



## Updates from the Liberian Corporate Registry

Welcome to this Winter edition of the Liberian Corporate Registry's quarterly electronic newsletter.

### Appointment of Hilary Spilkin as Vice President & Director of Corporate Registry

INTERNATIONAL tax expert Hilary Spilkin has been appointed Vice-President & Director of Corporate Registry by the rapidly expanding Liberian Corporate Registry, which is headquartered in the United States and has a network of international offices.

Hilary is qualified to practice law in both the United States and South Africa, and is fluent in English, French and Spanish. Following a two-year spell as a barrister/advocate to the Supreme Court of South Africa in Johannesburg, she has occupied senior positions as a tax and legal consultant with leading international firms in London and California. She has also worked in private practice as a legal and international tax consultant in California and Tel Aviv, Israel. Most recently, she has been working, in the US and London, under contract to Florida-headquartered Standard Chartered (Americas) Private Wealth Bank, implementing compliance protocols and operating systems.

Hilary says, "I am very excited at the opportunity to be working for one of the world's leading corporate registries. Liberia is widely acknowledged as a highly efficient, secure and strategic jurisdiction for international investors. Its international ship registry has long been recognized globally for its professionalism and commitment to safety, as well as its cost-effectiveness. There has never been a more appropriate time for companies and individuals to take advantage of this reputable and experienced offshore registry. I am looking forward to further expanding the Liberian corporate operation."

Scott Bergeron, Chief Operating Officer of the Liberian International Ship & Corporate Registry (LISCR), the US-owned and operated company that provides the day-to-day management of the Liberian Registry, says, "Liberia's corporate registry is undergoing a period of healthy and planned expansion. We recognize that this is a competitive field and that trust, security and professionalism are fundamental requirements for prospective investors, as well as transparency and accessibility. Liberia's corporate registry provides all these qualities, and will be able to do so even more effectively now that Hilary has joined our team."

"Hilary's experience is a perfect fit for our operation and encompasses everything from practicing at the bar to advising an international client base on tax planning, the formation and management of offshore structures, systems compliance, transaction analysis, and forensic fraud investigations.

"We are experiencing a surge of interest in our corporate business. Hilary's appointment is an important part of our expansion plans. Her legal and commercial experience, and her particular expertise in the area of taxation, will add genuine value to the service we are able to offer our clients."

### Meeting Clients

Hilary has wasted no time in getting up to speed, already logging visits to clients in Cyprus and Greece. She will next be visiting clients in Switzerland this week accompanied by staff from our Zurich office.

A visit to Hong Kong is also on the agenda for this spring.



Hilary Spilkin

### In This Issue

- Introduction
- Appointment of Hilary Spilkin as VP & Director of Corporate Registry
- Meeting Clients
- Feature - 'Entrepreneurs, Investors and Dynasties - Finding the Right Corporate Vehicle'
- Next newsletter
- Contact Details

### Feature Article -

### 'Entrepreneurs, Investors and Dynasties - Finding the Right Corporate Vehicle'

In order to fully appreciate the use of special purpose corporate vehicles, a sophisticated business planner will understand that the needs and dynamics of a company change over time. Although the structure of the company may have been sufficient at its inception, the form may need to be changed as the company matures and evolves...

(Read more in Feature Section)

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## Feature - 'Entrepreneurs, Investors and Dynasties - Finding the Right Corporate Vehicle'

*Brad L. Berman, Executive Director, and Zaharoula Mavrikos, Associate Counsel, Liberian Corporate Registry*

In order to fully appreciate the use of special purpose corporate vehicles, a sophisticated business planner will understand that the needs and dynamics of a company change over time. Although the structure of the company may have been sufficient at its inception, the form may need to be changed as the company matures and evolves.

Recent legislative initiatives permit business entities to de-register as one form of legal entity and re-register as a new form of legal entity. In many jurisdictions, this concept is referred to as "conversion" and it is widely adopted in the United States. California, Delaware, Florida, Massachusetts, Minnesota and Washington are some of the U.S. states that have amended their corporate statutes to include provisions for entity conversions. Internationally, this concept is recognized in various degrees by countries such as Liberia, Australia and India.

Similar to U.S. Delaware Corporate Law, various provisions of the Liberian Business Corporation Act ("BCA") address the concept of conversion from one business entity to another. Section 10.14 of the BCA provides for the de-registration of a Liberian corporation and its re-registration as another form of Liberian entity, Section 14.2.14 of the BCA, governs the re-registration of a legal entity existing under the laws of Liberia to re-register as a Liberian limited liability company, and Section 14.2.15 permits the cancellation of a Liberian limited liability company upon re-registration as another form of Liberian entity. Provisions comparable to Sections 14.2.14 and 14.2.15 of the BCA are incorporated in the Liberian laws related to Limited Partnership and Foundations.

Prior to the legal concept of "conversion", practitioners had to either (a) form a new entity and merge the old entity into the new one or (b) dissolve the original entity, distribute the assets to the equity holders and then have the equity holders contribute the assets into a new entity. Apart from being time consuming, these practices can be costly and can trigger unnecessary tax consequences. In many cases, conversion will yield the same result in a more efficient manner. In the U.S., there are Internal Revenue Code rulings that state that a gain or loss will not be recognized on conversion.

*Perhaps it is easier to grasp the use of conversion in the context of specific examples.*

In the first example, two entrepreneurs decide that in order to limit their liability in a proposed investment it would be best for each to contribute capital by purchasing shares in a standard special purpose IBC. Over the course of time, they realize that additional capital is needed to fund the new corporation's expansion. They are introduced by their financial advisor to three investors. While the three investors are content to leave full management and operation in the hands of the two entrepreneurs, they do not want the tax revenue agency to reap the reward of corporate taxation at the entity level and subsequently personal income taxation from the three investors.

Assuming the IBC was formed within a jurisdiction that allows for entity conversion, the two entrepreneurs can transfer the assets and liabilities of their special purpose company to a pass-through tax vehicle by converting their IBC into an LLC. The entrepreneurs will assume responsibility as co-managing members with the investors participating as investment members. The advantages of an LLC will thus be realized. These include: members' protection from personal liability for the debts and obligations of the LLC; single layer taxation; simplicity and operational flexibility; and reduced record keeping requirements.

In our second example, an entrepreneur decides that to limit his liability in a proposed investment, it would be best to contribute capital by purchasing shares in a standard special purpose IBC. After a few very prosperous years, this special purpose IBC grows into an extremely valuable holding company, owning the entrepreneur's family wealth. In this case, the shareholder would like to donate certain assets to his heirs. However, he would like to maintain the wealth generating potential of the company while distancing himself from its assets and the tax revenue agency's long reach.

In this scenario, the entrepreneur's corporation was also formed in a jurisdiction that permits conversion. Thus, a conversion of his special purpose IBC into a Foundation seems to be the most sensible option. The de-registration of the corporation and its subsequent re-registration as a Foundation will allow the donor to become a beneficiary of the Foundation while participating on the Foundation's supervisory board. Following the conversion, the entrepreneur can avoid including the Foundation's assets in his personal taxable estate, since it is the Foundation that owns the assets.

Moreover, the donor will realize the following additional advantages: the Foundation will be managed by independent officers (usually professional administrators), guided by a Supervisory Board (or Council). The Foundation's officers will determine distribution of income and capital in accordance with the Founder's instructions, which can change over time. Also, in jurisdictions, such as Liberia, there will be limited public filing requirements and there is no disclosure of the identities of the Founder or the beneficiaries.

The clear advantage of the conversion is that the Foundation will distance the assets from otherwise taxable events. In addition, the creation of the Foundation structure avoids problems that could be incurred by the creation of a trust structure. With this structure, the Foundation, rather than trustees, is the legal owner of the property.

## CONTACT DETAILS

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The mass conversion of Canadian income trusts into corporations is a recent example of the benefits of conversion statutes. On October 31, 2006, the Canadian Department of Finance announced the Specified Investment Flow-Through rules (SIFT rules). The new SIFT rules alter the way in which publicly traded income fund trusts are taxed, which is similar to corporate taxation. On July 14, 2008, the SIFT rules were further amended to allow for the conversion of a SIFT trust into a corporation on a tax deferred basis if the conversion was completed prior to 2012.

The corporate world responded swiftly to these new regulations and a significant number of income fund trusts took advantage of the new regulations. Many trusts have either converted into corporations or have announced their intention to convert. Canadian companies have cited numerous advantages of the conversion, including the effective and efficient method to convert from a trust into a corporation; the benefit of lower income tax rates on dividends paid by unit holders after the conversion; the improved access to capital markets in Canada by utilization of a corporate form (rather than a trust form); and the elimination of normal growth restrictions imposed by the SIFT rules.

As a note of caution, it is worth reiterating that conversion from one type of entity into another could have tax implications. While these implications are beyond the scope of this article, with advice and guidance of financial professionals, conversion clearly offers an intriguing option to change corporate structure as a company evolves and matures.

#### UPCOMING NEWSLETTER

The next issue of Corporate@ is scheduled for May 2011 and will feature an article on *'Entrepreneurs, Investors and Dynasties - Finding the right Corporate vehicle'*.

*As always, we are ready to serve your needs.*

Best regards,

*The Liberian Corporate Program*