

Updates to *The Lifeboat Strategy*, 3d ed. (February 2009)

The 3d edition was published in October 2007

Note: All page numbering refers to the THIRD edition of The Lifeboat Strategy. The final update for the SECOND edition is published at http://nestmann.com/pdf/lifeboat_updates_1107.pdf.

p. 7

In addition to the public records listed on this page, private companies maintain records of many types of transactions you make with them. In most cases, these companies may distribute these records as they see fit; you don't own them.

When you open a bank account, order a pizza, donate to a charity, register a product for a warranty, sign up for a "shopper's card" at a grocery, collect a rebate, or order information out of a catalog, the information you disclose (although not your credit card number) may be shared. In some states, even records of your medical prescriptions may be shared.

p. 9

There is a typographical error in the first word of the last paragraph. Please substitute "one" for "once."

p. 14

A recent trend in identify theft is for criminals to set up online data warehouses of stolen personal data for sale to prospective data thieves. For those with access to such warehouses, identity theft is as easy as "point and click."¹

p. 15

The INSPASS program has been discontinued. In its place, the U.S. Department of Homeland Security has initiated several "trusted traveler" programs to reduce border-crossing formalities. The main trusted traveler programs are the:

- Global Entry Program (provides pre-approved, low-risk travelers expedited clearance upon arrival into the United States)
- NEXUS Program (provides expedited travel via land, air or sea to approved members between the U.S. and Canada border) and

- SENTRI Program (provides expedited travel to approved members between the U.S. and Mexico border)²

p. 15

Research is mixed as to whether CCTV is effective at preventing or solving crime. One study from the United Kingdom, the country with the world's most pervasive CCTV network, shows that street crime and violence is in most areas equipped with CCTV no lower than in areas without it.³ On the other hand, an internal investigation by Scotland Yard (the London police authority) concluded that seven out of ten murders are solved using footage captured by CCTV cameras.⁴

p. 17

In January 2008, the FBI proposed a global network, through which U.S. law enforcement and intelligence agencies would have direct access to biometric information held in foreign databases. The proposal would, for the first time, expand the five-nation UK-USA intelligence sharing agreement (Chapter 2) between the United States, the United Kingdom, Canada, Australia, and New Zealand, into regular law enforcement.⁵

p. 17

In April 2008, President George W. Bush signed into legislation that authorizes the federal to screen the DNA of all babies born in the United States. The official purpose of the database is for genetic research, but critics describe it as the first step towards a national DNA databank.⁶

p. 17

Beginning in January 2009, under new rules from the U.S. Department of Justice, any person arrested in connection with any federal crime must provide a DNA sample.⁷

pp. 30-31

All 50 states have now agreed to participate in the U.S. Department of Homeland Security's "Real ID" initiative to develop high-tech driver's licenses. However, no state has yet implemented these requirements, and all 50 states have been granted extensions from the original May 2008 deadline.⁸ The new deadline is Dec. 31, 2009.

pp. 31-32

The US\$50 billion Ponzi Scheme allegedly masterminded by investment manager Bernie Madoff proves beyond any reasonable doubt that the SEC is unable to prevent even the largest investor frauds. The Madoff affair occurred despite the fact that the SEC was warned on numerous occasions, beginning more than a decade ago, that the investment returns claimed by Madoff were impossible to achieve by any legitimate method.⁹

p. 34

The weakening economy has led to an explosion in credit repair scams. There is no way to "instantly" repair your credit. You can improve your credit score legitimately, but it takes time, a conscious effort, and sticking to a personal debt repayment plan.

p. 38

In 2006, Congress enacted legislation that legalizes the sharing of genetic information among the more than 800,000 HIPPA-authorized entities described on this page. You need not be informed of such sharing and have no right to opt out of it.¹⁰

p. 40

In March 2008, in response to a request under the Freedom of Information Act, the U.S. Postal Service released limited data on mail covers. Each year, the Postal Inspection Service approves more than 10,000 mail covers. Nor is it applying a particularly rigorous standard of review. From 2004-2006, it approved more than 99.5% of mail cover applications.¹¹

p. 43

In 2007, federal and state law enforcement agencies requested 2,208 wiretaps, up from 1,839 wiretaps in 2006. As in 2006, no applications for wiretaps were denied.¹² The over-

whelming majority (94%) of these wiretaps were for cellular phones and other "portable devices. The Foreign Intelligence Surveillance Court authorized another 2,370 "national security" wiretaps, up from 2,176 in 2006.¹³

p. 46

After months of negotiations and stalled efforts, in June 2008, Congress enacted "compromise" legislation that makes most provisions of the Protect America Act permanent. The bill amends the Foreign Intelligence Surveillance Act (FISA) to give the NSA greatly expanded authority to carry out wholesale "data mining" of e-mail communications, telephone calls, faxes, etc., without obtaining a search warrant.

The only role of the courts under the new FISA law is to approve the computer algorithms the NSA uses to decide which messages merit further investigation. The amendments shift the decisions about which U.S. citizens to spy on from the courts to NSA technicians operating in secret and creating surveillance algorithms that only they understand.

The law also grants retroactive immunity to the telecom companies that cooperated with NSA eavesdropping after the attacks of Sept. 11, 2001.¹⁴

p. 46

In August 2008, the secret Foreign Intelligence Surveillance Court of Review ruled that warrantless e-mail and telephone surveillance by U.S. federal agencies does not violate the U.S. Constitution.¹⁵ The decision implicitly validates the amendments to FISA contained in the Protect America Act.

p. 46

The NSA's "Terrorist Surveillance Program" (TSP) appears to rely on mining the data streams of U.S. telecommunications companies to analyze transactional records of telephone and e-mail traffic in search of patterns that might point to terrorist suspects. Much of the world's telecom traffic passes through network hubs in the United States. The NSA has installed equipment in these hubs to route telecom data streams through NSA computers. This is done without a search warrant or any judicial oversight.¹⁶ If you

match a particular profile, the NSA apparently assigns a human analyst to listen in on your telephone calls and read your e-mail.

p. 48

Delete last paragraph before "E-Mail and Cellular Phones Have Little Privacy Protection" and insert in its place:

"Hundreds of companies buy and sell private telephone records. One of the most frequently used strategies to obtain someone's phone records is to impersonate that person. Such 'pretexting' is now illegal in some states, but persists. A proposed federal law would ban pretexting for obtaining telephone records, but would forbid the practice only by private companies. Government agencies could continue to freely impersonate you to obtain your telephone records."¹⁷

p. 49

Law enforcement agencies now routinely seek real-time tracking data from cell phone companies so they can pinpoint the whereabouts of criminal suspects. In many cases, no warrant is necessary to obtain this data.¹⁸

p. 51

Some data security experts believe that within a few years, perhaps sooner, there will be a data security "meltdown" event that will lead to the enactment of an "e-Patriot" Act.¹⁹ It will likely include provisions previously introduced, but rejected due to civil liberties concerns. These include:

- Mandatory disclosure of encryption keys and passphrases after a court order or other legal process
- Prohibition of anonymous e-mail accounts
- Mandatory retention of e-mail logs and Web surfing logs by Internet Service Providers
- Mandatory use of "Internet ID cards" to access the Internet

p. 54

The official name of the Cybercrime Treaty is the Council of Europe's Convention on Cyber-crime.

In February 2009, a federal judge ordered a criminal defendant in a child pornography inves-

tigation to divulge his encryption passphrase so prosecutors can view the unencrypted files on his hard disk.²⁰ Sebastien Boucher was arrested when customs agents searched his laptop at a Canadian border crossing in December 2006. An officer allegedly discovered "animation depicting adult and child pornography." But customs officials then shut down the computer.

Since Boucher had his entire hard drive encrypted, customs officials were unable to access the alleged pornographic materials when they restarted his laptop. Because a border guard saw the animation before the computer was shut down, the judge ruled that the government already knows the existence and location of the hard disk and the files on it. Therefore, the act of disclosing the passphrase is supposedly not self-incriminating.

p. 57

The IRS has published new procedures under which informants may claim rewards of up to 30% of additional tax, penalties and interest owed. To be eligible for an award under the new procedures, the tax, penalties, interest, additions to tax, and additional amounts in dispute must exceed \$2 million for any taxable year.²¹

p. 61

The Small Business and Work Opportunity Act of 2007 imposes much higher penalties on tax return preparers that fail to meet dramatically higher standards of legal authority. This higher standard requires the preparer to have a reasonable belief that any tax position that is not "red flagged" via Form 8275 would more likely than not be sustained if challenged by the IRS. Otherwise, the IRS can fine the tax preparer \$1,000 or 50% of the fee paid by the taxpayer. This provision is likely to force many tax preparers to take much more conservative positions when filing returns on behalf of their clients.

p. 66

The "structuring" statute is not often used to prosecute money laundering, but a structuring investigation may have ended the career of former New York governor Elliot Spitzer in March 2008. Spitzer apparently withdrew more than US\$10,000 in cash from his bank account in a series of "related" transactions. That apparently

set alarm bells off in the bank's software used to identify "suspicious transactions" in customer accounts.²² However, prosecutors ultimately declined to bring structuring charges against Spitzer.²³

pp. 71-74

In December 2008, the U.S. Department of the Treasury withdrew proposed anti-laundering compliance rules for unregistered investment companies, investment advisors and commodity trading advisors. These rules, had they been implemented, would have required such businesses to set up establish anti-money laundering programs, including the requirement to report "suspicious transactions" by customers. However, the SEC and other federal agencies have made it clear that they expect investment advisers to establish and enforce anti-money laundering programs.²⁴

p. 75

In January 2008, the Supreme Court ruled that federal law enforcement officers are immune from lawsuits for mishandling, losing, or even stealing personal property that comes under their control in the course of their official duties.²⁵ While the case did not involve a civil forfeiture, similar rules would presumably applied to this often-abused legal procedure.

pp. 75-79

As the economy sours, and governments are forced to cut back spending, civil forfeiture is viewed as an increasingly attractive revenue stream. And in at least one state, the U.S. military is participating and receiving their share of the spoils. Colorado law now designates the Colorado National Guard as a "law enforcement agency" for the purpose of participating in asset forfeitures conducted pursuant to federal law. When the Guard helps to investigate or otherwise assist in such cases, it shares in the revenues. In November 2008, the Guard received its first check, for US\$93,701.²⁶

pp. 75-79

In October 2008, federal prosecutors filed an indictment charging 79 members of the Mongols, a West Coast motorcycle gang, with numerous racketeering, drug and money laundering offenses. A key part of the indictment is a request for forfeiture of the Mongols' trademark,

which portrays a pony-tailed warrior with a handlebar mustache. According to the U.S. Attorney prosecuting the case, police are now authorized to confiscate on sight any article of clothing or other item displaying the Mongol logo.²⁷

If prosecutors decide to seize a popular retail brand like The Gap, could police fan out and start seizing teenagers' baseball caps and T-shirts? Under this logic, the answer would be yes.

p. 80

The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) didn't change the procedures for all types of forfeiture cases. The reforms exclude cases brought under forfeiture statutes relating to Customs offenses, some types of tax offenses, food/drug/cosmetic offenses, and offenses relating to the Trading with the Enemy Act.²⁸ For the vast majority of federal forfeiture statutes, however, CAFRA's provisions apply.

p. 80

Hearsay evidence is no longer admissible in a civil forfeiture proceeding under CAFRA.

pp. 85-88

In June 2008, the Supreme Court injected a small element of sanity into the money laundering law. In two decisions, the court concluded:

- The mere fact that money is "concealed" does not violate the money laundering statute. The government must also prove that the concealment was designed to hide the source, ownership, or control of the money.²⁹
- The "proceeds" of a money laundering crime should be interpreted to mean profits and not gross receipts.³⁰

Taken together, these decisions significantly restrict the reach and scope of the money-laundering statute. One practical effect is that you can no longer be prosecuted for money laundering merely for hiding cash at home, in a safety deposit box, or in your vehicle. But more significantly, the decisions mean that the government won't be able to convert garden-variety financial crimes into money laundering prosecutions.

Congress, of course, can amend the law to specifically make it a money laundering offense to "hide money." It could also redefine "proceeds" as "gross receipts."

pp. 92-93

As part of the Egmont Group initiative (p. 268), FinCEN has signed Memoranda of Understanding (MOU) or obtained other written agreements with other FIUs to help identify forfeitable property. FinCEN has an MOU or a written agreement in effect with the FIUs in Argentina, Aruba, Australia, Belgium, Canada, Cayman Islands, Chile, Cyprus, France, Guatemala, Italy, Japan, Macedonia, Malaysia, Mexico, the Netherlands, Netherlands Antilles, Panama, Paraguay, Philippines, Poland, Romania, Russia, Singapore, Slovenia, South Korea, Spain, and the United Kingdom.³¹

p. 94

One of the most severe sanctions of the USA PATRIOT Act is Section 311, which permits the United States to freeze the U.S. assets of any foreign bank that has correspondent banking or other substantial relationships with specific banks administratively designated as being guilty of money laundering. This authority essentially permits the United States to declare a financial war against an entire country, without any legislative authorization.

In March 2008, the Treasury Department issued a "financial advisory" dealing with Iran. The advisory essentially warned the world's banks that if they do business with Iran, the U.S. Treasury could seize their U.S. assets. All the government needs to do so is to prevail in a secret civil forfeiture hearing in which the targeted bank has no right to participate.³²

p. 100

Please substitute the word "correctly" for "incorrectly" in the fifth line of the last full paragraph on this page.

p. 104

In September 2008, the U.S. Army announced the first deployment of a combat brigade within U.S. borders since the end of the Civil War. The 3rd Infantry Division's 1st Brigade Combat Team will function as an "on-call federal re-

sponse force for natural or manmade emergencies and disasters, including terrorist attacks." The deployment weakens the Posse Comitatus Act to near-insignificance, as the government apparently plans to use the brigade for law enforcement purposes such as "crowd control."³³

p. 105

As the global economic crisis deepens, some commentators speculate that President Obama will use the executive authority assigned the chief executive to try to jump-start the U.S. economy. If Congress doesn't go along with his domestic policy agenda—which it largely has to date—Obama may be tempted to draw on precedents set by previous presidents to "go it alone" via executive orders.

p. 109

In October 2007, legislation increasing civil and criminal penalties for violations of the International Emergency Economic Powers Act (IEEPA) came into effect. Civil penalties increase from US\$50,000 to US\$250,000 per violation, or twice the amount of the violating transaction. Criminal penalties increased to US\$1 million per violation. Prison terms of up to 20 years remained unchanged.

pp. 110-114

In October 2001, lawyers in the former Bush administration created a legal rationale to support the proposition that the Fourth Amendment protection against unreasonable searches and seizures domestically didn't apply to its efforts to protect against terrorism. The administration later disavowed this legal reasoning.³⁴

p. 111

The warrantless surveillance program described on this page is now part of the Protect America Act (see updates to p. 46).

p. 113

In his first days in office, President Obama signed an executive order to close the detention center at Guantanamo Bay, Cuba. He also suspended the military tribunal process inaugurated by the Bush administration. Obama also reversed the policies of the Bush administration by pledging to enforce international conventions signed by the United States that prohibit torture with respect to terrorist suspects.³⁵ However, he

has not yet acted on his campaign proposal to amend the Military Commissions Act, which arguably repeals the constitutional principle of *habeas corpus*.³⁶ Nor has he reversed any of the electronic or financial surveillance initiatives of the Bush administration, unless he has done so secretly.

p. 119

A third lifeboat strategy to avoid lawsuits is to avoid unnecessary legal entanglements. This principal extends, sadly, to even situations where your assistance could save someone's life. Most states have so-called "Good Samaritan" laws that shield would-be rescuers from legal liability in emergencies. However, these laws vary widely from state to state. And they often have holes large enough for an ambulance-chasing attorney to file a multi-million lawsuit.³⁷

In some states, you have a legal obligation called a "duty to rescue" to assist someone in distress. This is particularly true if you're a medical professional or work in emergency services. But, absent this duty, intervening in an emergency situation is often an invitation to a lawsuit.

p. 120

In December 2008, the Recording Industry Association of America announced it would stop suing consumers over illegal music downloads via the Internet. This is an abrupt shift of strategy for the RIAA, which has brought legal proceedings against more than 35,000 people since 2003.³⁸

p. 123-124

Insert the following text at the end of the numbered suggestions on these pages:

8. "When you subscribe to a credit monitoring service, make sure that it will notify you immediately when it detects an effort to steal your identity—by phone, e-mail or text message."

10. "A cross cut shredder is probably sufficient to protect you against a dumpster-diving identity thief. But it may not deter a more determined snoop. Researchers have developed software that can reassemble shredded documents, in some cases, with nearly 100% accuracy. If you really want to make sure that a document is un-

readable, use a micro-cut paper shredder. Or burn the document, then stir the ashes."³⁹

Add the following suggestions:

"24. Avoid using domestically issued debit cards. Use credit cards instead. This way, you're spending the credit card company's money and not your own. It's not always possible to recover the funds stolen from your bank account through fraudulent use of your debit card number. However, your liability for the fraudulent use of your credit card number is usually limited to US\$50."

"25. Beware of signing up for 'social networking' sites such as MySpace or Facebook. It may be extremely difficult or even impossible to remove all traces of your account if you change your mind and want to unsubscribe."⁴⁰

"26. Don't use personal checks unless there's no other alternative. Nearly all the information needed to steal your identity is on a personal check: your name, address, phone number, account number and routing number. If you pay for a purchase with a check, a clerk may write your driver's license number on the check, making it even easier for a prospective identity thief. When using personal checks, list your name only; not your address or phone number."

p. 125

Under the Gramm-Leach-Bliley Act, requests you've made to financial institutions to "opt out" of sharing your private data expire after one year. You must renew these instructions annually.

p. 130

Under the "search incident to arrest doctrine," the Supreme Court has held that police can search someone they are arresting. Even if the arrest is based on an expired or otherwise defective warrant, evidence seized in the search can be used against you.⁴¹

Police may also open any "containers" you have in your pockets or otherwise are carrying. This is true even if no probable cause exists that the containers contain anything illegal. In an in-

creasing number of cases, the "container" is your cell phone or other portable electronic device.⁴²

If you're arrested, expect police to seize your cell phone and retrieve all information on it. No warrant may be required for such a search, and police may be able to use any information found on your cell phone in a subsequent criminal prosecution.

To protect yourself, keep only as much data on your cell phone as you really need. Delete calling records, e-mails, text messages, and photographs daily. Copy any photos you've taken onto your PC and then delete them. If your cell phone has a SIM card (most U.S. phones don't) ask your cellular provider for a new one, and destroy the old one (e.g., by smashing it with a hammer and then incinerating it).

Unfortunately, simply deleting the data isn't enough to protect you if someone conducts a "data dump" of your cell phone. Just like on a personal computer, deleted data on your cell phone can be recovered until it's overwritten. But unlike PCs, the tools necessary to securely delete information on cell phones aren't readily available. In most cases, you'll need to reformat the phone to make the data unrecoverable. Before you proceed, make sure that your cell phone carrier will activate your reformatted phone.

Look in your cell phone manual index for entries like "delete data" or "reformat device" and follow the instructions. Also check out the Web page at http://www.recellular.com/recycling/data_eraser/default.asp. Here, you'll find deletion instructions for hundreds of cell phones.

Take the same precautions, of course, when you dispose of your cell phone.

p. 131

In April 2008 a second federal appeals court declared that border officials may copy the contents of laptop PCs or other electronic devices in your possession when you cross a U.S. border, even if they have no evidence of criminal activity.⁴³ And in February 2009, a federal judge ordered a criminal defendant in a child pornogra-

phy investigation to divulge his encryption passphrase so prosecutors can view the unencrypted files on his hard disk (see updates to p. 54).⁴⁴ The Homeland Security Administration has now released official guidelines under which customs officials can seize and search portable electronic devices.⁴⁵

p. 139

The services described on this page from Jangl and PrivatePhone are no longer available.

p. 140

In July 2008, an Austrian government official revealed that monitoring conversations made through the Skype VOIP network presents "no particular problems."⁴⁶ There is no reason to believe that police in other countries aren't already monitoring conversations made through Skype.

p. 140

Zfone is now compatible with the popular "MagicJack" VOIP product (www.magicjack.com).

p. 141

Insert the following text at the end of the numbered suggestions on these pages:

4. "An additional idea to protect your data is to set a portion of your hard drive to be encrypted with a different key than the one with which you encrypt the entire hard drive, and keep any sensitive data there. When traveling, back up all data files in your laptop to a server, a portable hard drive, or a USB stick. Encrypt all files before you back them up."

Suggestions 6 and 8:

"As a consequence of a 2008 court decision, trying to use the Internet anonymously in the United States may be illegal. If you violate a Web site's terms of service by registering under a fake name, you may be committing a crime."⁴⁷

7. The Diclave service has been acquired by Cryptohippie USA (www.cryptohippie.net).

p. 142

Insert the following text at the end of the numbered suggestions on this page:

8. "Don't keep copies of any e-mail you send or receive on Yahoo!, g-Mail, and similar online services operated by U.S. companies, as they enjoy very little legal protection under U.S. law."⁴⁸

p. 142

Hushmail (<http://www.hushmail.com>) now acknowledges that the company will eavesdrop on its users when presented with a valid court order. In 2007, Hushmail provided 12 CDs of emails to U.S. officials targeting steroid manufacturers, in response to a Canadian court order.⁴⁹

p. 144

Add the following suggestions:

"21. Program your PC so that the 'page' or 'swap' file is automatically deleted upon shutdown. Instructions for this process are posted at <http://www.top-windows-tutorials.com/paging-file.html>."

"22. Avoid Microsoft Internet Explorer (IE). The bulk of malicious programs circulating on the Internet exist because of flaws in the security architecture of IE. In many cases, simply viewing a 'bugged' Web page is enough to compromise your PC. Protect yourself by using Mozilla Firefox (<http://www.mozilla.com>) or another non-Microsoft browsers."

"23. An additional idea to protect your data is to set a portion of your hard drive to be encrypted with a different key than the one with which you encrypt the entire hard drive, and keep any sensitive data there."

"24. Be wary of computer repair services. There are numerous examples of technicians finding suspicious images or other evidence of other illegal activity and reporting their discoveries to police."⁵⁰

pp. 145-146

"Google Health" and a handful of other companies now offer consumers the ability to organize their medical records online, where caregivers can access it instantly. However, Google's Terms of Service for this offering give the company the right to share your data with a variety

of groups unrelated to health care professionals, including the U.S. government. Avoid such services, despite their promised benefits.

p. 146

For 2009, the maximum HSA contribution for an eligible individual with self-only coverage is US\$3,000, and the maximum contribution for family coverage is US\$5,950.

p. 150

Many major casinos have safety deposit boxes on site. In most cases, you'll need to show a government-issued ID to rent one, but since the boxes themselves aren't tied to a bank account, it's unlikely they would show up in an asset search.

p. 157

The Tax Relief and Health Care Act of 2006 increased the penalty for filing a "frivolous" tax return from US\$500 to US\$5,000. Some examples of frivolous returns include: failing to sign the return; taking the position that the Constitution forbids imposition of a federal income tax; or filing a tax return with zeros entered on every line, even though you have taxable income.

p. 160

If you can't pay the tax you owe to the IRS, one option is to apply for an "offer in compromise" (OIC). This is an offer to pay the IRS an amount less than the total you owe to settle the debt in full. You must file all tax returns due and deposit 20% of the sum you plan to offer before applying for an OIC.⁵¹

p. 161

The vast majority of asset protection plans won't protect you from tax claims. The IRS can seize the equity in your home regardless of any homestead exemption, the cash value in a life insurance policy, and most retirement accounts. If you create an offshore structure to hide assets from the IRS, the agency may respond by requesting a court order to incarcerate you for contempt until you repatriate the assets.

p. 161

In July 2008, one of the first digital gold services, Nevis-based E-Gold, pleaded guilty to money laundering charges.⁵²

p. 167

The global financial crisis has led to suggestions that governments use gold as a monetary tool to jump-start the global economy. Under this reasoning, governments worldwide will simultaneously devalue their currencies by revaluing gold at higher-than-market prices. At the same time they will restrict or prohibit most new purchases of gold. These controls will be enforced internationally to prevent a gold-buying panic as governments hyper-inflate their economies to prevent a worldwide depression.⁵³

p. 169

If you're sued, and your legal advisors believe the plaintiff has a valid claim, it may be best to settle out-of-court. Not only does reduce possible damages a jury would award, it avoids a possible tax liability if you experience a judgment that is later reduced through post-trial settlement negotiations. After a judgment is rendered, there is a debt and any reduction through negotiation represents taxable income.

p. 169

Replace second sentence of paragraph #4 with:

"And, for reasons examined in this chapter, if the only reason you took a particular step or series of steps was to "hinder, delay or defraud" a creditor, those transactions can often be legally unwound and you'll be obligated to pay off the judgment—and potentially, face incarceration if you can't."

p. 171

E-mail communication can compromise attorney-client privilege. To preserve it, use a computer to which only you have access to communicate via e-mail with your attorney. This avoids any claim that your communications aren't protected by attorney-client privilege because other people had access to your computer. In addition, encrypt all e-mail communication between you and your attorney. This demonstrates you had the intent of communicating confidentially.⁵⁴

p. 171

New guidelines from the U.S. Department of Justice reduce the likelihood that a business under criminal investigation will be asked to waive attorney-client privilege with respect to its em-

ployees' communication with attorneys paid for by that business.⁵⁵

pp. 173-174

Additional suggestions to avoid having an independent contractor classified as an employee include:

- Filing an Independent Contractor form with authorities in your state
- Using a written contract to define the contractor's responsibilities

pp. 175-176

An often-overlooked source of liability is a falling-out with business partners. For instance, if you are an employee of a business and also own less than a 50% interest in it, your partners may legally terminate your employment, and henceforth pay you only a percentage of the profits. To deal with this threat, make sure you have a professionally drafted employment severance agreement in place before you give up control of the business.

Another important precaution is to have a buy-sell agreement in place with your business partners. The agreement should stipulate under what conditions partners can be forced to sell their interests and at what price; what occurs upon the death of a partner, etc. Again, it's important to have this agreement professionally drafted.

p. 176-177

A good way to beef up liability insurance protection inexpensively is to purchase an "umbrella" policy. With this type of policy, coverage kicks in only after you've reached the limits of your primary liability insurance. Coverage up to US\$5 million is readily available in most states.

p. 178

The Weiss Ratings service has been acquired by TheStreet.com (www.thestreet.com).

pp. 179-180

If you own a single-member LLC, the IRS can seize your personal property for tax debts owed by the LLC. A tax levy served by the IRS on a LLC extends to property or rights to property belonging to the LLC's sole owner.⁵⁶

p. 181

For 2009, estates of U.S. citizens or permanent residents smaller than US\$3.5 million aren't subject to estate tax. This exemption doubles to US\$7 million for a married couple that carries out some basic estate planning. President Obama has proposed amending the Tax Code to make this exemption permanent.

p. 181

Legislation now before Congress would eliminate most "valuation discounts" associated with family limited partnerships and limited liability companies.⁵⁷

pp. 181-182

Limited partnerships (LPs) are used more often than LLCs for estate planning purposes. One reason is that LPs have been around for a longer period and thus have a longer track record in the courts. Another reason is that with a LP, it is easier to separate ownership from control than with a LLC. Unlike the managing member of a LLC, the general partner of a partnership has full liability for activities of the partnership by virtue of the various state statutes authorizing limited partnerships.⁵⁸

p. 183

To preserve asset protection in a LLC, certain formalities are necessary, although not to the degree of a corporation. In particular, some states require you to conduct an annual meeting for the LLC and document the meetings with minutes. Other requirements may also apply.

pp. 184-185

Legislation introduced in May 2008 in the U.S. Senate would require that all 50 states obtain the names and proof of identity of the beneficial owners of any corporation or limited liability company (LLC) formed under that state's laws.⁵⁹ This information would be available to law enforcement authorities upon receipt of a subpoena or summons.

p. 188

A spendthrift trust offers even greater asset protection for its beneficiaries after the death of the person that created it. Instead of giving beneficiaries outright gifts, use the trust as the vehicle for the gift.

p. 191

If you borrow money from a commercial lender and the lender later cancels or forgives the debt, you may have to pay income tax on the amount cancelled. (A 2007 law exempts mortgages on a principal residence from this tax treatment.) Bankruptcy may eliminate this potential tax.

p. 191

Right after you've been discharged from a Chapter 7 bankruptcy is probably the safest time to begin an asset protection plan. The reason is that you have no unidentified creditors. Any future creditor will have a very hard time proving that your planning constituted a fraudulent transfer.

pp. 191-193

There are a few things you can do to protect your assets immediately before filing for bankruptcy:

- Pay any debts you have that aren't dischargeable in bankruptcy: e.g., income tax.
- If you're expecting an inheritance, have the person you expect to receive it from convey it into a discretionary spendthrift trust or comparable asset protection structure, rather than give it to you directly. That way, it won't be available to creditors.
- Get divorced. If one spouse declares bankruptcy, some of the non-bankrupt spouse's income may be imputed to the bankrupt one. Should joint income exceeds certain limits, the bankrupt spouse may not be eligible for a Chapter 7 "fresh start" bankruptcy.

Consult with a bankruptcy attorney before invoking any of these strategies.

p. 194

Rephrase the last sentence of the first full paragraph to read:

"In states with an unlimited homestead exemption, this provision gives creditors an incentive to force debtors who recently acquired a home with equity that exceeds the federal limitation into involuntary bankruptcy. The value of the home equity that exceeds US\$136,875 is then subject to seizure."

p. 200

In recent months, attacks on offshore centers and offshore investments in general have intensified. President Obama has also stressed that he wishes to "shut tax havens down."⁶⁰ However, even the most vociferous opponents of offshore investments often have their own offshore "nest egg." Case in point: Charlie Rangel (D-N.Y.), the Chairman of the powerful U.S. House Ways and Means Committee that writes all of America's tax laws. Since 1988, Rep. Rangel has owned a luxury beachfront home in the Dominican Republic. But he admits that he never reported nor paid taxes on over \$75,000 in rental income the home earned him.⁶¹

p. 201-202

Emerging market economies are experiencing a sharp contraction, although the largest emerging market economies—China and India—are still growing faster than the United States. Stock prices in most emerging markets fell sharply in 2008. The U.S. dollar rebounded against most foreign currencies, resulting in even greater losses for U.S. dollar-based investors.

p. 203

Fitch Research rates only about 1,000 of the largest global banks and thus isn't suitable to evaluate the safety of smaller offshore banks.

p. 204

As pressure from the IRS and other U.S. government agencies intensifies, more offshore banks are now refusing to conduct business with U.S. persons. In some cases, offshore banks have forced long-time U.S. clients to close their accounts. For instance, Swiss banking giant UBS announced in January 2009 that it would close more than 19,000 accounts owned by U.S. investors.⁶² This trend makes the techniques to avoid offshore investment restrictions described on this page even more important.

pp. 205-206

An increasing number of offshore banks will no longer accept investment instructions originating in the United States. A U.S. person with an account in such a bank must either have instructions mailed or faxed from another country, or make a personal visit. In some cases, offshore banks will not permit U.S. investors to purchase any security that is not registered to trade on a

U.S. exchange. This, of course, greatly reduces the usefulness of an offshore bank account.

p. 208

For U.S. tax purposes, a PFIC is not only a foreign corporation, but also any foreign entity taxed as a foreign corporation.

p. 211

Minimums for offshore portfolio management have increased. A realistic minimum investment is now US\$500,000 or more. Some offshore banks reduce this minimum to US\$100,000 or even less for depositors willing to invest in a portfolio of offshore mutual funds. U.S. investors should generally avoid offshore mutual funds because of the tax problems discussed on pp. 208-209.

p. 213

In some countries it is not possible to name a beneficiary to receive the proceeds of an offshore account upon the death of the account holder. In that situation, the best option is to either hold the account in the name of an offshore entity that does not terminate on the owner's death, or have the beneficiary become a co-signer on the account.

p. 215

The anti-offshore vendetta now underway in most high-tax countries is designed to eliminate bank secrecy in low-tax countries respect to foreign tax investigations. U.S. persons in particular, but increasingly residents of other high-tax countries, can no longer count on bank secrecy to shield their offshore dealings from tax authorities at home. This is true both for ordinary and numbered accounts.

p. 216

For the paragraph beginning, "For a corporate account," insert the following sentence at the end of the first sentence:

"Each authorized signatory will need to present proof of identity and residence address."

p. 220-21

In September 2008, the U.S. Treasury Department introduced a new version of Form 90-22.1. This reporting form has become increasingly important because of ongoing and intensifying

IRS investigations involving U.S. persons with unreported offshore bank accounts.

For the first time, the IRS has publicized the filing requirement to tax professionals. It has also made it clear that a U.S. person who establishes a foreign trust or trust-like structure such as a foundation must file the report. It also explicitly includes debit card and prepaid credit card accounts. However, the instructions also stipulate that individual securities (stocks, bonds and notes) are not "financial accounts," and that an unsecured loan to a foreign business (other than a financial institution) does not trigger the filing requirement.

The instructions also extend the filing requirement to any person "in or doing business in the United States" without regard to citizenship. This requirement appears to require any foreign individual with business interests in the United States to disclose to the U.S. Treasury details of all non-U.S. accounts. Whether foreign investors with U.S. business interests will ignore this requirement, comply with it, or liquidate those interests to legally avoid reporting, remains to be seen.

p. 221

There are relatively few criminal prosecutions for failure to file Form TD F 90-22.1. One likely reason is if there is no significant tax loss to the U.S. Treasury, a taxpayer who neglects to file the form will receive a civil fine, rather than be criminally prosecuted. On the other hand, if there is a significant tax loss, then prosecutors are likely to bring tax evasion or tax fraud charges against the taxpayer. As a practical matter, these cases are easier to prosecute than trying to prove a taxpayer "willfully" failed to file the reporting form. However, the IRS's expanding ability to penetrate bank secrecy obtain information in offshore jurisdictions suggests that criminal prosecutions of willful violators will increase.⁶³

p. 221

Today, more than 20 offshore jurisdictions have enacted legislation authorizing the creation of trusts with asset protection features.

pp. 222-224

Offshore trusts also have compelling advantages to non-U.S. persons who are considering living, investing or doing business in the United States.⁶⁴

p. 223

The \$25,000 sum mentioned in the last paragraph on this page is expressed in Eastern Caribbean dollars. The equivalent amount in U.S. dollars is US\$9,250.

p. 227

As U.S. courts continue to hammer away at offshore asset protection arrangements, the "impossibility defense" will become more difficult to justify if an anti-duress clause is present in an offshore trust or other asset protection structure. An acceptable alternative to a duress clause is a properly selected protector with veto power over distributions.

p. 229

Insert the following section immediately before "The Many Benefits of Offshore Variable Annuities":

"Offshore Foundations: Not Recommended for Americans

In recent years, some promoters have marketed offshore private interest foundations (OPIFs) to Americans as alternatives to offshore trusts. The use of OPIFs for asset protection and estate planning purposes originated in Liechtenstein, although Panama is probably the most popular jurisdictions for OPIFs formed by Americans (Chapter 7). Despite claims by some promoters that interest, dividends, and earnings of OPIFs are non-taxable, these entities generally have no U.S. income tax advantages, unless set up for charitable purposes. However, OPIFs can own tax-advantaged investments such as life insurance policies or annuities.

An OPIF, unlike an OAPT, is a separate legal entity that does business in its own name. It consists of an independent fund consisting of assets donated by the founder for a specific, non-commercial purpose—generally, family support and assistance to relatives and heirs. Rather than trustees, the OPIF managed by a council, which acts like a board of directors. This makes it pos-

sible to operate an OPIF like a company, but it's usually set up as an OAPT substitute.

Like an OAPT, the founder of an OPIF may appoint a protector to oversee the foundation council. Similarly, after the death of the founder, an OPIF, like an OAPT, can be designed to avoid probate, reduce estate tax, and insure that property is passed to named beneficiaries.

An OPIF can also offer exceptionally strong asset protection, assuming that it's created in a suitable jurisdiction and managed properly. As with an OAPT, if set up correctly, assets conveyed to an OPIF can't be seized, attached, or otherwise used to satisfy the obligations of either the founder or the beneficiaries.

For a U.S. founder, the tax consequences for an OPIF will usually be the same as an OAPT, if the OPIF is set up as a substitute for an OAPT. All income or gain generated by the OPIF, other than that generated in a tax-deferred contract like an annuity, is generally taxable to the grantor or founder. OPIF founders and U.S. beneficiaries that receive distributions, loans, or marketable securities from the OPIF, must also make substantial disclosures to the IRS.

To achieve this result, the formation documents and bylaws must be carefully drafted to avoid the possibility that the entity will be taxed as a foreign corporation, with potentially disastrous tax consequences. For this reason, avoid 'off-the-shelf' foundation documents sold by promoters!

Because of the additional costs involved in drafting an OPIF that is likely to withstand a possible 'entity challenge' by the IRS, I don't generally recommend them, unless you have special needs better met by an OPIF than an OAPT."

p. 232

Unrealized gains in offshore variable annuities are likely to be included in determining whether a U.S. person who expatriates after June 17, 2008 is subject to the "exit tax" signed into law on that date. Their status should become clearer once the IRS issues regulations to interpret the exit tax law. However, it will be difficult for the

IRS to force offshore issuers of variable annuities to enforce a withholding tax provision in the exit tax legislation. This provision requires issuers of contracts defined as "deferred compensation items" to withhold and remit to the IRS a 30% withholding tax on distributions to covered expatriates (see updates pp. 246-248).

p. 233

Offshore private annuities may be subject to the 1% excise tax described on this page. The safest strategy in this regard is to pay the tax, if it's not waived by treaty.

p. 237

In October 2008, the IRS issued a non-binding "Chief Counsel Advice" that signifies a significant expansion of the investor control rules with respect to the segregated account of an offshore variable annuity or offshore life insurance policy. The announcement implies that any investments held by a U.S. person in such a policy cannot be invested in assets available to the general public and remain tax-deferred.

This reasoning contradicts prior IRS rulings, which have not been withdrawn. If upheld, the investment manager of a separate account could not, for example, buy shares listed in a stock exchange anywhere in the world because these assets are also available to the general public. Although the opinion isn't legally binding, it does foretell increased IRS scrutiny of variable annuities and insurance policies.⁶⁵

pp. 238-239

You can decrease the likelihood that a creditor can seize shares in an IBC by holding them in an offshore trust or other structure in which you have no authority to comply with the terms of a judgment.

p. 239

OLLCs, like their domestic counterparts discussed in Chapter 3, are less effective than limited partnerships for separating ownership from control. This potential vulnerability can generally be mitigated using strategies summarized on this page.

p. 241

The IRS has announced beginning on Jan. 1, 2009, it will automatically assess a US\$10,000

civil penalty on late filings of Form 5471.⁶⁶ Similar announcements are likely for other mandatory disclosures relating to foreign investments or business relationships.

p. 241

As with offshore LLCs, you can file Form 8832 to elect to have a foreign corporation taxed as a disregarded entity or a partnership. This option is not available for numerous foreign entities the IRS treats as "per se corporations" (e.g., the Panamanian S.A.).⁶⁷

pp. 243-244

The IRS has issued proposed rules that describe under what conditions an arrangement with a cell of a protected cell company constitutes "insurance" for federal tax purposes and amounts paid to the cell deductible as insurance premiums. These rules are welcomed since they provide a "road map" to tax practitioners as to how to proceed with smaller captive arrangements that are cost-effective only through utilization of the protected cell or "rent-a-captive" concept.⁶⁸

p. 244

For 2008, the FEIE is US\$87,600. It rises to US\$91,400 for 2009. If you are married and both you and your spouse work overseas, you can exclude a combined total of US\$182,800 of earned income exempt from all U.S. income tax liability in 2009.

For 2008, the foreign housing exclusion is generally limited to US\$26,280. However, in certain high-cost foreign cities, the maximum housing exclusion is much higher.

The FEIE is limited to the actual foreign earned income minus the foreign housing exclusion. Therefore, to exclude a foreign housing amount, you must first figure the foreign housing exclusion before determining the amount for the foreign earned income exclusion.

Generally, if you live in a country that has a higher tax rate than the United States the foreign tax credit that you can claim will be more valuable than the FEIE.

pp. 246-248

Delete after paragraph 2 of p. 246 up to "The Best Ways to Obtain Alternative Citizenship and Passport (p. 248) and insert:

"For tax purposes, a U.S. citizen gives up U.S. nationality on the earliest date one of the following actions is performed or takes place:

- The individual renounces U.S. nationality before a U.S. diplomatic or consular officer
- The individual furnishes to the U.S. Department of State a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an act of expatriation
- The date the U.S. Department of State issues to the individual a certificate of loss of nationality, or
- The date a U.S. court cancels a naturalized citizen's certificate of naturalization.

For an expatriating act to result in an official loss of nationality, the former U.S. citizen must possess a passport from another country, as U.S. policy prohibits its nationals from becoming 'stateless persons.'

The procedure for a long-term U.S. resident is slightly different. A non-citizen U.S. resident voluntarily abandons lawful permanent resident status by filing Department of Homeland Security Form I-407. Before leaving the United States, a resident alien must also obtain a certificate of tax compliance from the IRS, frequently referred to as a 'sailing permit.' This document is issued after the filing of IRS Form 1040-C or Form 2063.

Former U.S. citizens and long-term residents who wish to avoid estate tax on their global estate must also establish a new domicile. Your domicile is your permanent home—the country to which you eventually intend to return. It can be different from your country of actual residence. To change domicile, you must first change residence and subsequently take steps to indicate that you intend to stay in that country permanently. Steps you can take to establish a new domicile include purchasing property, ob-

taining a driver's license, setting up a business or purchasing a burial plot in that country.⁶⁹

Expatriation is politically unpopular. While only a few hundred people, many of whom are not wealthy, give up their U.S. citizenship annually, the image of former US citizens living tax-free in some tropical paradise is an irresistible populist target. As a result, anti-expatriation rules penalizing U.S. citizens and long-term residents who give up their citizenship or residence for tax avoidance reasons have been in effect for decades. First imposed in the 1960s, the rules were tightened in 1996 and again in 2004.

Because the anti-expatriation rules have historically been relatively easy to circumvent, in 2008, Congress replaced them almost in their entirety and replaced them with a mark-to-market 'exit tax.' The exit tax is predicated on the legal fiction that a covered expatriate sells all of his or her worldwide property on the day before the date of expatriation at its fair market value. Tax on the fictional gain is due at the time the expatriate's tax return is due for the year of expatriation. Unrealized gains in non-grantor trusts and many kinds of retirement and pension plans are exempted from the exit tax, but subject instead to a 30% withholding tax on future distributions.

The law also imposes a substitute estate tax of 'covered gifts or bequests' that exceed US\$12,000 annually received by a US citizen or resident from a covered expatriate, payable by the **recipient**. The US\$12,000 exclusion is adjusted annually for inflation.

The exit tax applies to individuals with unrealized capital gains in their global estate that exceed US\$600,000 and who:

- Have a global net worth exceeding US\$2 million; and/or
- Have an average annual net income tax liability for the five preceding years ending before the date of the loss of U.S. citizenship or residence exceeding US\$124,000 (as adjusted for inflation after 2004—US\$136,000 in 2007); and/or

- Fail to certify under penalties of perjury that they have complied with all U.S. federal tax obligations for the preceding five years or fail to submit evidence of compliance as required by regulation.

Only certain dual citizens and minors with few ties to the United States are exempted from these requirements. The exemptions are doubled for a married couple, both of which expatriate.

It is possible to defer payment of the tax by posting acceptable security with the U.S. Treasury and paying an interest charge on the amount deferred.

The best that can be said about the exit tax is that the new rules offer a clean break with the U.S. tax system as of the date of expatriation. Unlike prior law, there is no longer a 10-year period after expatriation during which special punitive tax rules apply.

One significant non-tax provision applies to former US citizens, but not former U.S. permanent residents. It was not modified by the 2008 exit tax. In 1996, Congress enacted so-called Reed amendment to the Immigration and Nationality Act. The amendment gives the U.S. Attorney General the discretion to deny entry into the United States to a former U.S. citizen who renounced U.S. citizenship in order to avoid U.S. taxation.⁷⁰ Other categories of 'excluded persons' are those with communicable diseases or other health conditions; those convicted of crimes involving moral turpitude or illegal drugs or with multiple criminal convictions; prostitutes; spies; terrorists; and draft evaders.⁷¹

Regulations under this provision have not been promulgated, and its power has never officially been invoked. However, some U.S. consular officials have denied visa applications from former US citizens, using the Reed amendment as legal authority for doing so.⁷² With the creation of the Department of Homeland Security's 'no-fly' restrictions, it would be relatively simple to enforce this law by prohibiting re-entry to the United States by persons deemed to have given up U.S. citizenship for tax purposes.

Is expatriation for you? The decision to give up U.S. citizenship is a serious one. It's a step you should take only after consulting with your family and professional advisors. But it's the only way that U.S. citizens and long-term residents can eliminate U.S. tax liability on their non-U.S. income, wherever they live. And it's a tax avoidance option that may eventually be foreclosed by Congress.

The Nestmann Group offers a report analyzing the proposed U.S. exit tax and its potential impact on wealthy U.S. citizens and long-residents. For more information, see http://www.nestmann.com/catalog/product_info.php?cPath=21&products_id=43.

p. 249

The Nestmann Group, Ltd. now works with a law firm that will process an application for Austrian citizenship for a much lower fee than the amount listed on this page.

pp. 249-250

The United Kingdom has now increased the tax burden on non-domiciled residents ("non-doms"). Persons living or working in the United Kingdom, but domiciled elsewhere, are now required to pay an annual £30,000 fee after seven years of U.K. tax residence. This charge may be avoided by becoming non-resident, or by electing to be taxed as a domiciled U.K. resident.⁷³ Any offshore income or gains remitted to the United Kingdom are taxed in addition to the £30,000. Non-doms with offshore income and gains of £2,000 or less will be immune from this new tax burden.⁷⁴

An alternative to the United Kingdom for non-domiciled residence is Ireland. In the wake of the U.K. crackdown on non-doms, the Irish Finance Ministry confirmed that it had no plans to change its non-dom rules, which provide fiscal advantages similar to those in the United Kingdom prior to 2007.⁷⁵

pp. 254-256

U.S. authorities are investigating Swiss banking giant UBS, and trying to force it to divulge names and banking records of more than 52,000 U.S. clients. In February 2009, UBS relinquished to the IRS the account records of ap-

proximately 250 U.S. depositors deemed to have violated Swiss tax laws. In signing a deferred prosecution agreement with the Department of Justice, UBS also admitted conspiring to create sham accounts to hide the assets of U.S. clients from the U.S. government. UBS also agreed to pay a fine of US\$780 million.⁷⁶ With these records available, it will be relatively easy for U.S. authorities to bring a tax evasion case against those depositors who didn't pay tax on the income or gain from their account. In aggravated cases, tax fraud and money laundering charges may be brought.

pp. 257-258

In October 2008, the IRS issued new rules to strengthen enforcement of the "qualified intermediary" (QI) program. Beginning in 2010, foreign banks that invest in U.S. securities on behalf of their clients must conduct due diligence to determine whether U.S. investors, or legal entities controlled by U.S. investors, are the beneficial owners of accounts the banks open.

Offshore banks acting as QIs must also be audited. And the greatly expanded auditing requirements are perhaps the most onerous provision of the new rules. For instance, if a foreign bank wants to use a foreign auditor, that auditor must have a U.S. accounting firm participate in the audit. What's more, the U.S. auditor must accept "joint and several liability" for the QI audit and cosign the report. If the foreign bank fails to identify any U.S. clients, and those clients aren't discovered in the audit, the IRS can bring civil or even criminal charges against the U.S. auditor.⁷⁷

One likely consequence of this campaign will be an even greater reluctance of offshore banks to deal with US customers. Many offshore banks have already severed account relationships with U.S. residents.

p. 258

The United States also uses various forcible means to bring individuals into the jurisdiction of its courts. Authorities have used extradition treaties, deportations, and even kidnapping for this purpose. Even citizens of countries that refuse to extradite nationals to the United States

are vulnerable if they travel to a country that honors U.S. extradition requests.

p. 259

In July 2008, the OECD published an update to its model tax treaty. A notable change welcome to taxpayers is a revision in the arbitration clause (Article 25) to ensure that the competent authorities reach mutual agreement on unresolved issues.⁷⁸

pp. 261-262

In addition to the forfeiture provisions of MLATs, the United States has entered into executive agreements on forfeiture cooperation, including: (1) an agreement with the United Kingdom providing for forfeiture assistance and asset sharing in narcotics cases; (2) a forfeiture cooperation and asset sharing agreement with the Kingdom of the Netherlands; and (3) a drug forfeiture agreement with Singapore. The United States also has asset-sharing agreements with Canada, the Cayman Islands (which was extended to Anguilla, British Virgin Islands, Montserrat, and the Turks and Caicos Islands), Colombia, Ecuador, Jamaica, Mexico and the United Kingdom. These agreements call for the United States to pay "kickbacks" to these respective governments for the proceeds of qualifying forfeitures.

Pursuant to these asset-sharing agreements, and under other provisions of U.S. law, that United States has shared forfeited assets with Anguilla, Antigua and Barbuda, Argentina, the Bahamas, Barbados, British Virgin Islands, Canada, Cayman Islands, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Greece, Guatemala, Guernsey, Hong Kong (SAR), Hungary, Indonesia, Isle of Man, Israel, Jordan, Liechtenstein, Luxembourg, Netherlands Antilles, Paraguay, Peru, Romania, South Africa, Switzerland, Thailand, Turkey, the United Kingdom, and Venezuela.

From 1989 through December 2007, the international asset-sharing program transferred nearly US\$230 million with foreign governments that cooperated and assisted in forfeiture investigations.⁷⁹

pp. 263-264

Declining tax collections in high-tax countries, combined with the sinking global economy, have spurred renewed efforts to enforce sanctions against low-tax jurisdictions that allegedly engage in "harmful tax competition." To avoid financial sanctions, dozens of low-tax jurisdictions have now signed tax information-sharing agreements (TIEAs) with OEC members.

Through the end of 2008, 44 TIEAs have been signed since the OECD began its harmful tax campaign in 2000. Most of these agreements have been signed by a handful of jurisdictions: The Isle of Man (11); Jersey (10); Guernsey (9); the Netherlands Antilles (4); the British Virgin Islands (3); and Bermuda (3). In signing the agreements, these offshore centers hope to avoid being placed on a revised OECD blacklist, which will likely be published in 2009.⁸⁰

pp. 264-265

The European Commission has proposed amendments to the EU Savings Tax Directive would significantly tighten its provisions. These amendments will likely:

- Increase the amount of data exchanged between EU members on accounts held outside a EU resident's home country
- Increase the number of investments subject to information exchange or withholding, such as life insurance
- Restrict the use of intermediaries to avoid tax by handling interest payments on behalf of EU residents
- Tie in information exchange mechanisms to anti-money-laundering regulations to more easily identify the beneficial owner of accounts.⁸¹

pp. 267-268

The ongoing international effort to isolate Iran from the global financial system hinges on a February 2008 report from the FATF accusing Iran of not being sufficiently diligent in applying anti-money-laundering or anti-terrorist-financing rules. These deficiencies, in turn, have led the United States to propose possible sanctions against Iranian banks. If these sanctions come into place, under the USA PATRIOT Act, the U.S. Treasury could seize the U.S. assets of any

Iranian bank, and any other bank doing business with Iran.⁸² (Also see updates to p. 94.)

pp. 267-268

The opposite of a "blacklist" is a "white list" of financial centers that meet international approval for tax transparency, enforcement of money laundering laws, or whatever other criteria government busybodies dream up. The EU has now drawn up an international white list of offshore centers that it believes have top quality anti-money laundering controls. As with past efforts in this area, the selections are obviously politically motivated. It includes Russia, Argentina, and other countries with very questionable money-laundering laws, yet excludes all of the U.K.'s Caribbean dependent territories and assigns the Crown dependencies (Jersey, Guernsey, and the Isle of Man) only a "qualified" status.

Businesses and individuals from the countries on the list will be able to carry out international financial transactions with EU financial institutions with fewer formalities than those who are not on the list.⁸³ In practice, it has become much more difficult for anyone from a non-white-listed jurisdiction to do business with EU financial institutions.

pp. 272-274

In October 2008, the U.K. government used anti-terrorism legislation to freeze an estimated US\$6.5 billion of British assets belonging to Icelandic banks. It took this action not in response to any terrorist threat, but to the failure of the Icelandic government to guarantee repayments to British depositors in failing Icelandic banks doing business in the United Kingdom. Given the unification of law documented in this section, this action by the U.K. government will no doubt be highly influential in other jurisdictions with an English Common Law background.⁸⁴

p. 273

The crown dependencies of the Isle of Man and the Channel Islands (Jersey, Guernsey, Alderney and Sark) have a unique constitutional status. These island jurisdictions are geographically close to Great Britain and are thus considered part of the British Isles. Each island has a minister ap-

pointed by the crown, who is responsible for communicating matters of importance to the United Kingdom to each dependency. None of them, however, have ever been part of the United Kingdom. Indeed, they have a long tradition of self-governance; the *Tynwald*, the parliament of the Isle of Man, is 1,000 years old, predating the English parliament by 300 years.

By the 1990s, the offshore industry had become a major source of income for the crown dependencies. Since non-resident investments were not taxed, and there was no exchange of information with other countries in tax matters, the OECD, EU and U.K. tax authorities all demanded a crack-down.

In November 2008, the U.K. government announced that it had commissioned an "independent review" of all British Crown Dependencies and Overseas Territories that function as offshore financial centers. Among other subjects, the review will cover financial supervision and transparency; tax policies; and international cooperation.⁸⁵ It's safe to conclude that when it's concluded, both Crown dependencies and overseas territories will provide individuals that invest there with less privacy and less asset protection.

pp. 276-277

In February 2007, Belize signed a debt restructuring agreement that provided significant liquidity relief for the government. Nevertheless, Belize's debt burden remains large, external reserves are relatively low, and the fiscal position is vulnerable.⁸⁶

pp. 277-278

In April 2008, the head of Britain's Committee of Public Accounts called Bermuda's record in combating money laundering "appalling." In 2007:

- Authorities in the British Virgin Islands brought criminal charges against IPOC International Growth Fund, Ltd., a Bermuda-registered mutual fund. The BVI accused IPOC of laundering money for a powerful Russian politician through the Bermuda Commercial Bank, one of Bermuda's largest and most respected banks.

- The U.S. Securities and Exchange Commission brought securities fraud charges against Lines Overseas Management, headquartered in Bermuda. LOM stands accused of receiving at least US\$5.8 million from two stock manipulation schemes.
- A local Bermuda newspaper reported that the prime minister, while serving in another ministry, obtained US\$150,000 of publicly funded renovation on his home. In connection with an alleged press leak, police arrested and detained the island's Auditor-General, whose responsibility is to oversee the government's financial affairs.

The U.K. authorities have generally not interfered in Bermuda's offshore sector, as they have historically considered it as a well-regulated jurisdiction. For instance, while most other U.K. overseas territories are subject to the EU Savings Tax Directive, it wasn't extended to Bermuda. A much heavier regulatory hand now extends from the United Kingdom to Bermuda. In addition, the United States has now signed a MLAT with Bermuda.⁸⁷

However, there's little doubt that Bermuda's successful captive insurance, investment fund, and trust management sectors will continue to thrive. Bermuda's financial infrastructure is also well developed, including numerous international law and accounting firms.

pp. 279-280

Corruption continues to plague the Cook Islands. In October 2008, a trial involving former member of Parliament Norman George and two others began. George and his co-defendants are accused of accepting kickbacks and engaging in other corrupt practices when buying heavy machinery on behalf of government.⁸⁸

Economic challenges also continue, with the global financial crisis leading to a downturn in tourism, the Cook Islands' largest source of foreign exchange. However, New Zealand and other external donors continue to support the Cook Islands economy.

pp. 281-282

Nevis (and neighboring St. Kitts), like many other small island jurisdictions, is heavily de-

pendant on the tourist industry. As a result of the global financial crisis, tourist bookings declined sharply in 2008 and the early months of 2009. At the same time, foreign investors continue to show confidence in Nevis/St. Kitts, with several luxury hotel/condominium projects nearing completion.⁸⁹

pp. 283-284

While Austria has maintained its AAA rating from global credit rating agencies,⁹⁰ several of its commercial banks have sought funds from a government bank rescue package.⁹¹ Real estate prices have also fallen sharply. The biggest challenge facing Austria, however, is the nation's immense exposure to emerging markets, particularly in Eastern Europe. This exposure amounts to approximately 85% of Austria's GDP and is likely to lead to further declines in real estate and share prices. Some of Austria's most over-extended commercial banks may face bankruptcy or nationalization.⁹²

pp. 284-285

In February 2008, reports surfaced that the German government paid an employee of Liechtenstein's LGT Bank €5 million to provide confidential records about German account holders. The stolen data is being used in tax evasion and tax fraud proceedings against hundreds of German taxpayers. Germany apparently shared data from these records with tax authorities in the United States, United Kingdom, Australia, and perhaps other countries.⁹³ (Also see updates to p. 200.)

Liechtenstein sought to minimize the damage to its reputation from this incident, but in December 2008, the Principality signed a landmark Tax Information Exchange Agreement (TIEA) with the United States that opens the door for the IRS to obtain information about bank accounts owned or controlled by U.S. taxpayers in Liechtenstein. The information will be released on a case-by-case basis and only after the IRS has demonstrated that possible tax fraud is at issue.⁹⁴

pp. 286-288

Panama must deal with numerous issues that will determine its future as an offshore center and retirement haven. A serious housing glut is likely to lead to sharp declines in the value of

real estate in Panama City, although overbuilding in other parts of the country is less pronounced. Living costs are rising as well, accentuating the financial hardships faced by the approximately one-third of the population living in poverty. Rates of violent crime are increasing as well as the likelihood of social unrest. Corruption continues to be problematic. Many everyday transactions in Panama require bribing public officials.

But the most important issue to non-resident investors is a case before the Panamanian Supreme Court relating to private interest foundations (PIFs). The case stems from a libel suit filed by a Panamanian bank against a Canadian retiree living in Panama. The Canadian made negative comments about the bank in an Internet chat room. Shortly thereafter, the bank petitioned the Supreme Court to freeze the assets of

the Canadian's PIF. The bank then sued the retiree for libel and won a US\$5 million judgment. The Supreme Court is now deciding whether the judgment can be enforced against the PIF's Panamanian bank account.⁹⁵

pp. 288-289

Switzerland's financial industry is facing its most serious crisis since World War II. Tax authorities in major industrialized countries are trying to force Switzerland to end or seriously diminish bank secrecy (see updates to pp. 204 and 254-256). Liechtenstein's decision to reveal account information for suspected tax evaders to U.S. authorities (see updates to pp. 284-285) raises pressure on Switzerland to take the same step. In addition, Swiss industrial interests favor compromise on banking secrecy to insure that global markets remain open to Swiss exports.⁹⁶

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