

**朱元真 Glen Chee**

**法律顾问 – 法律和合规负责人**

**Legal Counsel-Head of Legal  
and Compliance**



**独家专访:**

# **由境外从业者角度看 ICIJ 信息泄露**

## **Questions for the Offshore Leaks Initiated by ICIJ**

**——伟业信托集团法律与合规负责人朱元真先生访谈**

**Glen Chee, Head of Legal & Compliance Heritage Trust Group**



朱元真先生是伟业信托集团的（法律和合规负责人）法律顾问。伟业信托集团是一家独立的、持有牌照的信托公司，在新加坡和香港设有办事处，拥有超过 50 位的专业人士。朱先生可以为客户就公司、合规、风险和反洗钱问题提供建议。朱先生获得法学学士二级甲等学位，并因公司法方面的图书奖而被授予优等生。此外，朱先生通过了四级反洗钱考试，亦有 4 年法律行业和 3 年伦敦大学国际法项目讲师的工作经验。

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！近来，ICIJ 披露了大量的境外（Offshore）信息，吸引了全世界的目光，我们很高兴能就此事采访到您。请问，您对这件事情的第一印象是什么？

**A1** 这是对个人隐私这一基本权利的极大侵犯。人们可能没有做错任何事，其对自己公司的财务状况进行规划，并不违反道德和法律。（即便 ICIJ）在调查中亦强调，公司架构规划并不是违法的必要条件。

**Q2** 作为一个境外行业的专家，除了第一反应的印象，我相信您对境外信息泄漏及其这背后的故事，肯定还有更深层次的观察和视角。随着秘密性不断受到侵蚀，您认为境外世界的竞争优势是否也在逐渐消失？换句话说，面临 ICIJ 境外信息泄露甚至 OECD 以及其他在岸国家的外部冲击，您觉得境外世界将会走向灭亡吗？

**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, 简称“MAS”)

**A2** 新加坡金融管理局 (The Monetary Authority of Singapore, 简称“MAS”) 表示, 私密性对保护隐私相当重要, 但洗钱的人却不能藉此而躲藏在“银行和信托”的保密立法烟雾之下。即便如此, 机密性仍然至关重要。有鉴于 ICIJ 披露境外信息所引发的后果, MAS 已经发布了针对金融机构的 IT 安全指导, 以确保金融机构可以进行高级别的数据保护。

作为一个财富管理中心, 新加坡将一如既往地严格贯彻保密客户信息的政策; 这是新加坡的基本权利, 也是增强新加坡信心的所在。但客户信息保密政策, 不能被用来掩盖金融犯罪或者非法资金的流动, 亦不能阻碍犯罪调查中的跨境信息交换。高水准的金融诚信和新加坡作为财富管理中心的吸引力, 二者之间并不冲突。MAS 希望新加坡拥有干净的机制, 保障合法资金立法和消除黑钱, 从而继续成为一个充满活力的金融管理中心。

**Q3** 根据市场调查, 在未来两年, 新加坡将取代瑞士成为财富管理中心。显然, 愈发严格的监管正在削弱瑞士的竞争地位。鉴于监管加严将成为趋势, 特别是在境外信息泄漏的情况下, 您认为这会影响到新加坡在财富管理方面的未来前景吗? 针对此次 ICIJ 泄露境外信息, 新加坡有无反应或采取措施来进行应对呢?

**A3** 作为规管完备的金融中心, 新加坡一直以来堪为典范, 且新加坡拥有运行良好的政府对其进行监管。MAS 曾多次表示, 其目标是保持监管曲线的领先地位。从 2013 年 7 月 1 日起, 新加坡针对上游犯罪采取了大量措施, 严重的税收犯罪也被列入洗钱上游犯罪。所谓上游犯罪, 从逻辑或法律规定上讲, 意味着其为一项罪行或必须是另一项罪行的一部分。

新加坡副总理兼财政部长 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).





“这些改变是很大的提升，有助于和强化的信息交换国际标准保持一致。但是，只有在所有司法管辖区都遵从时，（信息交换）的新标准才能发挥作用。新加坡将会与我们的国际伙伴来合作实现这一目的，并确保不存在监管套利的空间。”



为进一步加强国际税收合作的框架，新加坡将采取的四个主要步骤具体如下：



◆根据新标准加大对现有税收协定伙伴的信息交换支持，而无需单独就彼此之间的双边税收协定进行更新。

◆扩展《多边税收行政互助公约》（Convention on Mutual Administrative Assistance in Tax Matters）网络，将签约数量从 41 份提高到 83 份。

◆允许新加坡税务局（Inland Revenue Authority of Singapore，简称“IRAS”）从金融机构获取银行和信托信息，而无需获得法院授令。

◆与美国缔结 Model 1 政府间协议（Inter-Governmental Agreement，简称“IGA”），以建立起向美国政府报告美国居民账户信息的机制。在该机制下，由金融机构将美国居民信息汇报给新加坡政府当局，然后再由后者提交给美国税务局（Inland Revenue Service，简称“IRS”）。如此一来，这将会有助于新加坡境内的金融机构合规外国税收账户遵从法案（Foreign Account Tax Compliance Act，简称“FATCA”）。



像澳大利亚、香港、荷兰和英国等其他主要司法管辖区一样，新加坡不甘落后。除了政府认定的 400 多个洗钱上游犯罪外，新加坡的犯罪列表还将会更新。

**Q**4 毫无疑问，IM(Intermediary，简称“IM”，在这里主要包括律师、注册会计师、公司服务提供者、财富规划者等)是境外产业的一个重要组成部分。对于这一次境外信息泄露，一贯低调的 IM(如，总部位于新加坡的保得利信普通)被暴露在聚光灯下。针对此次信息泄露对 IM 的影响，您的看法如何？您认为这是否会成为 IM（特别是以私密性为基础的财富管理机构）未来发展的一个障碍？

**A**4 保密对瑞士作为全球领先的财富管理中心是有用的，但保密已经成为过去。如今，监管良好的亚洲的金融中心（如香港和新加坡）都已经成长起来，因为该地区的财富在不断增长，客户会寻求私密性以避免政治和犯罪风险。

此外，财富管理公司提供许多其他的服务，例如资产保护、继承计划、投资、企业永久经营和其他质量服务。因此，认为财富管理服务仅建立在保密性基础上，这是不正确的。

**Q**5 我非常同意您的观点，朱先生。类似境外信息泄露这样的行为是一个孤立的事件，并不是一个普遍现象，否则，这将是所有人的一场噩梦。事实上，大多数 IMs 在保护客户隐私方面做得非常好。我知道伟业信托集团是一个知名的境外信托公司，对于如何在私密性和透明性间保持平衡，你能分享一些建议或经验吗？

**A**5 我们有一个由 4 位专业人士组成的法律合规团队，这个团队的目标就是“风险管理和质量控制”。早在监管环境变得严格之前，这个管理工具就已经被引入伟业信托集团。要想在新的、更加严格的监管环境下生存，如果不对适应新商

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.

**Q**4 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?

**A**4 Secrecy has been a thing of the past, and was useful for the Swiss being a leading wealth management cen-

业进行培训、IT 和合规流程等方面投资，那么，这样的服务供应者将会更加艰难。

**Q6** 随着中国的发展，越来越多的富人正在涌现。中国的 IMs 和客户信息并没有被 ICIJ 揭露出来。在某种程度上，这是他们的运气。即便如此，我想他们中的很多人都非常紧张，担心进一步的境外信息泄漏可能会波及到他们。从专业的角度看，您对中国客户有什么建议吗？

**A6** 随着中国的新富豪开始更关注房地产、财产继承人、资产和债权保护，信托和基金会等财富管理工具将在中国越来越受欢迎。即便是目前，我们注意到，一些有前途的、未来的企业家，他们对使用信托规划婚前财产以防离婚被分走大笔财产兴趣大增。

**Q7** 感谢您的分享。除了上述谈到私密性和架构规划方面的问题，对于通过境外工具来进行税收筹划，您可以和我们的读者谈谈想法吗？

**A7** 逃税是非法的，但税收效益却是合法的。无论激进与否，税收筹划都并未超出道德范围。

2013 年 6 月，英国法院公布的判决显示：



“针对非本土商人 Hossein Mehjoo 请求其会计师赔偿 140 万英镑损失一案，英格兰和威尔士高等法院已明确宣布，从业者有合同义务采取任何合法方式来帮助客户减轻税收。Hossein Mehjoo 的顾问未能告诉他，可以将业务转移到一个境外信托，以免交资本利得税。”



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.”



# “私密性”不再， 境外世界将 何去何从？

从 2013 年 4 月 ICIJ 公布境外行业的海量信息到现在，大半年已经过去。最初所引发的爆炸性冲击已经慢慢减弱，特别是随着境外世界的积极回应和政策调整，社会各界对此事的关注正在日渐淡化。

虽然说，时间是治愈一切的良药，如果从境外信息公布所带来的即时影响看，的确如此。但是，境外信息泄露对境外行业长远的影响似乎还未可知，毕竟，疾风骤雨过后未必就是彩虹，还可能仍然是连绵阴雨。

此次境外信息泄露是 2009 年 OECD 要求境外金融中心拓展 TIEA 网络交换税务信息以来最严重的一次冲击，一度被称为境外世界竞争利器的“私密性”正一点点在被加速蚕食。境外世界要么不得不扩展 TIEA 网络；要么由金融机构配合美国 FATCA（详见本期杂志的《谁在“风暴眼”中战栗：政商名人，中介机构，抑或境外投资者？》一文）公开昔日不为人知的股东信息、银行信息；要么被类似于 ICIJ 这样的第三方机构披露巨量信息……

当把银行保密法看作金融业基石的瑞士都不得不加入了美国的 FATCA 合作，境外行业的“私密性”几乎已经能够在岸国家无孔不入地窥视。对于境外中介，有哪些教训值得吸取？而对 OFCs 来说，该如何应对以便在未来的全球经济（金融）链条中继续存在，并分得一杯羹？

在探讨境外世界该如何应对之前，我们认为非常有必要对 ICIJ 此次境外信息披露的行为及其背后动机做一些分析。比如，ICIJ 为何会盯上境外世界？ICIJ 能获得其他主流媒体都不能获得的巨量信息，其信息来源是否合法、合理？其信息披露是否存在偏见？如此等等，希望能够通过我们的观察，引发读者更多的思考。