



# Duke Law Firm, P.C.-in the News

1572 Montgomery Highway, Suite 205  
Birmingham, Alabama 35216 USA

Volume 5, Issue 2, September 2008

The following is a publication of Duke Law Firm, P.C. All Rights Reserved © 2008

## FIRM NEWS

### ***We're Moving!***

Effective September 29, 2008, Duke Law Firm, P.C. will move its offices to: 1572 Montgomery Highway, Suite 205, Birmingham, AL 35216. The phone and fax numbers will remain the same.

### **J. Richard Duke Receives STEP Private Client Award 2008/9**

J. Richard Duke received the prestigious Private Client Award, North American Team of the Year 2008/9 from the Society of Trust and Estate Practitioners (STEP).

STEP U.S. Branches: Chicago, Los Angeles, Miami, New York, San Francisco.

<http://www.step.org>

**John M. Walker** of Walker Law Firm, LLC, is now "of counsel" to Duke Law Firm, P.C. John received a B.S. degree in Zoology/Cell Anatomy from the University of Georgia and a J.D. from the Cumberland School of Law at Samford University. He was admitted to the Alabama Bar in 1994. John was published as a law student in 1993 in the American Journal of Trial Advocacy on the "Relates To" clause of the Employment Retirement Income Security Act of 1976 (ERISA). He was a law clerk at Huie, Fernambucq and Stewart (Birmingham, Alabama), served an internship in

the Jefferson County Alabama District Attorney's Office, (Bessemer, Alabama) and worked as a Business Analyst for Protective Life Insurance Company. He recently earned his Masters of Science in Electrical Engineering (MSEE) degree from the University of Alabama at Birmingham, concentrating on entrepreneurship.

John lives in Birmingham, Alabama, with his wife, Sara, a physician practicing internal medicine, and two daughters, Marie (13) and Brittany (10).

Melanie P. Hahn of Hahn Law Firm, P.C. is also "of counsel" to Duke Law Firm, P.C.

### **Offshore Investment Magazine**

Beginning with the July/August 2008 issue of Offshore Investment magazine, which is widely read around the world, J. Richard Duke is now a Contributing Editor, authoring the monthly feature, "Dubai Digest" (10 issues per year).

<http://www.offshoreinvestment.com>

To read the first "Dubai Digest" article titled "Entity Structuring in Dubai" and the "Comment," both written by Richard Duke, go to:

<http://www.assetlaw.com/news.htm>

Mr. Duke will be speaking at **The World Offshore Convention 2008**, Tuesday 21st & Wednesday 22nd October 2008, San Juan Hotel & Casino, San Juan, Puerto

Rico, sponsored by Offshore Investment:

<http://www.offshoreinvestment.com/conferences/index.html>

Mr. Duke's conference topics include the following:

- **Investment Regulation**  
How US tax law impacts secret management accounts
- **Securitisation and the International Credit Crisis**  
Asset planning in the face of the current market volatility
- **What do Western Wealth Managers need to know about Islamic Investments?**  
Conservative investments and asset-backed bonds

### **New Markets for the USA in the United Arab Emirates**

Americans and American businesses are paying increasing attention to the news in the United Arab Emirates (UAE). Despite the weakening U.S. economy, strong business opportunities are available in the UAE, especially the emirates of Dubai and Abu Dhabi. In addition, personal investments into the UAE are available through both UAE and Swiss banks.

Why would Americans and American businesses want to invest in a country bordered by the Gulf of Oman and Saudi Arabia? Since the formation of the UAE in 1972, it

has enjoyed exceptional political stability. Similar to the U.S. Constitution that established a government of limited powers, the constitution of the UAE reserves all powers to the individual emirates that are not specifically granted to the federal government. The UAE federal system of government includes a Supreme Council, a Cabinet, and the Federal National Council, which is a parliamentary and independent judiciary.

The business laws of the UAE are closely patterned after U.S. corporate, partnership and trust laws. They are modified to follow Shari'a law, which is more appropriately referred to as a system of ethical principles applied to the law, and not a legal system in itself. These ethical principles overlay social responsibilities onto businesses to reinvest in the community. Personal and real property rights are protected and the acquisition of business and personal wealth are encouraged.

Traditionally, petro-dollars fueled the UAE economy. But the economies of the seven emirates comprising the UAE have diversified. By 2007, non-oil services overtook the oil sector as the prime economic factor in GDP. The emergence of "free trade zones" throughout the UAE have played a large role in catapulting it to the third most important re-exporter in the world, after Hong Kong and Singapore. Approximately 72% of goods imported by the UAE are re-exported to 160 countries. In 2007, trade in the UAE topped \$275 billion, and in the first six months of 2008 the value of exports and re-exports jumped 50% over the same period a year ago. Total private funds have more than doubled since 2004, rising from approximately \$17 billion to over \$37 billion at the end of 2007. In the third quarter 2008, these funds had increased to over \$45 billion. The return on equity (ROE) since 2004 has varied from a low of 18.2% (2006) to a high of 22.5% (2005), averaging 20.6% from

2004 thru 2007. Through the first quarter of 2008, ROE was 21.16%. Domestic banking institutions have increased from 383 in 2004 to 627 as of the third quarter of 2008, and foreign banking institutions have grown from 112 to 141 in the same period. Monthly transactions now total over \$704 billion. Foreign assets have increased during this time period from \$62 billion to over \$155 billion. (See <http://www.emirates.org/banking.html>).

U.S. businesses can take advantage of the thriving UAE economy in two ways. One is to invest capital in the UAE as described below. Another way is to export goods or services into one of the seven emirates that comprise the UAE. Currently, the top ten U.S. imports, by dollar value, into the UAE are airplanes (civilian); new and used automobiles; drilling and oil field equipment; non-monetary gold; telecom equipment; industrial machines; industrial engines; parts for military-type goods; gem quality diamonds; and excavating machinery. Airplanes were down about a third since 2006 and diamond demand was flat, but the others show double digit gains since 2006, with telecom equipment showing a 156% gain. The strongest gains overall came from barley, oats and sorghum (up 23,338% since 2006), and car bodies and chassis (up 3,680% since 2006). (See [http://import-export.suite101.com/article.cfm/top\\_uae\\_exports\\_imports](http://import-export.suite101.com/article.cfm/top_uae_exports_imports)).

To gain access to these markets, several rules must be strictly followed:

1. Be very specific about what you offer;
2. Obtain an introduction by someone who is known and well respected in the emirate where you want to do business;
3. Work with an attorney who is knowledgeable about the customs and business laws in the UAE;

4. Be highly ethical and honest in all of your business dealings.

Business and personal investments can be made directly through one or more private banks in the emirates of Dubai or Abu Dhabi. These UAE banks will make investments inside Dubai and UAE or other growth areas around the world. Another method of investing in the UAE involves using a Swiss affiliate of a UAE bank. This affiliate Swiss bank is subject to all the rules and regulations of Swiss law, so it cannot divulge the names of its private clients to the parent UAE bank unless the client waives this restriction. This privacy restriction applies to a direct investment, trustee of an asset protection trust, a foreign corporation (international business company), foreign limited liability company, or other entities. Although the Swiss bank does not disclose the names of its private clients to the UAE bank, the Swiss bank can be the custodian of the investments and use the private banking department in the emirate bank that formed the Swiss bank. This allows direct access into the UAE and surrounding growth areas but through a Swiss bank that is governed by Swiss rules and laws. A U.S. citizen, legal resident or business is subject to numerous tax compliance and reporting requirements with respect to foreign deposits and foreign financial accounts.

Duke Law Firm works with an Abu Dhabi bank, with branches in Dubai, which formed an affiliate private bank in Switzerland. Richard Duke has significant professional associations in both Dubai and Abu Dhabi, which are adjacent emirates.

For more information about expanding your business into the UAE or about private investments made through the UAE and surrounding growth areas, contact Duke Law Firm.

-----  
**Bastion Life Insurance SPC Limited** appointed Alpine Atlantic Global Asset Management AG as its default manager to manage policy assets. Bastion Life issues U.S.-compliant variable, universal life insurance policies on the lives of U.S. persons.

<http://www.bastionlife.com>

<http://www.alpineatlantic.com/>  
-----

## NEWS AROUND THE WORLD

**Jyske Bank Private Banking** received A+ rating with an outlook of "Stable" from Standard & Poor. The other banks on the list received a "Negative" outlook and were placed on the watch list for downgrading. This list includes Citigroup, Deutsche Bank, Goldman Sachs, JP Morgan, Chase, Credit Suisse, and Lehman Brothers.

<http://www.jyskebank.dk/jyskebankinfo/financionalinstitutions/hidden/ratings/7626.asp>

<http://www.jbpb.dk>  
-----

### **New Cook Islands Limited Liability Company Law**

The Cook Islands adopted the Cook Islands Limited Liability Companies Act 2008, 2008 NO. 7 (LLC Act). The LLC Act provides that the charging order is the sole and exclusive remedy available to a creditor in respect of a member's membership rights under Section 45(6). Under Section 49(1)(a), an LLC shall be dissolved by the unanimous written consent of all members (unless specified otherwise in the articles of organization or the operating agreement, under Section 49(1)(b)).

-----

## **The Wall Street Journal**

The September 11, 2008 issue of the Wall Street Journal reports:

Foreign buyers are scouring the U.S. for everything from guitar strings and wine corks to used dump trucks and newsprint. The volume is so great that some inland trade hubs can't find enough metal shipping containers to load products headed overseas.

The article further reports:

Service exports -- which include media, entertainment, financial services, computer software and foreign tourism in the U.S. -- have grown strongly right along with the larger goods side of the trade ledger. Through the second quarter of 2008, real-service exports are up nearly 10% over the past year.

-----

### **Report from the Gulf**

Even as world financial markets broke down last year, personal wealth around the world grew five percent to \$109.5 trillion, according to a global wealth report by Boston Consulting Group [BCG].

It was the sixth consecutive year of expanding wealth. The fastest growth was among households in developing regions, such the Gulf States and among families who were already rich.

That wealth also is increasingly concentrated among the richest.

And Dubai and Singapore, the firm said, are becoming regional private banking centers offering greater competition to traditional havens such as Switzerland.

The top one percent of all households owned 35 percent of the world's wealth last year. Meanwhile, the top 0.001 percent, ultra-rich households holding at least \$5 million in assets, commanded \$21 trillion - a fifth of the world's wealth.

The planet also continues to mint new millionaires rapidly. The biggest jumps in 2007 came from emerging countries in Asia and Latin America. Overall, the number of millionaire households grew 11 percent to 10.7 million last year.

*arabian Business.com--Gulf's rich just get richer - report*

<http://www.arabianbusiness.com/>  
-----

### **Potential Deferral of Income Taxation through Foreign Business Operations**

Foreign corporations formed by one or more U.S. persons (individuals or entities) for the purpose of investing outside the U.S. are subject to immediate taxation at the end of each calendar year, whether the income is distributed or retained. In addition, a foreign corporation formed by U.S. persons is classified as a "controlled foreign corporation" for tax purposes under the Internal Revenue Code, and passive income investments are classified as subpart F income. If the income is classified as subpart F income, no capital gains tax rate is available, and losses cannot be taken against gains until the corporation is liquidated. These tax disadvantages are avoided if the foreign corporation files a Form 8832 with the Internal Revenue Service electing to treat the foreign corporation as a "disregarded entity" (for one owner) or as a "foreign partnership" (for two or more owners).

U.S. persons who form a foreign corporation that is engaged in a trade or business that has "foreign

source income" may be able to defer payment of tax on the foreign corporation income until the income is repatriated. If the foreign corporation meets the two conditions—engaged in an active foreign trade or business with foreign source income—the foreign corporation generally will not file a Form 8832. In this case, the American owner or owners will want the foreign entity classified as a foreign corporation for tax purposes in order to obtain the potential benefits of income tax deferral on the foreign corporation's earnings. Although the foreign corporation may be classified as a controlled foreign corporation, if complex requirements are met under the Internal Revenue Code the foreign active trade or business may have foreign-source income that is not classified as subpart F income, thus allowing the deferral of income taxation until the income is repatriated to the U.S.

The controlled foreign corporation and subpart F income, as well as the credit for foreign taxes paid rules, are the most complex in the Internal Revenue Code. It is imperative that the conditions of any tax treaty with a relevant jurisdiction be followed, or the conditions of the Internal Revenue Code if no tax treaty is available, in order to avoid double taxation (tax in the foreign jurisdiction and tax in the U.S.). This avoidance of double taxation is available through a tax credit under the tax treaty or the Internal Revenue Code with respect to foreign taxes paid.

-----  
**SWITZERLAND - UBS ordered not to identify clients**  
*Swissinfo, Tages-Anzeiger*

Switzerland's finance minister Hans-Rudolf Merz stated, in an interview with the newspaper Tages-Anzeiger, that UBS bank

will be breaking Swiss law if UBS discloses customer lists to U.S. tax investigators.

[http://www.swissinfo.ch/eng/news\\_digest/Merz\\_defends\\_banking\\_secretary\\_in\\_UBS\\_tax\\_probe.html?siteSect=104&sid=9717140&Key=1221396617000&ty=nd](http://www.swissinfo.ch/eng/news_digest/Merz_defends_banking_secretary_in_UBS_tax_probe.html?siteSect=104&sid=9717140&Key=1221396617000&ty=nd)

The next issue of our newsletter will discuss the IRS recently stating that it is engaged in coordinated efforts to halt offshore tax evasion and fraud, as well as recent comments by U.S. government officials that more banks may be under scrutiny for offshore tax evasion.

**CIRCULAR 230 NOTICE--NOT A RELIANCE OPINION; NOT A MARKETED OPINION. THIS NEWSLETTER AND ITS CONTENTS WERE NOT INTENDED OR WRITTEN BY DUKE LAW FIRM, P.C. TO BE USED, AND CANNOT BE USED, BY ANYONE FOR THE PURPOSE OF (i) AVOIDING U.S. TAX PENALTIES, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED OR STATED HEREIN. THIS NEWSLETTER AND ITS CONTENTS AND ANY ATTACHMENTS ARE NOT TREATED AS A MARKETED OPINION BECAUSE "(A) THE ADVICE WAS NOT INTENDED OR WRITTEN BY DUKE LAW FIRM, P.C. TO BE USED, AND IT CANNOT BE USED BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER; (B) THE ADVICE WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTION(S) OR MATTER(S) ADDRESSED BY ANY WRITTEN ADVICE; AND (C) THE TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR." 31 C.F.R. SECTIONS 10.35(b)(4)(ii); 10.35(b)(5)(i); and (b)(5)(ii)(A), (B) AND (C).**

This newsletter is purely a public resource of general information that is intended, but not promised or guaranteed, to be correct, complete and up-to-date. This newsletter is not a source of advertising, solicitation or legal advice, and thus the material provided in this newsletter is not intended to create, and the receipt of it does not constitute, an attorney-client relationship. Do not rely on information provided herein, and always seek the advice of competent counsel in the reader's state or country outside the United States. The publisher of this newsletter is a law firm that includes attorneys licensed in the States of Alabama and Florida, and Duke Law Firm and its attorneys do not desire to represent anyone who views this

newsletter in a state or country outside the United States where this newsletter fails to comply with all laws and ethical rules of that state or foreign country. Please speak with one of our lawyers before sending information to the publisher of this newsletter, Duke Law Firm, or anyone listed herein.

No comparison is made for the services of Duke Law Firm and its lawyers, and the services of other law firms and their lawyers. Alabama State Bar Rules of Professional Conduct, Rule 7.1(c) and The Florida Bar Rules of Professional Conduct, Rule 4-7.2(b)(1)(D).

**Duke Law Firm, P.C.**  
**(205) 823-3900**  
**Facsimile: (205) 823-2630**  
**1572 Montgomery Highway,**  
**Suite 205**  
**Hoover, AL 35216 USA**  
<http://www.assetlaw.com>