



GGI EBAN Winter University in Sophia Antipolis

Global summit on early stage investing, “Building a new asset class”, attracts venture capitalists, early stage investors, entrepreneurs and professional service providers from around the world

The EBAN, Europe’s trade organisation for early stage investing, and Sophia Business Angels attracted a record number of more than 200 venture capitalists, early stage investors, entrepreneurs, and professional service providers from around the world to their global summit on early stage investing. Entitled “Building a new asset class”, the summit was held in Sophia Antipolis from 17-19 November 2010. It took place in the context of the annual EBAN’s Winter University and was co-hosted and organised by the Sophia Business Angels and sponsored by the CDC Enterprises,

Fondation Sophia Antipolis, and Geneva Group International.

During the summit, the participants issued a Manifesto, the EBAN white paper on early stage investing, which gave a set of guidelines to governments throughout Europe on steps they can take to provide a propitious environment for innovation, entrepreneurship, and early stage investing in their countries. Today, the private sector invests EUR 3 billion in early stage companies. With the proper fiscal framework, investment incentives in growth and human capital, and more trans-border activity amongst early stage companies, the EBAN believes that number could more than triple to EUR 10 billion in 5 years.

Members of the EBAN also issued “Professional Standards Guidelines” for Business Angels and Business Angel Clubs to adhere to, should they desire public participation in their investments in “Start-Ups”.

Finally, for the first time, the EBAN included one new stakeholder group – that of professional services, i.e., accountants, lawyers and executive-search firms – in their global summit on early stage investing. This group is now considered an es-



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sential part of the early stage “Eco System” for companies to grow and prosper.

The summit participants addressed a number of topics geared toward raising the level of “Business Angel” investments to a “new asset class”. The topics, which were debated by high-level participants from Iris Capital, the European Commission, the European Venture Capital Association, Wilson Sonsini, and Business Angel Clubs from around Europe and the world, included “exit strategy”, “intellectual property”, “board composition”, “EU-Mediterranean innovation cooperation”, “cross-border investment and professional services”, and “building a new asset class”.

Participants also included Senator Pierre Lafitte, Gustaf Nobel, Nobel Charitable Trust, Oliver Rothschild; GGI members Prof. Robert Anthony (Anthony & Cie, Sophia Antipolis), Derek Smith (MCS, Monaco), Donald Anderson (Alternative Business Partners, Monaco) and Gabrielle Stowasser (Heller Consult Tax

and Business Solutions Ltd. Vienna), and Michael Reiss von Filski, GGI CEO.



Michael Reiss von Filski and Senator Pierre Lafitte

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The financial responsibility of being a trustee

By Prof. Robert Anthony

When using an offshore company, one needs to be careful not to be requalified for tax purposes elsewhere. An example is Australia where a tax payer (the trustee) was share trading in Australia using trading accounts on behalf of non-resident corporations. The trustee, Leighton, based in Monaco was assessed by the Australian tax authorities. The tax payer was a non-resident who lived and conducted business in Monaco. The beneficial owners were unidentified third parties. The corporations engaged in share trading with moneys funnelled through a custodian arrangement with an Australian bank in the tax payer's own name. The profits were remitted to a custodian account in Monaco and there was no tax paid on the profits. The tax payer contended that article 98.3 could not apply if the trading was undertaken by



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the corporations and not him. The court held the tax payer was a trustee and therefore liable for tax. He controlled what was bought and sold. Some EUR 25 million in taxation is now due.

The moral of this story is to know where you put your feet when advising clients and the responsibility taken. The idea of substance over form and the use of treaty protection are essential in today's fiscal en-

vironment. The setting up of holding companies requires a real purpose and not just a letter box. Pure agency companies with no real activity can result, even where this is normally a treaty protection a real liability to the director. In certain instances the loss of the treaty protection, due to an anti-treaty shopping clause in the treaty can create the same problem as in the above case. Where the fis-

cal net is tightening worldwide, my strong advice is to review files to ensure that one is not exposed to the same fate as poor Norman Leighton. I know Norman and this shows how the evolution of tax inspector's offices is following the trends of legislation. In addition with the choice of jurisdictions, why do what he did anyway? It makes no sense. Cyprus doesn't tax financial transactions in a Cyprus resident company, so why choose Australia?

For those who wish to review the case, it is *Leighton v FCT* (2010) FCA 1086 (Federal Court, Gordon J. 6 October 2010).

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