whether to account for days of residence for the purposes of the computation of the 183-day rule of article 15.

The updated model treaty will become the new starting point for negotiation and interpretation of bilateral treaties among OECD member countries and non-member countries.

European Commission to strengthen Savings Tax Directive

The European Commission proposed, on 13 November 2008, to tighten rules concerning taxation on foreign interest income, aiming to close existing loopholes and avoid tax evasion.

The Savings Tax Directive, which was adopted in 2003 and came into force in July 2005, requires banks in all Member States, and certain third-party countries such as Switzerland, to either report the interest income or withhold tax on the interest income of non-resident account holders who reside in other EU member states.

But revenues raised from withholding taxes so far have fallen well below EU expectations because the Directive can be bypassed, either by channelling assets into business entities which are not covered by the rules or by parking savings in jurisdictions not included in the Directive, such as Dubai, Hong Kong or Singapore.

Laszlo Kovacs, EU commissioner for taxation and customs, said although the rules remain effective within the limits of its scope, they can be easily circumvented.

The Commission's proposal seeks to ensure the taxation of interest payments that are channelled through intermediate tax-exempted structures, like foundations or trusts. It also proposes to extend the scope of the rules to income equivalent to interest obtained through investments in some innovative financial products as well as in certain life insurances products.

"The current scope of the directive needs to be extended, in order to meet our goal of stamping out tax evasion, which affects the national budgets and creates disadvantages for the honest citizens," Kovacs said.

Sovereign Comment

By further amending the rules and extending the scope of the Savings Tax Directive, the EU hopes to receive a far greater share of the tax revenues it believes are due from savers and investors. But, as in all EU tax matters, the unanimous backing of all 27 member states is required for the proposal to be adopted and the EU's attempts to expand the geographical reach of the Directive are likely to prove very difficult, with the governments of Hong Kong and Singapore already having voiced their opposition.

TAX EFFICIENT JAPAN INVESTMENTS

- Niseko, Japan - Asia's premier alpine destination
- Five of Niseko's most sought after properties including, ABOVE+BEYOND, The Vale Niseko, The Setsumon, The Freshwater and Niseko Taisetsu
- Prices starting from JPY 18,900,000 (USD 189,000)
- Up to 80% mortgage financing at yen interest rates
- Excellent tax deductions
- Freehold title
- Hassle free property investment with strong management programs in place
- Strong capital growth and yield potential in the fastest growing ski region in the world

ENQUIRIES
Above and Beyond (HK) Ltd
15F The Centrium, 60 Wyndham Street, Central, Hong Kong

Contact | +852 2847 8400 | info@aboveandbeyondresorts.com

nisade
NISEKO ALPINE DEVELOPMENTS
your alpine partner

ABOVE + BEYOND
NISEKO

SOVEREIGN
SovereignGroup.com

UK Court of Appeal overturns domicile ruling in 'Barlow Clowes' case

The UK Court of Appeal held, on 23 May 2008, that where a person abandons his domicile of choice by ceasing to reside in the relevant country and giving up his intention permanently to reside there, his domicile of origin revives as a matter of law and persists until he acquired a domicile of choice elsewhere.

In *Barlow Clowes International Ltd (in Liquidation) and Others v Henwood*, the Court of Appeal allowed an appeal against a 2007 decision in the Bankruptcy Court that Peter Henwood, a key player in the Barlow Clowes fraud, was not domiciled in England and Wales when they presented a bankruptcy petition against him.

In 2001, the liquidators of Barlow Clowes obtained a judgment debt against Henwood in respect of his dishonest assistance in the disposal of monies stolen and, in 2005, the UK Privy Council upheld an Isle of Man High Court ruling that found Henwood liable for payments after 1987 because "by that time Henwood knew enough about the origins of the money to have suspected misappropriation and that he acted dishonestly in assisting in its disposal".

This ruling enabled the Barlow Clowes' receivers to pursue Henwood for the judgment debt and he was served with a bankruptcy petition for £9.4 million plus interest. In March 2006, Henwood applied for a declaration that the court had no jurisdiction to hear the petition on the ground that he was not UK domiciled.

The Court heard that Henwood had let his Isle of Man property in 1992 and taken a lease of a villa in Mauritius where he held residency and work permits. He spent little time in Mauritius due to extensive travel and long visits to his French property. But in 2006, his wife bought a further property in Mauritius, which enabled them to obtain a right of permanent residence. Thus, said the Court, the judgment would not be enforceable against him.

The liquidators of Barlow Clowes appealed. The Court of Appeal found the evidence did not establish the intention by Henwood to establish a domicile of choice in Mauritius but did establish abandonment of his domicile of choice in the Isle of Man. Thus his domicile of origin in the UK revived. Where a person maintained homes in more than one country, it said, the question had to be decided by reference to the quality of residence in each of those countries to ascertain in which country he had an intention permanently to reside.

Sovereign Comment

This is an unusual and high profile case, but it highlights the vital issue of domicile, particularly abandonment of a domicile of choice. We have encountered many cases where British clients have spent years in another country but then unwittingly reverted to their domicile of origin by moving to a third country. A classic example being someone who has worked in the Middle East for 20 years then retires to Spain. Contact your closest Sovereign office if you think you might be affected.

31 legal

Dutch Supreme Court rules on dividend withholding

The Dutch Supreme Court held, on 8 August 2008, that a Dutch withholding tax on dividends paid by a Dutch "dividend mixer" company to a UK company violated article 43 of the EC Treaty on the freedom of establishment, unless the UK company could credit the Dutch tax against any UK tax.

X Holding BV was part of a group of companies with a listed UK parent company and an intermediary UK holding company. Its function was to declare, receive, mix and distribute group dividends so that its UK parent company could make optimal use of its right to credit foreign corporation tax imposed on lower-tier subsidiaries against its UK corporation tax.

In 1989 and 1991, X Holding BV distributed a dividend to the intermediary UK holding company. Under the Netherlands-UK income tax treaty, the Netherlands levied a 5% withholding tax on the dividend payment. The EU parent-subsidiary directive was not in force at the time.

The Supreme Court held that the relevant provision in the 1965 Dutch Dividend Tax Act led to unlawful discrimination within the meaning of the EC Treaty, unless the tax was creditable by the UK company under the Netherlands-UK tax treaty.

Sovereign Comment

Note that the dividend payment at issue was made before introduction of the EU parent-subsidiary directive. A number of the 27 EU member states have yet to enact the provisions in full. It is vitally important therefore to obtain advice when establishing subsidiaries in other jurisdictions – particularly if they are "dividend mixer" companies – to ensure that the intended relief will be granted.

Jersey Court rules on varying a trust

The Royal Court of Jersey, on 15 August 2008, delivered an important judgment on the circumstances in which it can enforce or give effect to a matrimonial order of the English High Court to vary the terms of a Jersey trust.

In *The Matter of The IMK Family Trust Mubarak v Mubarak*, Mrs Mubarak had obtained an award of £4.875 million by an order of the English Court in 1999 but her former husband had not paid and was in contempt. She was now owed £7.6 million – comprising the original lump sum, periodical payments and costs.

Mr and Mrs Mubarak established the IMK Family Trust, a discretionary trust governed by the laws of Jersey, in 1997 with themselves and their children as beneficiaries. In 1998, just before his wife commenced divorce proceedings, Mr Mubarak excluded her as a beneficiary.

In 2005, Mrs Mubarak decided to attack the trust. The English High Court made an order varying the trust so as to reinstate Mrs Mubarak as a beneficiary to the extent of the sums outstanding under the order. It noted that as a general rule it would be an "exorbitant exercise of jurisdiction" for the English Court to vary a Jersey trust. But, in view of Mr Mubarak's prolonged recalcitrance, it had no other option.

The matter came before the Jersey Royal Court in April 2008 as an application for directions by the trustees. It held that it could not enforce a judgment of the English Court varying or altering a Jersey trust but, because Mr Mubarak had written confirming that the trustee should give effect to whatever order the English Court might make, all adult beneficiaries had in effect consented. As the variation was in the interests of the minor children, the Court gave its consent.

The case highlights the tensions that arise when ex-spouses seek to use divorce orders made in the UK to obtain assets held offshore by their former partners.The ruling establishes that assets in offshore trusts can be released to ex-spouses only if the trustees have the power to do so.

OECD enlarges network on exchange of tax information

The OECD announced, on 30 October 2008, that 16 new bilateral tax information exchange agreements (TIEAs) had been signed between OECD members and the British Virgin Islands, Guernsey and Jersey.

The BVI signed TIEAs with Australia and the UK. Guernsey and Jersey each signed bilateral TIEAs with the Nordic economies – Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden.

These new agreements bring to 44 the number of TIEAs put in place since 2000. The Isle of Man is leading, with 11 such pacts; Jersey has signed 10, Guernsey nine, the Netherlands Antilles four and the British Virgin Islands three. Bermuda, also with three, signed its first bilateral agreement with the US in 1986. Antigua has signed two, while Aruba, The Bahamas and the Cayman Islands have all signed one apiece.

The latest agreements represent a significant extension of information exchange networks in place in these jurisdictions, showing their commitment to implementing OECD's standards of transparency and exchange of information in tax matters.

The OECD said progress was also being made in other financial centres. Cyprus and Malta had removed the last impediments to a full exchange of information; Belgium has negotiated its first tax treaty with full exchange of information; Bahrain and the United Arab Emirates are implementing the OECD standards; and the government of Hong Kong (China) recently launched a review of its policy on exchange of information.

"The political climate is changing, and financial centres that do not respect the OECD standards will not be allowed to gain a competitive advantage," said OECD Secretary-General Angel Gurría. "Every new bilateral agreement demonstrates that we can make progress internationally. It is in the interest of all financial centres to have adequate measures in favour of full transparency as quickly as possible."

A TIEA permits a partner country to exchange tax information with the other partner country in relation to criminal, civil and administrative tax matters. The TIEA obliges the country requesting the information to follow a strict set of rules. If the rules have not been followed, the request for information will be declined.

These rules are designed to protect the legitimate confidentiality of taxpayers and the holders of information in both countries. In particular, they guard against what are often known as "fishing expeditions", where a tax authority might look for a large amount of general information, hoping that some of it might be useful.

Information is requested only in respect of individual cases and when a TIEA partner country sends a request for information it must make clear: the identity of the person or business under investigation; whether the investigation is being dealt with as a criminal or civil matter; the period for which the information is requested; what type of information is being requested; the tax purpose for which the information is sought; the reasons for believing that the information requested is relevant; why it is thought that the information requested is in a partner country; to the extent known, the name and address of any person believed to have the information; and that the other country has done everything reasonably possible in its own territory to obtain the information.

> **"Every new bilateral agreement demonstrates that we can make progress internationally".**

A TIEA partner country that receives information must keep it confidential and only use it for the purposes of the administration or enforcement of their tax laws. The information cannot be passed to another country without the other country's written consent.

The OECD is working on a list of uncooperative jurisdictions to which defensive measures could be applied. These measures have been an integral part of the OECD work since the late 1990s. In 2000, the OECD decided to put aside this aspect of its work to adopt a more inclusive approach. But following the Liechtenstein tax evasion scandal in early 2008, the OECD now recognises that whilst this "softer" approach has had some success, a return to the defensive measures approach is necessary.

The following are some of the defensive measures being considered by the member countries of the OECD:

- The use of provisions having the effect of disallowing any deduction, exemption, credit or other allowance in relation to all substantial payments made to persons located in jurisdictions engaged in harmful tax practices.
- The use of thin capitalisation provisions restricting the deduction of interest payments to persons located in jurisdictions engaged in harmful tax practices.
- Introduce reporting requirements for any resident who makes a substantial payment to, or enters into a transaction with, a person located in a jurisdiction engaged in a harmful tax practice.
- To tax residents on amounts corresponding to income that benefits from harmful tax practices that is earned by entities established abroad in which these residents have an interest.
- To deny the exemption method or modification of the credit method, where a country levies no or nominal tax on most of the income arising therein because of the existence of harmful tax practices.
- The use of legislative provisions to impose withholding taxes at a higher rate on all payments of dividends, interest and royalties made to beneficial owners benefiting from harmful tax practices.
- The use of provisions for special audit and enforcement programs to coordinate enforcement activities involving entities and transactions related to jurisdictions engaged in harmful tax practices.
- Terminating, limiting and not entering into tax treaties with jurisdictions involved in harmful tax practices.

the Sovereign MasterCard®

The ultimate offshore credit card.
Instant access to your offshore funds any place, anywhere. Contact your most convenient Sovereign office for further details.

information

For more information on the services provided by The Sovereign Group, please visit our website: **www.SovereignGroup.com** or contact your most convenient Sovereign office listed below.

Sovereign recruitment

As a result of business expansion across the Group, Sovereign is actively looking for qualified professionals to assist senior management teams in several of our worldwide offices. Applications from new, or recently qualified, lawyers or accountants are especially welcome, but we would also be interested to hear from more experienced professionals – particularly those with an established client following. Anyone who is interested to learn more about the opportunities currently available within Sovereign can find more information, and application procedures, on our website: www.SovereignGroup.com

change of address?

Have your subscription details changed recently?
Do you wish to redirect your quarterly issue of *The Sovereign Report* to a different address?
Or do you wish to unsubscribe?
If so, please contact Michelle Gallardo
by email: MGallardo@SovereignGroup.com
or by fax on: +852 2545 0550.

Please note that The Sovereign Group is committed to ensuring that your privacy is protected. All details submitted will be held in the strictest confidence.

contact

BAHAMAS
Alan Cole
Tel: +1 242 322 5444
bh@SovereignGroup.com

BRITISH VIRGIN ISLANDS
Rudsel Lucas
Tel: +1 284 495 3232
bvi@SovereignGroup.com

THE PEOPLE'S REPUBLIC OF CHINA, Shanghai
Sunny Liew
Tel: +8621 6103 7089
china@SovereignGroup.com

CYPRUS
Richard Melton
Tel: +357 25 738 501
cy@SovereignGroup.com

DENMARK
Jan Eriksen
Tel: +45 4492 0127
dk@SovereignGroup.com

DUBAI
John Hanafin
Tel: +971 4 397 6552
dubai@SovereignGroup.com

GIBRALTAR
Ian Le Breton
Tel: +350 200 76173
gib@SovereignGroup.com

RegisterAYacht.com
Gabriel González
Tel: +350 200 51870
ray@SovereignGroup.com

Sovereign Accounting Services
Valery Filiaev
Tel: +350 200 48669
sasgib@SovereignGroup.com

Sovereign Asset Management
Richard Foster
Tel: +350 200 41054
sam@SovereignGroup.com

Sovereign Insurance Services
Steve Armstrong
Tel: +350 200 44609
sis@SovereignGroup.com

HONG KONG
Jacques Scherman
Tel: +852 2542 1177
hk@SovereignGroup.com

Sovereign Accounting Services
Tel: +852 2868 1326
sashk@SovereignGroup.com

ISLE OF MAN
Diane Dentith
Tel: +44 (0)1624 699 800
iom@SovereignGroup.com

MALTA
Mark Miggiani
Tel: +356 21 228 411
ml@SovereignGroup.com

MAURITIUS
Ben Lim
Tel: +230 403 0813
mu@SovereignGroup.com

THE NETHERLANDS
Susan Redelaar
Tel: +31 (0)20 428 1630
nl@SovereignGroup.com

NETHERLANDS ANTILLES
Rudsel Lucas
Tel: +599 9 463 6138
na@SovereignGroup.com

PORTUGAL
Nigel Anteney-Hoare
Tel: +351 282 340 480
port@SovereignGroup.com

SEYCHELLES
Neil Puresh
Tel: +248 321 000
sc@SovereignGroup.com

SINGAPORE
Joe Cheung
Tel: +65 6222 3209
sg@SovereignGroup.com

SOUTH AFRICA
Tim Mertens
Cape Town
Tel: +27 21 683 1045
sact@SovereignGroup.com
Johannesburg
Tel: +27 11 881 5974
sajb@SovereignGroup.com

SWITZERLAND
Dr Norbert Buchbinder
Tel: +41 (0)21 971 1485
ch@SovereignGroup.com

TURKS & CAICOS ISLANDS
Rudsel Lucas
Tel: +1 649 946 2050
tci@SovereignGroup.com

UNITED KINGDOM
Simon Denton
Tel: +44 (0)20 7389 0644
uk@SovereignGroup.com

Sovereign Group Partners LLP
Hugh de Lusignan
Tel: +44 (0)20 7389 0655
capital@SovereignGroup.com

URUGUAY
Noel Otero
Tel: +598 2 900 3081
uy@SovereignGroup.com

www.SovereignGroup.com

90% OF LITIGATION FAILS, DUE TO LACK OF PROPER INFORMATION.

FORENSIC ACCOUNTANTS ARE A MUST HAVE IN THE EVER COMPLEX OFFSHORE AND PERSONAL FINANCE WORLD

Forensic Accountants

WHEN TO CALL IN THE FORENSICS?

Forensic accounting has become a key instrument for the successful settlement of disputes, litigation and is a must have in divorce. The offshore world is a minefield to navigate, often both professionals and end consumers need the advice of forensic accountants to help themselves into and, more often than not, out of situations. Lawyers can only argue a case if they have the full facts and figures. 90% of failed litigation is a direct result of inadequate information. Edward Ross-McNairn, Director of HW Forensic Accountants, explains why.

HOW IS A FORENSIC ACCOUNTANT DIFFERENT TO A NORMAL ACCOUNTANT?

Clearly, all our staff are fully trained chartered accountants, they have to be. However, the skills of a Forensic Accountant go much further. They must have an intimate knowledge of the law and its processes. They must know what will prove to be vital in the court room and quickly identify the red herrings. They must also have an in depth knowledge of the financial structures that are used to conceal monies and not just their practical application. So their knowledge of trust law, money laundering, tax havens as well as recognised behaviour patterns has to be second to none.

Secondly is the element of detective work, drawing on seemingly irrelevant financial clues and learning how to follow the chain of evidence. Forensic Accountants have to be very good interviewers; discreet, thorough and subtle in their approach. They must know how to sift through piles of information, apply their accountancy knowledge and link it to the law to present the facts.

WHO SHOULD BRIEF A FORENSIC ACCOUNTANT...CLIENT OR PROFESSIONAL?

The initial contact often comes as a suggestion from the client especially in divorce cases. However, there are certain business briefs where our customers are referred to us by professionals as they think that we are the only people who can deal with the job. In some cases, clients are unaware that they would need our services in the first place. So if a lawyer is short on information, he or she will recommend that the client contacts a firm of Forensic Accountants. As to briefing, it is imperative that BOTH the professional and the client participate. Professionals, because they will have a far greater understanding of what they need to make a case work and individuals to make sure that we get the whole and entire picture.

WHAT EVIDENCE DO YOU NORMALLY ASK CLIENTS TO PRODUCE?

Depending upon the brief we are set by the client, we generally need everything they can provide. Every transaction, receipt, business deal or travel schedule tells a story. For some clients the evidence is initially very thin on the ground, so we have to ask the right questions and tease the information out. A sudden change in purchasing behaviour, spending more, spending less are all tell tale signs. In big cases, such as large corporate fraud, airline tickets and hotel bills often point towards which jurisdictions are in play. And then you have all the usual financial instruments to contend with. It is amazing also how people wishing to conceal money often follow patterns of behaviour which are fairly easy for us to trace. We are very familiar with most of the common practices and the standard advice these people may have received in an effort to hide their assets. So we just follow the professional paper trail. Basically, we ask our clients for everything they can provide and see what comes in...what they cannot provide we have to find.

ALL PROFESSIONAL SERVICES CARRY A COST - HOW AND WHEN DOES A CLIENT KNOW THAT IT IS WORTH IT?

Correct. Forensic Accountants, in view of their multiple skill sets, can help in a wide range of cases and can be involved in a case to a greater or lesser degree. For example, we can simply provide a detailed analytical report to support a case or we can be an appointed Expert Witness either for one party, defendant or claimant, or for the Court. There are obviously different levels of costs associated with each. However, when we are approached we assess the potential of each case in terms of what the client is likely to gain out of a successful piece of litigation. We can tell very quickly if the potential rewards of a case do not justify the involvement of a Forensic Accountant i.e. the client would not derive a significantly more successful outcome if we were on board. We advise on this very quickly, normally after the first meeting and a basic level of research. We pride ourselves on being completely transparent with all our clients, even if this means advising them against using our services.

WHAT HAVE BEEN YOUR BIGGEST SUCCESS STORIES SO FAR?

A lady in Marbella was offered a paltry £50,000 by her husband of 20 years who claimed he only had assets of £250,000. We found her £8,000,000...end of story! On the corporate and criminal front, we have worked some of the largest and far reaching cases, tracking assets and transactions all over the world in some of the most intricate networks of financial structures.

WHY SHOULD A SOVEREIGN CLIENT IN PARTICULAR TAKE NOTE OF YOUR SERVICES?

Clearly, the nature of the business lends itself to our services. We can also inverse our skill set and advise clients on how best to protect themselves from potential litigation or solve disputes by alternative methods such as mediation. Sovereign also has many clients that might be considering investing in certain financial schemes. They can call on us for an early warning search to check out the providers of the potential investment opportunity and confirm the viability of the firm and the investment. Working with Sovereign means that the client has the best forensic accounting advice and access to a strong financial solutions provider. The objective is to provide maximum financial protection for the client.

FINALLY, WHAT HAS BEEN THE MOST AMUSING CASE YOU HAVE EVER HAD TO DEAL WITH?

A very elegant and well dressed lady asked us to investigate her ex-husband's fashion business. She believed that he was a distributor of some of the industry's major labels and believed him to be worth millions. It actually turned out he was running, in full regalia, the only cross-dressing shop in a county town, and that most of the items in the shop were her old dresses and heels which he had hoarded away when they were married! We discreetly declined the case on cost versus gain grounds!

IF READERS WANT TO KNOW MORE, HOW CAN THEY TAKE THIS FURTHER?

Anyone who has a question for us or needs specific help can contact us at: sclayton@hwca.com or by calling our Spanish office on **(+34) 952 76 83 78** or London on **(+44) 20 7462 8138**.

Maximum discretion is always guaranteed.

Call (+44) 207 462 8138 / (+34) 952 76 83 78 or sclayton@hwca.com
www.hwforensic.co.uk

31

The material set out herein is for information purposes only and does not constitute legal or professional advice. No responsibility will be accepted for loss occasioned directly or indirectly as a result of acting, or refraining from acting, wholly or partially in reliance upon information contained herein.

Photocopying this publication is illegal.

© The Sovereign Group 2008

www.SovereignGroup.com