



# Establishing Foreign Companies with Clarity

Enhancing understanding of  
KYC/AML regulations

Virtual Round Table Series  
Corporate Services Working Group 2018

# Establishing Foreign Companies with Clarity

## Enhancing understanding of KYC/AML regulations

Establishing a presence in a foreign jurisdiction can be difficult, without the right help and guidance.

International anti-money laundering (AML) rules mean that full customer due diligence is required on companies or trusts – including shareholders, directors and any persons exercising control over the structure. Added to that, banks have seriously tightened up compliance with AML rules, requiring full oversight of ultimate beneficial owners (UBOs) and the source of any funds held in a newly-opened account.

Cultural changes towards compliance-driven objectives will be a key priority for those jurisdictions who have yet to fully comply with international objectives in this area, but wish to avoid their reputation being tarnished by high-profile scandals similar to the Panama Papers or the Paradise Papers. This will inevitably make establishing a foreign presence even more difficult.

In addition to overarching international parameters, most developed jurisdictions also have multiple domestic regula-

tions that need to be adhered to around company formation, establishment of bank accounts and tax structuring.

The upshot is that it is extremely difficult to move forward in this area without the help of an experienced corporate service provider (CSP), resident in the foreign jurisdiction of choice. They will smooth the process, ensuring unnecessary delays are avoided and regulations and laws are adhered to.

Reliable corporate services providers remain one step ahead of regulatory changes and are able to offer a range of effective services over and above the initial tasks requested of them.

If the appropriate level of trust is developed between investor and CSP, those services can prove extremely effective and cost efficient, particularly during the initial phase of establishment. CSPs can operate client trust accounts (CTAs), moving money on behalf of clients - or act as nominee directors and shareholders, giving clients a legal presence and a registered address in the chosen jurisdiction.

Many CSPs also offer a private client service, including financial administration and reporting, financial audit and internal control, payroll services, corporate governance matters and bank account management. This might also include discretionary management of assets or the creation of specialised trusts such as protected cell companies to enhance asset protection.

The conclusion might be that not only are CSPs critical to establishing a presence in a foreign jurisdiction, they are also crucial in maintaining that presence amidst changing regulations, cost pressures and inefficient bureaucracies.

In this discussion you will hear from eight experts in corporate service provision. Each will highlight the ways in which they can help clients and offer details on the benefits and challenges of establishing a presence in their jurisdiction. We consider specific AML and KYC laws, the balance between regulatory and business specific risk and examine the role of trust in increasing the effectiveness of the CSP offering.



## The View from IR

**Tom Wheeler**  
MANAGING DIRECTOR

Our Virtual Series publications bring together a number of the network's members to discuss a different practice area-related topic. The participants share their expertise and offer a unique perspective from the jurisdiction they operate in.

This initiative highlights the emphasis we place on collaboration within the IR Global community and the need for effective knowledge sharing.

Each discussion features just one representative per jurisdiction, with the subject matter chosen by the steering committee of the relevant working group. The goal is to provide insight into challenges and opportunities identified by specialist practitioners.

We firmly believe the power of a global network comes from sharing ideas and expertise, enabling our members to better serve their clients' international needs.



ENGLAND

## Paul Beare

Founder, Paul Beare Ltd

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Paul founded Paul Beare Ltd having worked in a family business in the accounting realm, Kevin Beare & Co, for over ten years. That business was sold in 2014 as part of a successful M&A.

Working in a family business provided vast experience in advisory, setting up client's operations, implementing procedures, and in many circumstances co-running client's entities by working in parallel with the senior management team.

Using all this knowledge and experience, Paul continues to support the needs of overseas companies setting up in the UK by providing the service and support these companies need to land and expand; while becoming operational as quickly as possible.

With an extensive support network of international providers that Paul has built up over the years, clients, and potential UK in-bound start-ups will regularly approach him for UK and international expansion support, such as employing someone in Brussels, or establishing a bank account in India. He is often a first point of call – a term referred to, appropriately, as a Trusted Advisor.

Paul travels frequently to the USA, Australia and New Zealand.



LUXEMBOURG

## Christophe Gammal

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Christophe Gammal graduated from the European School in Luxembourg in 1987.

From 1991 to 1996, he pursued business administration studies (Diplom Kaufmann) at the University of Regensburg, Germany, with specialisation in investment, banking and finance as well as operation research. In 1998, he studied commercial law in Luxembourg and has subsequently followed various courses in taxes; management (including MIT); human resources and private equity.

He joined HALSEY in 1997 and has served as a member of the Executive Committee and holder of a CSSF license since 2000 and as a director since 2006, at which point he became a partner. Before he joined HALSEY, he served in various positions with FLG Metallurgie GmbH (VIAG Group) in Düsseldorf, Germany, Murex Rainham Ltd, Rainham (UK) and with Hypobank International S.A. in Luxembourg in the internal audit and deposit department.



NEW ZEALAND

## Richard Ashby

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Richard Ashby has more than 25 years' experience with New Zealand taxation matters, starting his career with the Internal Revenue Division before eventually becoming tax partner at Gilligan Sheppard.

He deals with clients of all types and sizes and provides tax opinions on the appropriate treatment of items of income and expenditure, assists clients with IRD risk reviews and audits and can assist clients who are having difficulties meeting their tax payment obligations to make suitable repayment arrangements with the IRD.

Richard strives to maintain a good work/life balance and outside of the office spends a large amount of time on his road bike, either training or competing in various events around the North Island.



AUSTRALIA

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Ric is a chartered accountant and has worked in public practice since 1989. He graduated from University of Technology Sydney (UTS) in 1993 with a Bachelor of Business, going on to complete a Masters in Taxation Law with UTS in 1996.

He was admitted to the Institute of Chartered Accountants in Australia as a Member in 1996 and as a Fellow in 2013, becoming a SMSF Specialist Advisor in 2013.

Along with his extensive tax knowledge, Ric assists clients to structure their business affairs in order to minimise tax, protect their financial interests and provide maximum flexibility with respect to wealth building goals.

Ric also acts as resident director, secretary and public officer for a number of Australian subsidiaries of overseas companies and local agent for foreign companies registered in Australia and advises on corporate matters generally in regards to those positions.



DUTCH CARIBBEAN

## Luis Santine

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Luis Santine, born in Curacao in 1970, is the founder and managing director of InfoCapital and CX Pay; providing diversified advisory services related to international business solutions, e-commerce and payment solutions.

InfoCapital & CX Pay serve a wide range of clientele ranging from corporate to small business owners and from institutional to individual investors.

On an executive level, Luis is a board member of Banco del Orinoco, Travelsure Insurance Company and Manrique Capriles International as well as the chairman of the board of Curacao Investment & Export Development Foundation (CINEX). He has extensive experience in the international financial sector, having occupied positions at various local and international companies in the financial sector.

Luis holds a MBA degree in Entrepreneurship & Management and a B.S.B.A. degree in International Business in Finance from the American University in Washington, D.C. Luis is proficient in Dutch, English and Spanish, in addition to Papiamentu.



ANGUILLA

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Carlyle K Rogers is a Barrister by profession, having studied law in London at Queen Mary, University of London (UoL) from which he obtained an LLB (Hons) degree and later gained an LLM degree in Corporate and Commercial Law from UoL.

He completed the Professional Legal Studies Course (the Bar) in Auckland, New Zealand at the College of Law, studied Legal Ethics with the College of Law in New South Wales, Australia and is admitted to the New Zealand High Court. He also completed the Legal Education Certificate from Hugh Wooding Law School in Trinidad.

He was also awarded an MBA degree in Finance from the City University Business School (now Cass Business School) in London where he studied as a Commonwealth Scholar.

He splits his time between Anguilla and Dubai where he is a Dubai International Financial Centre (DIFC) registered Wills Draftsman and runs Carlyle Rogers Legal Consultants FZE which focuses on UAE company formation, wealth management and corporate/commercial law.



INDIA

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Vinayaka specialises in the area of risk advisory and assurance for businesses, internal business controls and advising businesses on risk mitigation by functioning within the ambit of the applicable corporate and tax laws.

Vinayaka actively advises clients in the health-care, manufacturing & distribution, real estate, and information technology sectors.

He is a certified IFRS (International Financial Reporting Standards) professional and a commerce graduate from one of the leading universities of India.



ITALY

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Giuseppe is a court expert and a member of Ordine Dottori Commercialisti Milan.

He works in Milan, where he studies business culture and offers professional assistance to enterprises in different fields. He is a member of the executive of the Italian Tax Consultant National Association (ANTI), Delegate of ANTI at Confédération Fiscale Européenne and a member of the Institute for the Study and Economic Research in Europe. He regularly takes part in international meetings on business economics and future economic developments.

## QUESTION 1

# What are some of the key KYC/AML regulations in your jurisdiction that clients should be aware of?

**India – Vinayaka Hanagodu (VH)** For individual foreign promoters, the KYC norms dictate that a passport must be used as a mandatory identification document, plus a proof of address, such as a bank statement or any utility bill.

For corporates, we would expect to see the company's charter documents, plus the shareholding pattern which would be assessed against foreign direct investment norms. These are defined by the Government of India and updated regularly.

Where high risk businesses are concerned, the Government of India restricts, or prohibits, foreign direct investment in certain sectors such as defence, real estate and agriculture.

**England – Paul Beare (PB)** The level of data we need to obtain before we undertake acting for a client varies depending on those services we are providing. Ultimately, we need to feel comfortable that we genuinely 'know' our client.

If we are opening a bank account for example and are also being appointed on the banking mandate as a point of reference with the chosen partner, or processing payments for those clients whereby we are a full-service provider, then we seek visual identity with those who hold 10 per cent or more.

Where we are unable to physically meet face-to-face with our clients, we use a notary public, or seek the support of a local counterpart with whom we have a pre-existing relationship.

Every client is different, and the working relationship differs from one to another. Some clients have discretionary, or unit trusts involved as the ultimate beneficial owner. Where these exist we also need to

understand who the potential beneficiaries of the trust are, should they be named within the trust deed.

Some clients prefer anonymity and we respect that; there is a fine balance between compliance and knowing who the client actually is!

**Dutch Caribbean – Luis Santine (LS)** Pursuant to laws and regulations on combating money laundering and terrorist financing, service providers must take reasonable measures to monitor clients and their transactions on a continuous and/or regular basis by means of an established risk profile and risk classification of that specific client.

To assist in the fight against money laundering and terrorism financing, the Government of Curacao established the National Ordinance Reporting Unusual Transactions (NORUT) and the National Ordinance Identification when Rendering Services or NOIS.

There is no banking secrecy legislation as such, but the jurisdiction does not normally respond to requests for help on tax matters or beneficial ownership clarification from anyone other than treaty partners.

Company formations are done by a Notary Public. Once incorporated, an offshore company needs to obtain foreign exchange control exemption and a business licence.

Curaçao is an active and complying member of various international organisations, such as the OECD, the Egmont Group, the Financial Action Task Force (FATF) and the Caribbean Financial Action Task Force (CFATF).

**Luxembourg – Christophe Gammal (CG)** Luxembourg has a comprehensive and extensive anti-money laundering and countering the financing of terrorism (AML&CFT) legal, regulatory and institutional framework based for the most part on EU instruments and FATF standards.

In Luxembourg the Financial Supervisory Authority ("Commission de Surveillance du Secteur Financier", CSSF) issues the applicable AML/CFT laws for the financial sector. The main AML&CFT law is the Law of 12 November 2004 (as amended) (here named "AML Law"), reinforced with the Law of 27 October 2010, the FSA Regulation 12-02 and the FSA Circular 17/650 (on predicate tax offences). The bill of law n.7128 implementing the IV AML Directive has been voted on 6 February 2018 and should soon become law.

The AML Law, although addressed to the financial sector, is the law which is used as a 'source of inspiration' to issue AML legal framework also for the other entities and/or professionals which are not under the supervision of the CSSF (i.e. notaries, lawyers...).

In practice identification is done for the direct shareholders and parent companies / ultimate beneficial owners (UBOs) and includes obtaining supporting documents as relevant for individuals/legal entities. The AML law settles the threshold to define UBOs at 25 per cent or more of the shares (direct/indirect ownership) and voting rights in that legal entity. Where no individual can be identified to meet the 25 per cent threshold, it might be that the entity's senior managing officials will be considered as UBOs.

Non-compliance with any AML&CFT professional obligations, committed knowingly, may lead to criminal sanc-



Corporate services working group pictured at the 2017 IR Annual Conference in Berlin

tions (a fine between EUR 1,250 to EUR 1,250,000 and/or up to five years' imprisonment), even in the absence of a money-laundering or terrorist financing offence. Aggravated tax fraud and the tax swindle are now punishable by imprisonment (up to five years) and a fine of between EUR 25,000 and 10 times the amount of tax defrauded or fraudulently reimbursed.

**Anguilla – Carlyle Rogers (CR)** In Anguilla, the AML/KYC regime is set out in legislative statute under the Proceeds of Crime Act, R.S.A. c.P98 (POCA). The requirement to conduct due diligence is laid down in the Anti-Money Laundering and Terrorist Financing Regulations and the Anti-Money Laundering and Terrorist Financing Code issued under POCA.

The regulator of the financial services industry in Anguilla, the Financial Services Commission, [www.fsc.org.ai](http://www.fsc.org.ai), is responsible for enforcing the regime through onsite and offsite inspections of company managers or registered agents who incorporate companies. The regime also applies to trust companies, insurance companies, mutual/hedge funds,

banks (both domestic and offshore), money service providers and all other financial services providers and non-profit organisations.

Specifically, the regulations and code require service providers to conduct customer due diligence on all beneficial owners; which would include shareholders, directors and persons exercising control over the structure prior to taking on any of them as a client. The service providers are required to conduct a risk assessment of the entity being established, taking into consideration the activities of said entity, where operations will take place and the residence and background of the persons who will serve in the role of beneficial owner.

In addition, service providers have a continuing obligation to conduct customer due diligence on a regular basis to ensure that the entities are in compliance with the regime. Conducting due diligence requires service providers to secure identification information including passport documentation and a proof of address at minimum, on a risk basis, which must be certified or notarised. The

service provider must also understand and be able to show evidence of the activities of the entity and, again on a risk sensitive basis, ascertain the source of funds and source of wealth of beneficial owners.

**New Zealand – Richard Ashby (RA)**

New Zealand has had specific AML legislation (Anti-Money Laundering and Countering Financing of Terrorism Act 2009) in force since 2013, applying to banks, casinos, a range of financial service providers and some trust and company service providers.

From 1st July 2018, the reach of the Act will be extended, as lawyers and conveyancers will be included in the types of 'reporting entities' bound by its terms, which includes requirements to conduct due diligence on customers, and report on certain prescribed transactions and any suspicious activities.

The list of 'reporting entities' continues to expand, with accountants (1st October 2018), real estate agents (1st January 2019) and the New Zealand Racing

Board and some businesses trading in high value goods (1st August 2019) all coming under the Act's umbrella.

Under New Zealand's (NZ) AML/CFT legislation, non-residents wishing to establish a business presence or undertake transactions in NZ, may find themselves having to provide documentation to confirm who they are, evidence of who they are representing (beneficial owners), and, at times, where and who money has come from. Individuals are likely to have to provide their name, birth date and address details, most likely evidenced via the sighting of a passport or driver's license/bank card, plus a bank statement or power bill.

For those wishing to incorporate a NZ company, there is now a requirement to have at least one NZ resident director (although there is a concession for Australian residents who are already directors of an Australian company). The process around obtaining a NZ tax file number has been strengthened by the applicant having to supply details of an active NZ bank account (the Inland Revenue is reliant on the fact the bank, in complying with its own AML/CFT obligations, would have already obtained various KYC evidence from the person as part of their due diligence processes before permitting a bank account to be opened).

**Australia – Riccardo Raso (RR)** Australia has strengthened its fight against money laundering and terrorism financing with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act). The Australian

Transaction Reports and Analysis Centre (AUSTRAC) is the Australian Government agency responsible for ensuring compliance with the AML/CTF Act.

The AML/CTF Act was developed in close consultation with industry stakeholders from 2004 to 2006, and regulates the financial, gambling, remittance and bullion sectors that provide designated services listed in the AML/CTF Act.

This list of regulated persons is set to be extended to include Accountants and other professionals during phase 2 (expected to come online in 2019).

The AML/CTF Act provides the means to help detect and deter money laundering and terrorism financing. It also provides financial intelligence to revenue and law enforcement agencies.

The act imposes five key obligations on regulated businesses:

1. **enrolment** – all regulated businesses need to enrol with AUSTRAC and provide prescribed enrolment details
2. **establishing and maintaining an AML/CTF program** – to help identify, mitigate and manage the money laundering and terrorism financing risks a business faces
3. **customer due diligence** – identifying and verifying the customer's identity, and ongoing monitoring of transactions
4. **reporting** – notifying authorities of suspicious matters, threshold transactions and international funds transfer instructions

5. **record keeping** – businesses are required to keep records of transactions, customer identification, electronic funds transfer instructions and details of AML/CTF programs.

As a corporate service provider(CSP) we require certain KYC documents and information to be provided by clients, dependant on the type of client and services requested. In addition, registration of the company in Australia will require certain proof of identity documents to be provided to the respective government agencies. We assist our clients to to select and provide the appropriate documentation and explain how it is to be certified to meet the government agency or financial institution requirements.

## QUESTION 2

# How do you help clients manage the balance between regulatory risk and business specific risk in terms of AML? Examples.

**India – VH** Generally, in India, the KYC and AML Regulations are monitored by the resident banking partner.

**Dutch Caribbean – LS** The international financial sector (IFS) of Curaçao is a premier and high quality, globally competitive financial centre that has invested heavily in establishing a robust regulatory regime with supervision that meets or exceeds international standards.

In recent years Curaçao has moved to become predominantly a mid-shore jurisdiction, favouring more transparency, compliance and substance over traditional offshore structures based primarily on favourable tax structures. Much of the financial infrastructure in Curaçao has been setup to cater to structures that seek not only a favourable tax climate, but mostly to provide insight and transparency into property and money flows of the respective companies and private clients.

The specific needs of clients are carefully and thoroughly assessed and evaluated to provide customised and compliant solutions through the most fitting structures that are tailored around the principles of a risk-based approach. This approach is anchored on current laws and regulations on the prevention of money laundering and terrorist financing that aim to provide a better, less timely and a more cost-effective alternative to the normative approach.

Service providers can therefore allocate resources more effectively on high-risk clients and meet compliance requirements with greater efficiency. This, in turn, creates greater latitude and flexibility for professional service providers

to dedicate the desired and adequate attention to the risk assessment of specific client profiles, country, product or transaction types. This risk assessment is used to describe how the risks are either eliminated or mitigated pursuant to the money-laundering legislation.

**Anguilla – CR** It is trite to say that certain business activities are inherently more susceptible to being used to launder money or provide financing for terrorist activities. A company that is involved in making shoes, on a balance of probabilities, is less likely to be involved in laundering funds or financing terrorism, than a car wash where payments are likely to be made in cash.

It is this risk, unique to the particular activities of a company, which service providers will hone in on when conducting their assessments prior to providing registered agent services. This is also the risk that the regulator will look at during inspections of registered agents and other service providers

There is little that a service provider can do to manage this risk without the active participation of the client, unless the service provider is providing directorship or shareholder services and thus is involved in a much deeper manner with the client's operations. In such a scenario, the service provider will have more insight into the actual workings of the business and would be able to ensure that the business risks are fully mitigated

This would also deal with all regulatory risks that the service provider faces because said provider will be able to

respond to any queries from the regulator or a law enforcement agency with full information available.

Outside of this circumstance, the service provider can only advise the client that his or her business activity will mean that the company being formed will receive a higher risk rating which will result in further due diligence checks and more consistent monitoring. This would include securing perhaps, police certificates, bank and accountancy/law firm professional references or even a specialised due diligence report from a professional firm that conducts more extensive background checks using sources that may not be available to the service provider.

Of course, if the business activity is one which is licensed and regulated, then both regulatory and business risks are mitigated since the service provider is a direct licensee subject to oversight by the aforementioned Commission.

**Luxembourg – CG** One of the obligations supervised entities have under AML law, refers to ongoing measures of vigilance around clients which are applied according to a risk-based approach (RBA). These measures of vigilance are applied, not only in the beginning of business relationship, but also during the course of the business relationship.

The RBA states that an assessment must be done prior to the acceptance of the client in order to assign a rating, and that this rating is adjusted later during the ongoing monitoring of the client, further to the evolution of the relationship and the transactions.

When applying the RBA, different factors are considered such as: origin of the relationship, type of services provided (i.e. provision of registered office, management services, administrative services...), knowledge of the client (including origin of the financing of the structure), knowledge of the UBOs as well as of any external managers appointed.

While certain criteria included in the RBA are well known, we have noticed lately that the country of fiscal residence of the UBOs can not only have a negative impact on the final assessment of the potential client but can also prevent bank account opening.

It is important to notice that this is not a general approach adopted by all banks in the Luxembourg market and, although the door seems to be closed for certain jurisdictions with some banks, the door remains open for the same jurisdictions with other banks. We maintain a continuous dialogue with banks and try to find the appropriate documents/information to not only mitigate risks raised, but also to find the banks that will accept clients coming from such jurisdictions.

**Italy – Giuseppe Barranco (GB)** We assess all preliminary operations, including study of a client's business and their various requests. We then prepare an initial project to submit with a forecast of professional fees, notary charges and expenses.

For a foreign client, it is important to get acquainted with all the necessary local information. Our professional experience has matured during years of practice with foreign investors, so that we are able to easily define their local needs.

After we have completed the company formation, we often assess the legal site address and related services, provide book-keeping assistance and help to research and select personnel.

The first step to understanding business risk is to plan a convenient legal form within the foreign country involved, considering the utilisation of all the procedures necessary to grant management and control.

We are comfortable with the laws of many countries and understand the legal, taxation and professional challenges inherent in the process of forming companies across borders.

**New Zealand – RA** As a firm, we approach new clients, particularly non-residents who are looking to establish business operations in New Zealand, on the basis of ensuring they have the most efficient trading structure in place. AML/CFT requirements simply become part of the equation the client needs to attend to, in order to achieve the optimal structuring platform.

Certainly the biggest hurdle we experience presently, is the opening of a bank account for a non-resident client. In recent months we have seen increased time delays and even resistance from a couple of the banks, almost to the extent that AML/CFT obligations are too onerous for them, particularly when dealing with SMEs. Unless the client already has a relationship with the bank in another jurisdiction, they are just not interested in taking them on as a customer.

Naturally we attempt to develop our own trusted relationships with various key organisations, the goal being to attempt to smooth the transition process for new clients, particularly non-residents, trying to establish their businesses.

**Australia – RR** The Accounting Professional and Ethical Standards Board (APESB) is an independent, national body that sets the Code of Ethics and Professional Standards with which members of CA ANZ must comply. Members in public practice in Australia need to perform an assessment of a client at the point of acceptance, as well as on a continuous basis.

With regard to the integrity of a client, matters to consider include, the identity and business reputation of the client's principal owners, key management, related parties and those charged with its governance. We should also take into account indications that the client might be involved in money laundering or other criminal activities and the identity and business reputation of related parties.

When the AML/CTF regulations are expanded to include accountants it is expected that the recommendations will apply to accountants when they prepare for or carry out transactions or activities for their clients, including buying and selling real estate, managing client money, securities or other assets and the management of bank, savings or securities accounts.

Australia and New Zealand are members of the Financial Action Task Force (FATF), which has money laundering (ML) obligations for accountants, centred on customer due diligence, internal controls and special measures for mitigating risks around foreign branches.

The risk-based approach to regulation of the AML/CTF Act would assist some accountants to minimise compliance costs, recognising that it is impractical and inefficient to apply an equal level of vigilance to every client transaction.

Instead, it encourages directing resources and effort towards clients and transactions with a higher potential for money laundering (ML). This means that affected businesses must implement controls that are in proportion to the level of assessed risk of ML that they face. In practice, the risk-based approach requires a professional to consider the ML risk of each client, taking into account relevant risk factors including the type of client, the jurisdictions they deal with, the services they provide and the method through which they provide them, as well as the nature, size and complexity of the client's business.



IR Members pictured at the 2017 IR Annual Conference in Berlin

### QUESTION 3

## What part does trust play in your client relationships when it comes to becoming a corporate services partner? Any concrete examples?

**Luxembourg – CG** Trust is key and an integral part of our business relationships with clients, not only in the beginning, but also during the whole period of the business relationship. We give an important credit to building trust and we appreciate continuous open collaboration and discussion with our clients.

The services we provide to our clients include, but are not limited to: set-up services, domiciliation services, management of companies, accounting services, corporate and secretarial administration services, corporate tax services and fund administration.

Tailored offers are made to our potential clients and the type of service the client chooses, represents a first step towards creating a trust-based relationship and has also an impact on the AML/CFT risk assessment made on each of our clients.

For example, by providing management services or accounting services to our clients, we better understand their structure and transactions and this gives us more comfort, which translates to increased trust.

When external providers of services are chosen, the risk assigned to a client is increased as reliance on a third party means that we need to ensure among others that the third party gives the best quality of services to our clients. If the client is using the services of a third party which is part of a reputable network such as IR Global, the risk associated with this 'externalisation' of services decreases as we have more comfort that services will

be performed to the standards of care of a professional placed in similar circumstances.

We do know that trust is mutual and we place great importance on the trust clients give us. We make client satisfaction a top priority and we involve and encourage all our team members from different departments to have direct contact with clients.

**New Zealand – RA** Trust is very much a two-way street, particularly when dealing with a new non-resident client. From our perspective, it is often a case of where the lead has originated from that dictates our level of comfort. It depends on whether it has come from another IR group member, an existing client or whether we were simply approached as a result of a Google search.

NZ's geographical location will often mean a face-to-face meeting is impractical during the critical decision period of whether to take on the client, however there are now numerous other means of communication which we can utilise to attempt to develop a relationship, and gain a certain level of understanding of the client's risk profile and consequent exposure for our own business should we proceed.

Our firm has been around long enough however, to be very selective as to the type of clients we wish to engage with, appreciating that what we offer in terms of our services is very much a relationship based on trust.

For a number of years now, our focus has been on communicating a message to our clients, that we are their trusted advisor, not only in terms of servicing their accounting and tax compliance needs, but from a global perspective.

We have already developed a wide network of people who we trust and like dealing with in other service industries within NZ (lawyers, banks, real estate agents etc). This shows we are trusted advisers, not all about making the quick buck, but interested in the long term association, assisting our clients to be successful in whatever they do.

**England – PB** Unlike most professional service firms, we prefer to wholly support our clients; for those who appreciate that service. This means we take care of a vast majority of a client's UK needs.

Opening a bank account in the UK can take two or three months from start to finish for a simple UK ownership structure where an overseas parent company is involved. It also takes around a week or two to set up internet banking once the bank account is actually established and opened.

We know this can be cumbersome, so once the anti-money laundering/know your client checks are complete we can open a designated client trust account (CTA). The name is self-explanatory; not a general client account but an account specifically in our client's name. Usually the account name is "PB Ltd RE Client X". This can be used to receive and transmit funds on our client's instructions. Of

course, we are at this point 'holding' client funds and ensuring we know the source of those funds and where the funds are being sent to is paramount to this service.

For some clients, we provide an enhanced service, such as director and trustee support. Some clients benefit from further knowledge and skills gained over the years and this can be passed on by way of these services. The role of Director comes with its own duties and obligations above and beyond a Company Secretary (legal officer) – which is a role in which most of our clients engage us to provide where there is no UK based/domiciled director.

Operating a company in the UK is usually unknown for most of our clients. They either decide to set up a UK company because they have UK clients, or know there is a market presence for them to establish a UK entity.

**Australia – RR** Trust plays a very important part in our client relationships. We tend to be much more sceptical of clients that approach us directly, rather than referred by an existing client, colleague or known business associate. Obviously having referrals from fellow IR Global members provides an additional level of comfort that the client has an existing relationship with a fellow member in another jurisdiction.

We do offer a client trust account to meet certain client obligations, that is independently audited on an annual basis to ensure compliance. We do, however, encourage clients to process transactions via their own bank account rather than rely on our client trust account.

McBurneys offers a local (resident) director service for our overseas clients, and part of that process requires us to have some level of assurance that the parent company exists. We prepare tripartite engagement letters and deeds of access indemnity and insurance which require execution by the parent company, as well as the local company. In addition, we undertake a series of due diligence

investigations (as part of our role) including ASIC Search, ATO Access to lodgement and compliance history, along with key data such as contact persons within the client entity.

**India – VH** Trust is a vital part of any business relationship especially in India, as it requires some communication with the Authorities in respect to compliance. Therefore, it is essential that a client has utmost faith and belief in us in order for us to provide services diligently.

**Italy – GB** Service, for us, means assisting the client in all aspects of their new organisation, while granting a sure, fast and well-defined company system.

We understand that in some cases it is necessary to 'manage' multiple projects over the same period, in order to realise opportunities.

Because of this, trust is key, alongside timeliness, experience and understanding client objectives. Trust allows us to focus on the client, while supplying information, drafting documents and offering qualified suggestions on the project to be realised it in Italy.

**Anguilla – CR** Trust is essential to be a successful corporate services partner, especially in today's world of transparency.

The corporate services provider must be a straight-shooter who understands, respects, accepts and even appreciates the new age in which business is being done. The days of shell games, shell companies, shortcuts, too-cute-by-half strategies and foolishness like nominee directors who are farmers paid a pittance to come in and sign their names to whatever documents are placed before them, are over or will soon be over. Unless of course the corporate services provider wishes to go the way of those companies exposed for shoddy practices by international investigative journalists.

Equally so, the client must understand that the rules of the game are not being set by the corporate services provider or even the regulator and the jurisdiction

that the entity is to be domiciled in, but rather by the international community and bureaucracies. Therefore, the antagonistic and blaming approach which I have found many clients engage in, always arguing about due diligence issues, fees and seeking to play one corporate services provider against another, or one jurisdiction against another in order not to comply with the global rules needs to stop. Clients need to accept the changed landscape and play on it as is.

This not only means providing any, and all requested information that a corporate services provider may require from time to time in fulfilment of his or her AML/KYC obligations, but also being prepared to pay the increased fees associated with the rising costs of compliance. Without that trust on both sides, then eventually the relationship will break down or both sides may end up facing criminal, and or regulatory penalties.

**Dutch Caribbean – LS** We build trusted relationships by engaging with our clients to understand their personal stories and organisational challenges, and help support their business needs. Through our extensive international network and experience we are well positioned to cater to businesses with strategic advice covering multiple markets and cultures. InfoCapital's affiliation with the IR Global network plays a significant role in this.



#### QUESTION 4

## What safeguards do you have in place to ensure the quality of the new clients you work for?

**Dutch Caribbean – LS** Curaçao acquired autonomous status within the Kingdom of the Netherlands eight years ago, and is one of the premier (and oldest) international financial centres in the world. It offers a politically stable jurisdiction and is home to a diverse group of leading financial institutions. Supervision by the Central Bank as well as by the Supervisory Committee governing the financial and fiduciary industry ensures transparency, security and stability in the sector.

Curaçao currently complies with all the requirements of the EU Code of Conduct against harmful tax practices, and has adopted, among other things, the EU Savings Directive as well as measures against money laundering and the financing of terrorism. As an accepted jurisdiction by the OECD and FATF, and apart from its Qualified Intermediary (QI) status awarded by the United States Internal Revenue, Curaçao strives to remain an internationally compliant jurisdiction, evidenced by its ever-growing network of bilateral tax information exchange (TIEA) and double taxation treaties (DTA).

InfoCapital provides a broad range of services to mostly corporate, but also high-net-worth clients around the world. We ensure that all entities serviced by our firm are fully compliant in their relevant jurisdictions. The strength of our alliances is based on the personalised service and trusted relationship we have with our clients and partners alike.

For all client inquiries, an in-depth KYC and customer due diligence (CDD) will be done as part of a risk-based approach. The CDD investigations are performed through screenings, international database scans, sanction and other monitoring lists, as well as verifying IDs and other documents. InfoCapital will also consult its international and local network for additional references.

**Luxembourg – CG** Our clients are mainly multinationals, private equity firms, investment funds and high net worth individuals.

Each of our prospective clients is assessed individually for pre-acceptance and one of the first factors considered (and which helps build trust) is the origin of the relationship. Criteria such as length of the business relationship with

the business feeder, frequency of the contact with the business feeder as well as regulation of the business feeder are evaluated at this early stage.

Working with IR Global is also a good example of a reputable business partner, as entities have adhered to high quality standards which give credit to the new client. Furthermore, this will for sure contribute also to speeding up the process as regards collection of AML-related documents.

While we have not banned working with clients coming from certain jurisdictions, as a Luxembourg CSSF supervised entity we are obligated to carry out an internal analysis and determine which countries are considered more at risk to work with. As such, in case of clients coming from jurisdictions considered more at risk, additional documents intended to bring comfort and build in trust might be requested. Furthermore, extensive AML/CFT checks might also be performed.

Assessing client projects, as well as understanding their structure are also criteria which are weighted at the pre-acceptance level.

We are diligent in the pre-acceptance of our clients, by gathering most of the supporting documents and knowledge on the prospective client ourselves. We understand the importance of making the right decision at an early stage.

**India – VH** Our team is comprised of individuals with specialisation in every aspect of business compliance, including chartered accountants, company secretaries and lawyers.

**Anguilla – CR** My firm works mainly but not exclusively with intermediaries, whether regulated or not. As a result, these intermediaries such as law and accountancy firms or foreign corporate services providers, are the first line of client screening.

The necessary passport identification, second proof of identity such as a driver's license or voter's identification card and proof of address through a bank statement or utility bill are secured from these persons and or firms. We also secure further background information gleaned from the company order form and customer risk profile through said intermediaries.

Each of these intermediaries has to complete a questionnaire providing their background details as required under Anguilla's Regulations and Code mentioned earlier. Recently, the Commission provided guidelines for registered agents, requiring each intermediary to provide the requisite due diligence needed for incorporation, both pre-incorporation and post-incorporation, on a continuous basis.

Where we work with direct clients, similar due diligence information is required and a similar due diligence agreement between my firm and the client is requested. However, since these are direct clients, there is no need for an intermediary questionnaire to be completed.

This information is then run through the World Check system to see if the beneficial owners, directors or shareholders

have a criminal background, are on any blacklist or sanctions list or if they are Politically Exposed Persons (PEPs) as we assess their risk level prior to incorporation and on an on-going basis. The business risk is also assessed from the details of the order form and customer risk profile especially with regards to the activities of the company, the residence of the beneficial owners, proposed banking, source of funds and wealth and other relevant criteria.

Regular risk assessments, updating of information and monitoring of activities are done in order to ensure the quality of the new and indeed old clients with which my firm works.

**Italy – GB** We have been members of the Register of Dottori Commercialisti of Milan since 1972 and have a long experience of foreign investment in Italy.

We have acted as board members, shareholder representatives, and statutory auditors for businesses in various industries, including building services, mechanical engineering, jewellery, finance and technology.

As such our safeguards are built around experience and knowledge of the businesses we work with.

We have extensive experience in international areas and we have also worked for many industrial investors from UK, USA, Australia, France, Spain, Germany, Hungary, Sweden and the Baltic Countries. We are able to accompany the formation of new companies with this professional knowledge.

**New Zealand – RA** We are selective in the clients we are prepared to take on, and value the reputation our firm has developed over the past thirty years or so. There is an entrenched understanding among all the directors that it can just take one poorly selected client to undo all that good work.

Certainly the engagement bar is a lot higher in respect of new non-resident clients than it is for local ones, and the spread of years of experience between

the four directors, and our complementary individual characteristics, have to date enabled us to weed out those potentially less desirable prospects.

Certainly, as we come under the AML/CFT legislation umbrella from 1st October 2018, our engagement processes will become even more robust.

**Australia – RR** Our vetting process is personal and dependant on the client. All new clients are discussed at a monthly Principals meeting and our database keeps track of client referral sources. Issues such as compliance history and other factors will be taken into account when determining whether or not to take on a new client.

As mentioned above, we have a due diligence process for clients where we act as directors. For other clients that are compliance or advice, our due diligence is governed by APES 320 in terms of knowing our client and getting a feel for the quality of the client – this may include:

- writing to the former accountant for professional clearance to take over a role
- understanding past compliance record for lodgement and payment of taxes
- understanding the client industry and whether or not the client's results are in line with industry expectations

We do not generally outsource any of our services, but we do have outsourcing options with some specific services. We do not outsource without the express consent of our clients.

With effect from February 2018, Australia has enacted new rules around the mandatory notification of data breaches (as part of changes to the Privacy Act) for all companies with over AUD3 million in turnover. This will impact on business in Australia and will require adequate safeguarding of client data.

QUESTION 5

## How else are you able to add value to your client's corporate services experience ahead of other accountancy firms?

**Anguilla – CR** My firm is a small boutique outfit which focuses mainly on corporate services, trust domiciliation and general financial services/wealth management with ancillary legal services to the extent that this assists the corporate clients and other high net worth individuals.

We are based in Anguilla and offer services from this jurisdiction primarily, although we can assist with work in other jurisdictions through colleagues with which we have relationships. Through a sister company, Carlyle Rogers Legal Consultants FZE, we have an operation in Dubai, United Arab Emirates (UAE) which promotes the services of the Anguillian operations and advise on issues of company set-up in the UAE, investment migration through Caribbean citizen-by-investment programmes, FATCA and CRS compliance and private client work.

In today's world of public and media pressures, the small, under the radar firms, which are not multijurisdictional, may be a better fit for private clients with nothing to hide and who are fully compliant but who also feel that there is still or should be financial privacy. In addition, my firm offers a specialised and personalised service based more on a long-term relationship than quick profit.

We pride ourselves on customer service, a speedy response time, 24-hour availability, ease of communication, reasonable fees and a commitment to ensuring that clients are one step ahead of and in compliance with the changing regulatory landscape. I regularly write and speak at engagements,

so that clients know the firm is headed by someone with a detailed, considered and well-informed view of the wealth management industry and who is committed to making it work for clients.

**Dutch Caribbean – LS** InfoCapital provides private clients with all necessary assistance and coordination throughout the company formation process including registered office facilities and agents as well as local representatives.

We can act as local director or trustee for legal entities, while Nominee Shareholder Services are possible through the company's professional network in selective jurisdictions. Additional related services include trusteeship and discretionary management of assets.

As part of our private client services, InfoCapital handles a broad range of corporate secretarial services that include financial administration and reporting, financial audit and internal control, payroll services, corporate governance matters and bank account management.

InfoCapital also provides exchange listing services through its affiliation with the Dutch Caribbean Securities Exchange (DCSX). The DCSX is supervised by the Central Bank of Curacao and Sint Maarten and operates under full license of the Ministry of Finance of the Curaçao Government and is the only authorised securities exchange within the country of Curaçao.

In addition to corporate services, InfoCapital has experience and background in providing trustee and board

services to high net worth families, family offices and privately held corporations. We are able to setup protected cell companies (PCCs) to enhance asset protection. This structure allows a fund to have multiple trust cells, creating separation between assets and liabilities from one trust cell to another and the general assets of the limited liability company in which the trust cells are created.

Making the PCC even more attractive is the fact that it can be set up as a regulated investment fund and thus fall under supervision of the Central Bank of Curaçao. A professional party exemption can be obtained from the regulator, as long as there is a minimum initial subscription amount of more than USD50,000 per investor.

As part of its total solutions offering, InfoCapital provides payments services under a private label, CX Pay. The services include multi-currency, payment processing and risk management solutions to internet merchants and acquiring banks worldwide.

The payment platform offers multiple payment methods to assist merchants across the world with online payments through the company's extensive network of international acquiring partners. It is possible to accept recurring payments in over 200 countries and territories, including Europe, the USA, Canada, Asia, Latin America and the Caribbean.

**Luxembourg – CG** Our firm has been established for more than 20 years, and is regulated by the Luxembourg CSSF. We are independent and wholly



Christophe Gammal pictured at the 2017 IR 'On the Road' Conference in Singapore

owned by our management, offering a personalised and objective approach to our clients' specific needs.

One of the main strengths our company has, is represented by its human size – we are a small and dedicated team of professionals, proactive and always listening to the needs of our clients. We anticipate legal requirements and work closely with our clients to ensure that legal deadlines are respected.

We use our knowledge to propose the most appropriate solutions to their specific structure. Although each of our staff is specialised in a specific area, members collaborate closely and are very flexible when it comes to answering clients' demands. We have the capacity to offer our clients an extensive range of high quality services in connection with Luxembourg financial companies both at the time of incorporation and throughout the life of the company.

Furthermore, we have created and maintain a good network of highly skilled external professionals with

whom we collaborate whenever a specific topic out of our expertise requires external involvement (i.e. notaries, fiscal advisers, lawyers...). Being part of IR Global also gives us the opportunity to be able to suggest appropriate service providers to our clients for jurisdictions which might be of interest to expand their businesses.

The satisfaction of our clients is primordial and we give the utmost attention to maintaining it to a high level.

**England – PB** Around 90 per cent of our client base is made of up overseas owned entities. We prefer to work with these types of companies, because most other firms of accountants have a substantial number of UK owned clients by comparison and don't provide the dedicated time, education and practical support these companies require.

Our full service "trusted-advisor" support is appreciated by all. Clients entrust us to manage their UK operation from all aspects; preparing and submitting VAT returns through to pay-

roll and managing pension contributions. We can also act as director for our clients.

As clients continue their growth cycle and look to expand overseas, we collaborate with our counterpart member in that jurisdiction to ensure our client's best interests are observed. Indeed, this member to member knowledge allows for tax efficiencies to be utilised, providing minimisation of taxes where possible.

**India – VH** Our team is built on individuals who deliver comprehensive and continuous quality service to our clients. Our people have exposure to all business verticals, thereby giving us an edge over other firms who are dedicated to a role, with limited understanding of business functioning.

**Italy – GB** Our additional services include tax representation, legal domiciliation, notary links and professional links in all the principal cities of Italy. This give us the possibility to cover all the Italian territory for legal formalities and tax projects.

**New Zealand – RA** We pride ourselves on being a firm that offers a wide array of services, over and above that offered by most of our competitors.

While we have the standard business services team to accommodate all our clients' annual regulatory compliance needs, we also have a specialist tax team offering detailed tax opinion, general Q&A (to other NZ accounting firms as well) and assistance with dealing with the Inland Revenue with respect to tax audits and the like.

We also have a dedicated client enrichment team, who focus on all the other areas which can add value to a client's business – valuation, capital raising, litigation support and succession planning.

We also see ourselves as leaders in the industry, being one of the first NZ firms to establish our own offshore outsourcing operation (now offering its services to other NZ/Australian practices), becoming a paperless office and being the first to offer accountancy insurance – essentially an insurance product providing coverage for professional fees in the event a client is subject to an Inland Revenue dispute.

**Australia – RR** We currently work with overseas colleagues to ensure the client is serviced as efficiently as possible. We will take into consideration the expectations of the referring advisor as well as

the client when establishing a local entity, valuing all our referrals and ensuring that the client experience is as easy and prompt as possible.

We understand that when clients are referred to us, our services not only reflect on our firm but on the firm that referred the client to us. It is for this reason that we ensure all our referrals are given priority treatment during the initial settling in phase. We work hard to provide a service level commensurate with our client expectations, and we are open to a fixed fee billing process for regular work.

We always look to add value to our client and will offer improvement advice whenever we identify areas that need improvement or are operating outside of normal expectations. For foreign clients, we offer local expertise so that we are able to provide advice regarding local customs and expectations as well as rules and regulations. Examples of this may include, assisting to negotiate office leases and offering advice on salary packaging or salary expectations for staff in different industries (e.g. Australian employers generally don't provide Private Health Insurance cover as may be customary for some employers in the US as this would be considered a Fringe Benefit).

McBurneys specialises in establishing companies for foreign parents wishing to establish subsidiaries in Australia. Our speciality will ensure companies are set up (with all registrations necessary to do business), with minimal disruption to business and as quickly as possible.

We will also provide structuring advice to clients to ensure the most efficient structures are put in place bearing in mind a cost/benefit consideration, so that overly complicated structures are not implemented where the cost would exceed the perceived benefits. Part of this process would be to consider the tax benefits of various structures and ensure that these form part of the consideration.



IR Members pictured at the 2017 IR Annual Conference in Berlin

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