



# Business Brief

Business and Client Advisory

## OFFSHORE BANK ACCOUNTS

Clients frequently have questions about establishing or maintaining offshore bank accounts. An offshore bank account may be a useful tool for asset protection planning, the establishment of offshore business, or for providing access to international insurance and financial markets. However, in recent years, the Internal Revenue Service (IRS) has focused on the use of offshore bank accounts for illegal purposes, such as tax evasion, under-reporting gain and criminal enterprise. As a result, many U.S. citizens or business entities are reluctant to open offshore accounts.

A U.S. citizen or business entity has the right to open a bank account of any value, anywhere, at any time; the only caveat being that the account must be properly reported to the U.S. Department of Treasury. A U.S. taxpayer must file Form TD F 90-22.1 (also referred to as a "Report of Foreign Bank and Financial Account" or "FBAR," by the IRS) with the Department of Treasury at the time in which the account is opened. In addition, the taxpayer must check the appropriate box on the federal income tax return stating that there is a foreign bank account under the taxpayer's control. In December, 2006, the IRS issued a Workbook on the FBAR, stating the objectives of the reporting requirements and who is required to file.

The FBAR reporting requirement assists the IRS in tracking the flow of illicit funds, identifying offshore banking activities and combating money laundering and other crimes. To that end, government statutes provide for enforcement sanctions which allow the IRS to impose severe penalties for non-compliance. In fact, IRS penalties for willful violation may well exceed the value of the account at the time in which the violation occurred; an effective deterrent to the illegal use of offshore bank accounts.

However, such deterrents should not discourage one from establishing an offshore bank account for legitimate business, estate and tax planning purposes. Attention to detail, the proper maintenance of records and the timely filing of any necessary documentation is all that is required to remain in compliance, which is no more arduous than preparing for the filing of an annual income tax return. In fact, the proper registration of an offshore bank account and the timely filing of Form TD F 90-22.1 positively demonstrate tax compliance, rather than suggest any impropriety on the part of the taxpayer.

Vogt & Resnick can assist clients in all areas of regulatory reporting and compliance, international business transactions and tax planning. For answers to your questions in these areas, please feel free to contact this office.

## IS YOUR TRADEMARK SAFE?

While electronic commerce has boomed with the expansion of the Internet, recent developments in domain name registration have given rise to practices such as “cybersquatting,” (i.e. the abusive registration of trademarked names as Internet domain names), which threaten the interests of trademark owners and cause consumer confusion. Incidents of cybersquatting have risen dramatically in recent years. In fact, the number of disputes filed with the World Intellectual Property Organization (WIPO) involving cybersquatting increased 25% in the year 2006.

Mass automated registration of expired domain names, as well as the ability to “park” domain names on pay-per-click portal sites and register domain names free of charge for a five-day “tasting” period are areas of great concern to trademark owners, as they create greater opportunity for the mass, often anonymous, registration of domain names without specific consideration to third-party intellectual property rights. The WIPO has expressed some concern that the domain name system, which was originally developed to identify certain businesses and internet users, has evolved into a speculative market, in which many domain names have become mere commodities for speculative gain and moving targets for rights holders.

In the past year, arbitration and mediation centers have served a wide range of internet users, from well-known brands, to smaller enterprises and organizations, as well as individuals, covering various subject matters from pharmaceuticals, luxury items, famous persons and entertainment, to hospitality, sports and gambling. Charitable organizations and educational institutions have also filed cases.

A number of disputes relating to new businesses, public interests, or newly merged or collaborating corporations have also been raised. Such cases suggest that cybersquatters tend to follow newsworthy events. A good example of this would be the number of Tamiflu trademark cases, involving the use of domain names like “tamiflu-vaccine.com,” “tamiflu.net,” and “ordertamiflunow.com,” filed at the height of international concern about an avian flu pandemic in 2006.

Since the commencement of the Uniform Domain Name Dispute Resolution Policy (UDRP), which is a quick and cost effective dispute resolution procedure, in December, 1999, over 10,177 UDRP or UDRP-based cases have been filed with the WIPO Arbitration and Mediation Center, covering over 25,815 separate domain names. However, the good news is that 97% of those cases have been resolved, with some 84% of them resulting in the transfer of the domain name to the trademark owner.

For more information about trademark protection or domain name dispute resolution procedures, please contact this office.

## PREGNANCY LEAVE: EMPLOYEE RIGHTS

California employers with five or more employees must give each female employee up to a four-month leave of absence whenever she becomes “disabled” by pregnancy, childbirth, or related medical conditions. *Cal. Govt. Code* § 12945(a). There is no length of service required before this entitlement kicks in. Accordingly, the employee could assert this right on her second day of employment.

Four months leave is the maximum period permitted under the statute, but a woman who is physically and mentally capable of returning to work before the expiration of four months is not entitled to a four-month leave of absence. For purposes of this statute, a woman is considered “disabled” if, in the opinion of her physician, she is unable to work due to pregnancy, childbirth, or related medical conditions, or is unable to perform any one or more of the essential functions of her job, or is unable to perform them without undue risk to herself, the successful completion of her pregnancy, or to other persons. *2 Cal. Code Regs. § 7291.2(g)*. A woman is also considered to be “disabled by pregnancy,” if she is suffering from “morning sickness” or needs to take time off for prenatal care. *2 Cal. Code Regs. § 7291.2(g)*.

Pregnancy disability leave may be taken intermittently or on a reduced work schedule when medically advisable. *2 Cal. Code Regs. § 7291.7(a)(3)*. Employers may limit these leave increments to the shortest period of time that the employer’s payroll service uses to account for absences or use of leave. *2 Cal. Code Regs. § 7291.7(a)(3)*. If an employee needs intermittent leave or leave on a reduced-leave schedule that is foreseeable, based on planned medical treatment, the employee may be transferred temporarily to an available alternative position. *2 Cal. Code Regs. § 7291.6(c)*.

A physician’s certification may be required to verify an employee’s disability on account of pregnancy so long as physicians’ certifications are required to verify other temporary disabilities. Second or third medical opinions may not be required. *2 Cal. Code Regs. § 7291.10(b)*. An employer may not ask the employee (or her physician) to provide any information other than: the date on which disability began; the probable duration of the period(s) of disability; an explanatory statement that, due to the disability, the employee is unable to work, or is unable to perform certain functions; or is unable to perform them without undue risk to herself, the successful completion of her pregnancy, or to other persons.

The employee must be allowed to use any accrued vacation time or other accrued personal time off during the otherwise unpaid portion of her disability leave. *Cal. Govt. Code § 12945(a)*. Additionally, the employer may require the employee to use, or the employee may elect to use, sick leave during the otherwise unpaid portion of her pregnancy disability leave. *Cal. Code Regs. § 7291.11(b)*.

There are additional federal and state benefits to which a pregnant employee may be entitled. Failure, on the part of an employer, to comply with federal and state laws regarding these benefits may result in the assessment of penalties against the employer. Please contact our office if you have any questions about your rights and obligations under these laws.

## COURTROOM QUOTATIONS

**Lawyer:** "Could you see him from where you were standing?"

**Witness:** "I could see his head."

**Lawyer:** "And where was his head?"

**Witness:** "Just above his shoulders."

**Lawyer:** "What is your marital status?"

**Witness:** "Fair."

**Accused, Defending His Own Case:** "Did you get a good look at my face when I took your purse?" (The defendant was found guilty and sentenced to ten years in jail.)

**Lawyer:** "Mrs. Jones, is your appearance this morning pursuant to a deposition notice which I sent to your attorney?"

**Witness:** "No. This is how I dress when I go to work."

**Lawyer:** "Do you know how far pregnant you are now?"

**Witness:** "I'll be three months on November 8."

**Lawyer:** "Apparently, then, the date of conception was August 8."

**Witness:** "Yes."

**Lawyer:** "What were you doing at that time?"

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