



AUTOMATIC EXCHANGE OF INFORMATION

Bank secrecy for tax purposes is coming to an end as countries and major financial centers commit to automatic exchange of information between jurisdictions.

The Declaration on Automatic Exchange of Information in Tax Matters was endorsed during the OECD's annual Ministerial Council Meeting in Paris by all 34 member countries, along with Argentina, Brazil, China, Colombia, Costa Rica, India, Indonesia, Latvia, Lithuania, Malaysia, Saudi Arabia, Singapore and South Africa.

The Declaration commits countries to implement a new single global standard on automatic exchange of information. The standard, which was developed at the OECD and endorsed by G20 finance ministers, last February, obliges countries and jurisdictions to obtain all financial information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis.

"Tax fraud and tax evasion are not victimless crimes: they deprive governments of revenues needed to restore growth and jeopardise citizens' trust in the fairness and integrity of the tax system," OECD Secretary-General Angel Gurría said. "Today's commitment by so many countries to implement the new global standard, and to do so quickly, is another major step towards ensuring that tax cheats have nowhere left to hide."

The OECD will deliver a detailed Commentary on the new standard, as well as technical solutions to implement the actual information exchanges, during a meeting of G20 finance ministers in September 2014.

G20 governments have mandated the OECD-hosted Global Forum on Transparency and Exchange

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of Information for Tax Purposes to monitor and review implementation of the standard.

More than 60 countries and jurisdictions have now committed to early adoption of the standard, and additional Global Forum members are expected to join this group in the coming months.

Source: OECD Newsroom | May 6, 2014.

PUBLIC HOLIDAY

Our Hong Kong office will be closed in observance of:

Monday, June 2, 2014 Tuen Ng Festival

We will not monitor our e-mails. For urgent matters please contact lourdes@aspenoffshore.com.

A GUIDE ON DIRECTOR'S DUTIES

Many times Aspen is requested to provide directorship services for companies in Hong Kong and other jurisdictions. Frequently, clients are concerned about the reach and power the director has over the affairs of the company. Bluntly speaking, most are just afraid the director "will take all my money and run away".

There are tools and mechanisms Aspen interposes to offer the client as much protection as possible while maintaining a separation in the roles of beneficial owner and director. Oddly, hardly anyone asks, what happens to the director, if the beneficial owner mismanages the company; sends Aspen incorrect information; or willfully provides erroneous information? Read on.

With the new requirement of having at least one natural person as director of every Hong Kong company, it is opportune to review and understand the responsibilities and liabilities of directors. The following principles are issued by the Hong Kong Companies Registry; however, these principles apply to any director in any jurisdiction, aside from those mandated by the respective laws, it simply makes for good practice.

RESPONSIBILITIES & LIABILITIES

The responsibilities and liabilities of directors derive from various sources, including the constitution of the company, case law and statute law. If a person does not comply with his duties as a director he may be liable to civil or criminal proceedings and may be disqualified from acting as a director.

All the general principles of directors' duties are of equal importance.

Principle 1: Duty to act in good faith for the benefit of the company as a whole

A director of a company must act in good faith in the best interests of the company. This means that a director owes a duty to act in the interests of all its shareholders, present and future. In carrying out this duty, a director must (as far as practicable) have regard to the need to achieve outcomes that are fair as between its members.

Principle 2: Duty to use powers for a proper purpose for the benefit of members as a whole

A director of a company must exercise his powers for a "proper purpose". This means that he must not exercise his powers for purposes that are different from purposes for which they were conferred. The primary and substantial purpose of the exercise of a director's powers must be for the benefit of the company. If the primary motive is found to be for some other reasons (e.g. to benefit one or more directors and to gain control of the company), then

the effects of his exercise of his power may be set aside. This duty can be breached even if he has acted in good faith.

Principle 3: Duty not to delegate powers except with proper authorization and duty to exercise independent judgment

Except where authorized to do so by the company's articles of association (the "constitution") or any resolution, a director of a company must not delegate any of his powers. He must exercise independent judgment in relation to any exercise of his powers.

Principle 4: Duty to exercise care, skill and diligence

A director of a company must exercise reasonable care, skill and diligence. This means the care, skill and diligence that would be exercised by a reasonably diligent person with —

- (i) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and
- (ii) the general knowledge, skill and experience that the director has.

If a person does not comply with his duties as a director he may be liable to civil or criminal proceedings...

Principle 5: Duty to avoid conflicts between personal interests and interests of the company

A director of a company must not allow personal interests to conflict with the interests of the company.

Principle 6: Duty not to enter into transactions in which the directors have an interest except in compliance with the requirements of the law

A director of a company has certain duties where he has a material interest in any transaction to which the company is, or may be, a party. Until he has complied with these duties, he must not, in the performance of his functions as a director, authorize, procure or permit the company to enter into a transaction. Furthermore, he must not enter into a transaction with the company, unless he has complied with the requirements of the law.

The law requires a director to disclose the nature and extent of his interest in respect of such transactions. Under certain circumstances the constitution may prescribe procedures to secure the approval of

directors or members in respect of proposed transactions. A director must disclose the relevant interest to the extent required. Where applicable, he must secure the requisite approval of other directors or members.

Principle 7: Duty not to gain advantage from use of position as a director

A director of a company must not use his position as a director to gain (directly or indirectly) an advantage for himself, or someone else, or which causes detriment to the company.

Principle 8: Duty not to make unauthorized use of company's property or information

A director of a company must not use the company's property or information, or any opportunity that presents itself to the company, of which he becomes aware as a director of the company. This is except where the use or benefit has been disclosed to the company in general meeting and the company has consented to it.

YOU SHOULD KNOW:

Aspen Global Incorporations can assist in providing reputable, professional individual directors for all jurisdictions. Please contact us directly for a quote.

Principle 9: Duty not to accept personal benefit from third parties conferred because of position as a director

A director or former director of a company must not accept any benefit from a third party, which is conferred because of the powers he has as director or by way of reward for any exercise of his powers as a director. This is unless the company itself confers the benefit, or the company has consented to it by ordinary resolution, or where the benefit is necessarily incidental to the proper performance of any of his functions as director.

Principle 10: Duty to observe the company's constitution and resolutions

A director of a company must act in accordance with the company's constitution. He must also comply with resolutions that are made in accordance with the company's constitution.

Principle 11: Duty to keep accounting records

A director of a company must take all reasonable steps to secure that the company keeps accounting records that are sufficient to show and explain the company's transactions and disclose with reasonable accuracy the company's financial position and financial performance. To avoid breaching fraudulent trading provisions, a director must not allow the company to incur further credit knowing that there is no reasonable prospect of avoiding insolvency.

Source: HK Companies Registry, March 2014

DOING BUSINESS IN CHINA: IS IT AS EASY AS SIMPLY SHOWING UP?

The Chinese economy has grown at just under 10 per cent a year for 32 years, overtaking Japan in 2010 to become the world's 2nd largest economy. According to the OECD, China is projected to overtake the US in 2016 (in PPP terms).

While many of the world's major economies are still struggling to recover from economic contraction, China's economy grew by 9.2% in 2011. This economic slowdown continued in 2013, to around 7.8%. This is partly due to suppressed demand in China's largest export markets (Europe, USA) but also to tightening of monetary policy in late 2011. The Chinese government has subsequently now begun loosening monetary policy and has launched a major investment program to ensure growth does not slip below the official "target rate" of 7.5 per cent for 2013. The target was met.

There are significant changes in China's growth strategy. Traditionally, China has provided low-cost manufacturing solutions for the global market, but exports declined sharply after the global downturn and China's manufacturing industry has responded by quickly moving up the value chain.

The Chinese Government is pressing hard to improve infrastructure and social welfare as well as targeting resources to develop China's vast rural and interior regions, aiming to unleash domestic consumption among the wider population. Industrial structures are shifting inland with dozens of new cities emerging

and coastal areas developing into sophisticated urban clusters. This presents wonderful opportunities.

With continued encouraging news, many wish to be closer to this money making giant. Is it simply a matter of arriving in Shanghai (or city of choice) and setting up shop? In fact, it is possible because, today, China offers many more resources for international firms and individuals. Many educated Chinese speak English or other foreign languages, and some government offices have an 'English counter'. China is striving to operate with "Western-like" business standards.

Endless books have been written about doing business in China, the business card mantra; getting a good Chinese name; developing *guanxi* (relationships); and that proper wait-out endurance period the Chinese seem to put everyone through. But few books write that, as the land of excessive opportunities, the environment is ripe with unscrupulous business people and a get rich quick attitude.

In the past, setting up a business in China required joining a local Chinese person or company in a Joint Venture (JV). Some types of business remain restricted for Chinese only or to be held jointly. Admittedly, there are many success stories but there are many more JV horror stories.

Another option is the Wholly Owned Foreign Enterprise (WOFE). It is a type of company that allows a foreigner to own a business directly without the need of a Chinese partner. It is important, however, to find the proper service providers (accountants, attorneys, company managers) at the place where you seek to establish. The range of industries and services that can be provided using a WOFE is broad.

Both the JV and the WOFE are subject to a general equity/debt ratio requirement which means that a percentage of the total investment must be funded in cash by the investors. This amount is subject to the local governments and varies from city to city.

It is important to understand the rules of Exchange Control in China whereby, all cash contributions are converted into RMB (Renminbi or Chinese Yuan). In

like manner all profit are accrued in RMB. Outward remittances are subject to this exchange control and any debts owed to the investors must be registered. In other words, the investor can only get paid in RMB. As such, it is advisable to enter the Chinese market (be it using a JV or WOFE) by securing the debt as a foreign debt owed to an offshore entity. In the case of a WOFE, additional government approval is not necessary. Simply stated, the shareholders of the WOFE should be an offshore company for example, a B.V.I., Cayman, or a Hong Kong company.

Ensuring that this step is correctly interposed and implemented remains Hong Kong's strength and it is essential when doing business in China.

YOU SHOULD KNOW:

Aspen Global Incorporations can assist in establishing WOFEs and in structuring the best offshore investment vehicle for these ventures. Contact us directly for a quote.

China is massive, people are on the move. "In today, gone tomorrow" is the motto. People move around so much, it is pointless to keep anyone's business card for more than one year. WOFE and offshore company services are available in China but many later find that they after a few months the provider is no longer available and that their companies are not compliant.

This is why Hong Kong continues its successful role as the gateway to China. Hong Kong offers a full range of services in Chinese, correct English, and other languages. There is a pool of excellent company management and secretarial services. Superior banking services with online platforms in correct English. Anti-money laundering regulations apply to all aspects of the financial services industry and there are strict controls and modern, flexible regulatory oversight. International standards are applied to accounting and audits; and it's a short train or plane ride away from any city in China.

PROFESSIONAL INDEPENDENT TRUSTEES

Many individuals seeking to establish an offshore trust know little or nothing about the basic trust principles, compliance and management; the role of the trustee as a fiduciary, and the impact of having settled assets into trust. Most of all, they know nothing about the laws of the country where the trust is settled. In the worse cases, settlors don't know or are ill advised on how to settle or grant assets into the trust.

Settlors can be extremely distrusting and hope for significant control; this is stoked by past trustee abuses –although significantly less today, which have been widely covered in the media. Charlatans roam the Internet and many offshore trust service providers reside far away from the settlor. Although a trust was his best option, a client once cried: “I just don't trust anyone, not my wife, not my father, not God.” I suggested the client should avoid the offshore environment and seek traditional, onshore services but he presented a couple more objections: “It's too expensive and onshore services can impact confidentiality adversely.” While the personal knowledge of the settlor is instrumental in creating a trust that will anticipate his intentions, desires, and most importantly satisfy the purposes of the trust, a properly managed trust will not give the settlor any control.

TRUST MANAGEMENT OPTIONS

Truth be told, banks offer great trust services. Most private banks add a personal touch and can offer a one-stop service by placing the assets with their investment arm at the bank. However, private bank trustee services may not always be cost effective and the investment growth may be eroded by the trust management fees. Larger privately managed trust corporations have also developed their own asset management arms giving the client more of a say but the trust management fees may nosh on the assets under management, until the fund may not be interesting enough for the trustee. And the final objection: impersonality.

Without the motivation to manage a poor trust asset, service becomes impersonal and restricted to that pesky client access area which is now ever present in most trust company websites. Did you forget your

password? There is also the issue with employee rotation; it is nearly impossible to have a long-term relationship with any one individual in a trust company or private bank, it seems 2 years is their shelf life.

Professional independent trustee services are not free but they are less dire than at a larger trust company or bank.

Using a Private Trust Company (PTC) is a good option for the finicky and distrusting. After all, it is only natural to distrust a complete stranger who sits in an unknown country. The Private Trust Company can act as the trustee over a group of related trusts and its concept is easier to understand by non-professionals. It may be easily integrated into a family office or commercial arrangement. The PTC can keep trustee charges in check and can help maintain confidentiality. The B.V.I. offers the most popular PTC structure allowing various trusts to be overseen by one PTC as long as they are related; even if they are not from the same jurisdiction. However, all of the company's trust business must be 'unremunerated trust business' or 'related trust business'. In most cases, a company will conduct 'unremunerated trust business' because it will manage its own related trusts and no fees are paid to the company or anyone associated with it. New Zealand is a good option for this matter in the cases where a Caribbean jurisdiction is not your cup of tea.

PROFESSIONAL INDEPENDENT TRUSTEES

The above sounds wonderful, right? Well... lack of knowledge remains an issue that even a PTC cannot be overcome. In comes the independent professional trustee, someone you can be with on a first name basis.

Many professional independent trustees have specialized training, expertise, and exposure necessary to oversee a trust. The service is usually provided by an attorney, accountant or professional trained to provide fiduciary services. An independent trustee can help avoid conflict of interest in the jurisdiction where the trust resides; serve as a neutral party to ensure the goals of the trust are met and compliance is observed; and work closely with the registered agent or local trustee. Independent professional trustees are more likely to respond quickly because the fiduciary duties fall directly on them as individuals (or as smaller trust company);

consequently, it is easier to develop a personal relationship. A professional trustee can be appointed as a director in a PTC to ensure compliance by the PTC and proper execution of transactions and operations.

Furthermore, to ensure transparency and accountability, independent professional trustees will rely on external professionals to provide auditing and delegate investment duties. Most importantly, bank account administration and commercial transactions are handled personally with technical knowledge. As such, the trustee can serve as a true guide and administrator.

Professional independent trustee services are not free but they are less dire than at a larger trust company or bank. Some jurisdictions require licensing for professional trustees but many don't. On a last note, universal insurance for trustee operations is not always available or mandatory but some professional trustees have limited professional indemnity insurance.

As such, independent professional trustees can offer a greater sense of confidentiality, stability, uniformity, and reliability that is most sought-after today.

Aspen Fiduciary Services Limited provides independent trustee services from New Zealand, Hong Kong and through Aspen Legal Services for Panamanian foundations and other similar vehicles.

PS. WHAT'S IN THE NAME ASPEN

Many ask about the origin of our company name, Aspen. To be clear, the founders are not from Aspen, Colorado, United States nor avid skiers.

The name **Aspen** was selected because of the qualities of the aspen tree (*Botanical name: *populus tremula, adenopoda, or tremuloides**); qualities we strive for in the execution of our work, in our professional and personal values and in the relationships we develop with others.

Network

All of the aspens typically grow in large clonal colonies, derived from a single seedling, and spread by means of root suckers.

Strength

Each individual tree can live for 40–150 years above ground, but the root system of the colony is long-lived.

Resilience

Aspen trees survive forest fires, since the roots are below the heat of the fire, new sprouts grow very soon after the fire burns out.

Resourcefulness

Aspen trees contain salicylates which are compounds related to aspirin. The leaves have been used to treat burns, irritations, aches, and swollen joints. Tea from its bark has been used to treat ailments. The pulp is used to make the paper for books and magazines. Its soft white wood is also used to make matches, boxes, crates and, soft wood shavings for packaging.

Integrity

The dry timber of aspen trees weathers very well. It becomes silvery-grey and is resistant to rotting and warping. It is a noble wood for building cabins and floors.

Beauty

The most notable quality of the aspen tree is the fluttering of its leaves which move from side to side and change colors throughout the seasons. From silver to green, then golden yellow to rich orange, like flecks of silver and gold. And when the wind rustles the leaves, the sound is a sweet song of joy, love, and peace. Aspen trees are truly a sight to behold.

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