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獨家專訪：

由境外從業者角度看 ICIJ 信息泄露

Questions for the Offshore Leaks Initiated by ICIJ

——偉業信托集團法律與合規負責人朱元真先生訪談
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朱元真先生是偉業信托集團的（法律和合規負責人）法律顧問。偉業信托集團是一家獨立的、持有牌照的信托公司，在新加坡和香港設有辦事處，擁有超過 50 位的專業人士。朱先生可以為客戶就公司、合規、風險和反洗錢問題提供建議。朱先生獲得法學學士二級甲等學位，並因公司法方面的圖書獎而被授予優等生。此外，朱先生通過了四級反洗錢考試，亦有 4 年法律行業和 3 年倫敦大學國際法項目講師的工作經驗。

Glen is the Legal Counsel (Legal and Compliance) for Heritage Trust Group, an independent, licensed trust company with offices in Singapore and Hong Kong with over 50 professionals. He advises on corporate, compliance, risks and Anti-Money Laundering matters. He has obtained a LLB 2nd Upper Class Honours and was awarded top student for his cohort and a book prize for company law. In addition, he obtained four distinctions for the Anti-Money Laundering diploma examinations. He has 4 years of experience in the legal industry and 3 years as a lecturer at the University of London being in charge of the International Law Programs.



Q1 您好，朱元真先生！近來，ICIJ 披露了大量的境外（Offshore）信息，吸引了全世界的目光，我們很高興能就此事採訪到您。請問，您對這件事情的第一印象是什麼？

A1 這是對個人隱私這一基本權利的極大侵犯。人們可能沒有做錯任何事，其對自己公司的財務狀況進行規劃，並不違反道德和法律。（即便 ICIJ）在調查中亦強調，公司架構規劃並不是違法的必要條件。

Q2 作為一個境外行業的專家，除了第一反應的印象，我相信你對境外信息洩漏及其這背後的故事，肯定還有更深層次的觀察和視角。隨着秘密性不斷受到侵蝕，您認為境外世界的競爭優勢是否也在逐漸消失？換句話說，面臨 ICIJ 境外信息泄露甚至 OECD 以及其他在岸國家的外部衝擊，您覺得境外世界將會走向滅亡嗎？

Q1 Hello, Mr. Glen Chee. Nice to interview you on the offshore leak which is initiated by ICIJ recently. As we know, ICIJ has been disclosing a series of offshore information since this April. Just like a big bang, the offshore leak attracts great attentions worldwide, what is your first impression on it?

A1 This was a gross invasion of individual privacy which is a fundamental right. These people may not have done anything wrong and structuring of one's financial affairs is not immoral or illegal. In the investigations, it was stressed that there was nothing necessarily illegal about the structures.

Q2 As an offshore expert, besides impression, I am sure that you have deeper perspectives on the offshore leak and stories behind it. As the secrecy is being eroding, do you think the offshore advantages are vanishing gradually? In other words, will the offshore world be dead due to the outside attacks, such as offshore leak or even OECD and onshore pressures?

A2 The Monetary Authority of Singapore (“MAS”) says confidentiality to protect privacy remains relevant but money launders cannot hide behind the smokescreen of “Bank & Trust” confidentiality legislation. As such confidentiality will always be relevant, recently post-ICIJ offshore leaks, MAS has issued IT security guidelines for financial institutions to ensure high level of data protection.

Maintaining strict policies for the protection of the confidentiality of customer



新加坡金融管理局 (The Monetary Authority of Singapore, 簡稱“MAS”)

A2 新加坡金融管理局 (The Monetary Authority of Singapore, 簡稱“MAS”) 表示，私密性對保護隱私相當重要，但洗錢的人却不能藉此而躲藏在“銀行和信托”的保密立法烟霧之下。即便如此，機密性仍然至關重要。有鑒于 ICIJ 披露境外信息所引發的後果，MAS 已經發布了針對金融機構的 IT 安全指導，以確保金融機構可以進行高級別的數據保護。

作為一個財富管理中心，新加坡將一如既往地嚴格貫徹保密客戶信息的政策；這是新加坡的基本權利，也是增強新加坡信心的所在。但客戶信息保密政策，不能被用來掩蓋金融犯罪或者非法資金的流動，亦不能阻礙犯罪調查中的跨境信息交換。高水準的金融誠信和新加坡作為財富管理中心的吸引力，二者之間並不衝突。MAS 希望新加坡擁有幹淨的機制，保障合法資金立法和消除黑錢，從而繼續成為一個充滿活力的金融管理中心。

Q3 根據市場調查，在未來兩年，新加坡將取代瑞士成為財富管理中心。顯然，愈發嚴格的監管正在削弱瑞士的競爭地位。鑒于監管加嚴將成為趨勢，特別是在境外信息泄漏的情況下，您認為這會影響到新加坡在財富管理方面的未來前景嗎？針對此次 ICIJ 泄露境外信息，新加坡有無反應或採取措施來進行應對呢？

A3 作為規管完備的金融中心，新加坡一直以來堪為典範，且新加坡擁有運行良好的政府對其進行監管。MAS 曾多次表示，其目標是保持監管曲線的領先地位。從 2013 年 7 月 1 日起，新加坡針對上游犯罪採取了大量措施，嚴重的稅收犯罪也被列入洗錢上游犯罪。所謂上游犯罪，從邏輯或法律規定上講，意味着其為一項罪行或必須是另一項罪行的一部分。

新加坡副總理兼財政部長 Tharman Shanmugaratnam 先生表示：



information will continue; it is a basic right and underpins confidence in Singapore as a wealth management centre. But confidentiality cannot and will not be used to conceal financial crime or the flow of illicit funds. Neither will confidentiality stand in the way of cross-border exchange of information for investigating crimes. There is no conflict between high standards of financial integrity and Singapore's attractiveness as a centre for managing wealth. The MAS intends Singapore to continue to be a vibrant wealth management centre by having a clean regime that safeguards legitimate funds and eliminates tainted money.

Q According to market study, Singapore will replace Switzerland as wealth center in the next two years. Obviously, one of the killers is the tighter regulation which has weakened the place of Switzerland. Given it would be a trend, especially under the off-shore leak situation, do you think it will affect the prospect of Singapore as a top wealth center in the future? Are there any reactions or measure have been taken by Singapore to deal with it?

A Singapore's such has been modeled on a well regulated financial centre and an efficient well run government overseeing this. The MAS has repeatedly stated that it aims to stay ahead of the regulatory curve, and has designated a broad range of predicate offences and recently included serious tax crimes as money laundering predicate offences which came into effect since 1st July 2013. A predicate offence is a crime that, as a matter of logic or statutory provision, is or must be part of another offence.

Singapore's Deputy Prime Minister and Minister for Finance, Mr Tharman Shanmugaratnam said:



"These changes we are now making are a major enhancement, in step with the strengthening of international standards for exchange of information. But new standards can only work if all jurisdictions subscribe to them. Singapore will work with our international partners to achieve just that, and ensure there is no room for regulatory arbitrage."



The four key steps Singapore will take to further strengthen framework for International Tax Cooperation are:



- ◆ Extend EOI assistance in accordance with the standard to all our existing tax agreement partners, without having to update individually our bilateral tax agreements with them.
- ◆ Sign the Convention on Mutual Administrative Assistance in Tax Matters, which will bring total from 41 to 83 signed.
- ◆ Allow IRAS to obtain bank and trust information from financial institutions without having to seek a Court Order.
- ◆ Conclude a Model 1 Inter-Governmental Agreement (IGA) with the United States (US) establishing a framework of reporting account information of US persons by financial institutions to the relevant domestic authority which in turn provides information to the US IRS that will facilitate financial institutions in Singapore to comply with the Foreign Account Tax Compliance Act (FATCA).



“這些改變是很大的提升，有助於和強化的信息交換國際標準保持一致。但是，祇有在所有司法管轄區都遵從時，（信息交換）的新標準才能發揮作用。新加坡將會與我們的國際伙伴來合作實現這一目的，並確保不存在監管套利的空間。”

為進一步加強國際稅收合作的框架，新加坡將採取的四個主要步驟具體如下：

◆根據新標準加大對現有稅收協定伙伴的信息交換支持，而無需單獨就彼此之間的雙邊稅收協定進行更新。

◆擴展《多邊稅收行政互助公約》（Convention on Mutual Administrative Assistance in Tax Matters）網絡，將簽約數量從 41 份提高到 83 份。

◆允許新加坡稅務局（Inland Revenue Authority of Singapore，簡稱“IRAS”）從金融機構獲取銀行和信托信息，而無需獲得法院授令。

◆與美國締結 Model 1 政府間協議（Inter-Governmental Agreement，簡稱“IGA”），以建立起向美國政府報告美國居民賬戶信息的機制。在該機制下，由金融機構將美國居民信息匯報給新加坡政府當局，然後再由後者提交給美國稅務局（Inland Revenue Service，簡稱“IRS”）。如此一來，這將會有助於新加坡境內的金融機構合規外國稅收賬戶遵從法案（Foreign Account Tax Compliance Act，簡稱“FATCA”）。

像澳大利亞、香港、荷蘭和英國等其他主要司法管轄區一樣，新加坡不甘落後。除了政府認定的 400 多個洗錢上游犯罪外，新加坡的犯罪列表還將會更新。

Q4 毫無疑問，IM(Intermediary，簡稱“IM”，在這裏主要包括律師、註冊會計師、公司服務提供者、財富規劃者等)是境外產業的一個重要組成部分。對於這一次境外信息泄露，一貫低調的 IM(如，總部位于新加坡的保得利信譽通)被暴露在聚光燈下。針對此次信息泄露對 IM 的影響，您的看法如何？您認為這是否會成為 IM（特別是以私密性為基礎的財富管理機構）未來發展的一個障礙？

A4 保密對瑞士作為全球領先的財富管理中心是有用的，但保密已經成為過去。如今，監管良好的亞洲的金融中心（如香港和新加坡）都已經成長起來，因為該地區的財富在不斷增長，客戶會尋求私密性以避免政治和犯罪風險。

此外，財富管理公司提供許多其他的服務，例如資產保護、繼承計劃、投資、企業永久經營和其他質量服務。因此，認為財富管理服務僅建立在保密性基礎上，這是不正確的。

Q5 我非常同意您的觀點，朱先生。類似境外信息泄露這樣的行為是一個孤立的事件，並不是一個普遍現象，否則，這將是所有人的一場噩夢。事實上，大多數 IMs 在保護客戶隱私方面做得非常好。我知道偉業信托集團是一個知名的境外信托公司，對於如何在私密性和透明性間保持平衡，你能分享一些建議或經驗嗎？

A5 我們有一個由 4 位專業人士組成的法律合規團隊，這個團隊的目標就是“風險管理和質量控制”。早在監管環境變得嚴格之前，這個管理工具就已經被引入偉業信托集團。要想在新的、更加嚴格的監管環境下生存，如果不對適應新商業進行培訓、IT 和合規流程等方面投資，那麼，這樣的服務供應者將會更加艱難。

Not falling behind the other key jurisdictions such as Australia, Hong Kong, Netherlands and the UK, the inclusion of tax crimes will be the latest addition to the list of over 400 other money laundering predicate offences designated by Singapore.

Q4 There is no doubt, the IM (lawyers, CPAs, company service provider, wealth planners etc.) is an important part of offshore industry chain. As to the offshore leak this time, some IMs (such as Portcullis, one IM based in Singapore) were in the spotlights from their traditionally low profiles. Referring to the impacts on IMs, may I know your opinions about it? Do you think it will be a block for IMs, especially for whom are providing wealth management services basing on secrecy?

A4 Secrecy has been a thing of the past, and was useful for the Swiss being a leading wealth management cen-

Q6 隨着中國的發展，越來越多的富人正在涌現。中國的 IMs 和客戶信息並沒有被 ICIJ 揭露出來。在某種程度上，這是他們的運氣。即便如此，我想他們中的很多人都非常緊張，擔心進一步的境外信息洩漏可能會波及到他們。從專業的角度看，您對中國客戶有什麼建議嗎？

A6 隨着中國的新富豪開始更關注房地產、財產繼承人、資產和債權保護，信託和基金會等財富管理工具將在中國越來越受歡迎。即便是目前，我們注意到，一些有前途的、未來的企業家，他們對使用信託規劃婚前財產以防離婚被分走大筆財產興趣大增。

Q7 謝謝您的分享。除了上述談到私密性和架構規劃方面的問題，對於通過境外工具來進行稅收籌劃，您可以和我們的讀者談談想法嗎？

A7 逃稅是非法的，但稅收效益却是合法的。無論激進與否，稅收籌劃都並未超出道德範圍。

2013年6月，英國法院公布的判決顯示：

“針對非本土商人 Hossein Mehjoo 請求其會計師賠償 140 萬英鎊損失一案，英格蘭和威爾士高等法院已明確宣布，從業者有合同義務採取任何合法方式來幫助客戶減輕稅收。Hossein Mehjoo 的顧問未能告訴他，可以將業務轉移到一個境外信託，以免交資本利得稅。”

tre. But today, well regulated Asian centres such as the Hong Kong and Singapore have grown because wealth is growing in this region and clients seek confidentiality from political and criminal risk.

In addition, wealth management companies provide many other services, such as asset protection, succession planning, investments, business continuity and other quality services, therefore to state that the wealth management services are merely based on offering secrecy is untrue.

Q5 I agree that such kind of offshore leak is isolated only, not a normal phenomenon, otherwise it would be a nightmare for all. In fact, most IMs are doing very well in the protection of client privacy. I see Heritage Trust Group is a reputable offshore trust company, regarding how to keep a balance between secrecy and transparency, could you share some advices or experiences here?

A5 We have a Legal and Compliance team of 4 and their objective is “Risk Management and Quality Control”. This management tool was introduced to Heritage Trust Group well before the regulatory environment started to tighten and it will become harder for those service providers who don’t invest in training, IT and compliance procedures for on-boarding new business, to survive in the new tighter regulatory environment.

Q6 With the development of China, more and more rich people are rising rapidly. The Chinese IMs and clients are not disclosed this time, to some extent, it is lucky for them. Even so, I guess many of them are very nervous and are worrying about the further offshore leak. From a professional standpoint, are there any advices for chinese clients?

A6 As the new money in China starts to become more concerned with estate and succession planning, asset and creditor protection, such tools as trusts and foundations will become more popular. Even now, we note that the use of trusts for pre-nuptial planning in the event of divorce is raising interest with some successful up-and-coming entrepreneurs.

Q7 Thanks for your kind sharing. The last question is that besides privacy and structuring, may the readers know your views on Tax Planning by offshore vehicles?

A7 Tax evasion is illegal while tax efficiency is legal. Tax planning whether it is aggressive or not, is not immoral.

In the recent UK court ruling in June 2013:

“In awarding non-dom businessman Hossein Mehjoo GBP1.4 million damages against his accountants, the England and Wales High Court has apparently declared that practitioners have a contractual duty to help clients mitigate tax by any legal means. Mehjoo’s advisors failed to tell him he could transfer his business to an offshore trust so that he could sell it free of capital gains tax.”