

Maitland

**IWP ZURICH MEETING**

**30 May 2012**

**SOVEREIGN RISK**

**International Wealth Planners**

# Overview

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## Anticipating an expropriation

- **Foreign investments vs domestic investments**
  - **Can you restructure?**
    - **Tax planning**
    - **Trust planning**
    - **BIT planning**
    - **Political**
  - **Exit strategy?**
    - **Second passport/second residency**
    - **Funds offshore**

# Preparing for an Expropriation

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**Understanding the nature of the business – various factors:**

- **Publicly-listed company vs privately-owned company**
  - **Jurisdiction(s) of shareholders (or ultimate beneficial owners)**
  - **BIT access vs tax treaty access vs other criteria**
  
- **Operations**
  - **Employees**
  - **Family members**
  - **Management**
  
- **Media scrutiny**
  - **Implications**

# Preparing for an Expropriation

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## Typical scenario:

- **Government decrees / Court orders**
  - announcement
  - shares are owned by the state
  - management has no authority over affairs (eg, decisions, treasury, bank accounts, etc)
  
- **Impact**
  - employees must continue to work
  - management must continue to work
  
- **Media attacks**
  - state promotes broad range of violations
    - personal attacks
    - reduced value of the expropriated assets for compensation purpose
  
- **QUERY: how should foreign banks react?**

# Anticipating an Expropriation

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- **Consider a reorganisation of the business**
  - **Realistic at all?**
    - **Media scrutiny**
    - **Currency controls**
    - **Local filing requirements (eg, change of control, tax returns etc)**
  - **What can you reorganise?**
    - **QUERY whether Wealth Planners can get involved under the current private banking environment?**

# Anticipating an Expropriation

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Consider reorganising:

**1. Business structure**

- shifting assets offshore (eg, IP, servers, etc)
- controlling supply chain

**2. Ownership structure**

- transferring ownership to take advantage of BIT protection
- political protection

**3. Personal planning**

- citizenship & residency
- assets (using trusts)

➤ **PROTECT YOUR INFORMATION – THIS IS KEY**

# Anticipating an Expropriation

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## 1. Business structure:

- **transferring management or assets or IP to treaty-protected jurisdictions**
- **create nexus with more robust jurisdictions – eg US**
- **transfer servers outside the jurisdiction**
- **attempt to control the supply chain offshore**



# Anticipating an Expropriation

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## 2. Ownership structure

- **transferring ownership to take advantage of BIT protection**
  - **consider substance vs holding company**
- **making use of nationality and consular protection**
  - **consider existing diplomatic situation (eg, Spain-Venezuela)**

# Anticipating an Expropriation

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## 3. Personal planning

### ➤ second passport?

- how to choose a second passport?
  - visa-free travel
  - consular protection
  - risks?
  - where? St-Kitts/Austria/Cyprus/Dominica etc

### ➤ second residency?

- how to choose a second residency?
  - easy to access and maintain
  - zero tax implications
  - where? Austria, Belgium, Bulgaria, Canada, HK, Singapore, UAE, Switzerland, Monaco etc

# Anticipating an Expropriation

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## 3. Personal planning

- **Segregating current assets offshore from new ownership structure**
  - **How?**
  - **OECD / Mutual assistance**

# Anticipating an Expropriation

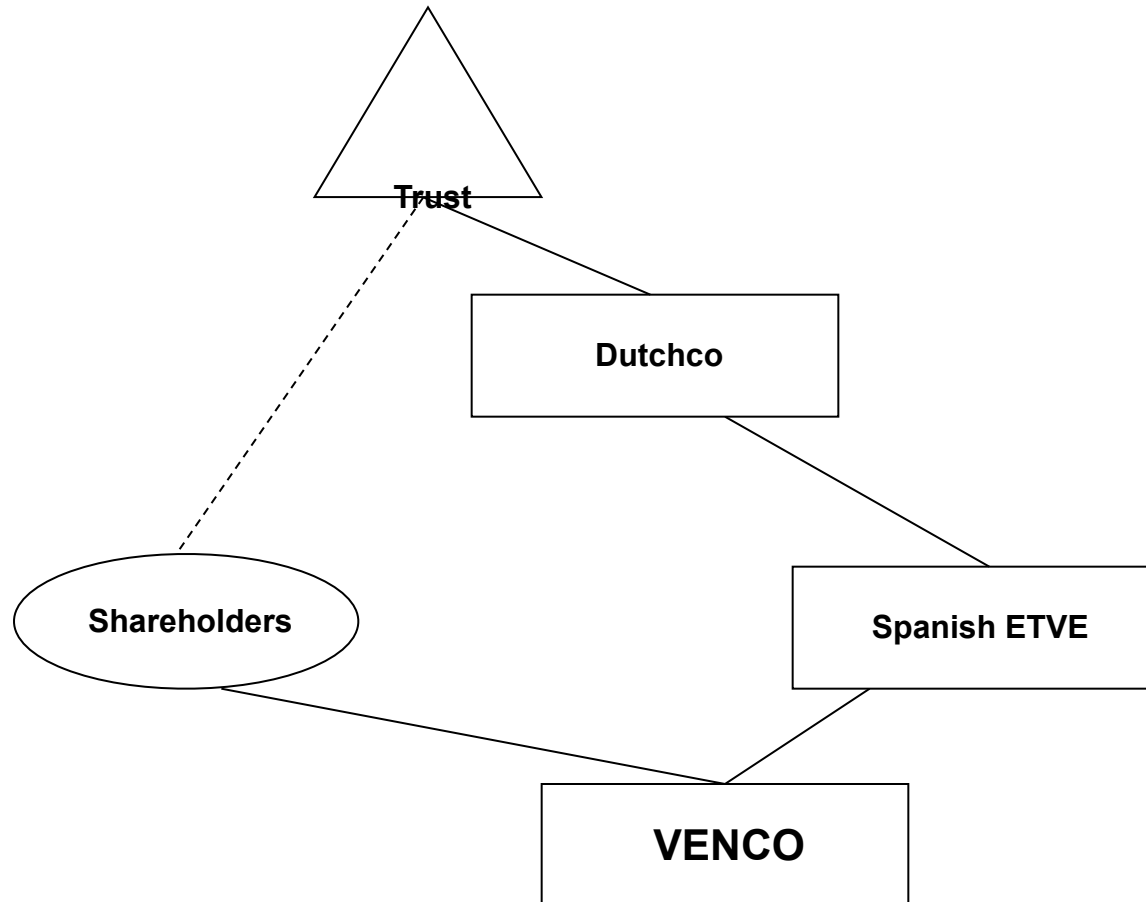
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## 3. Personal planning

- **Relying on current banking environment**
  - how to protect your foreign assets
    - banking secrecy
    - exchange of information / mutual assistance
    - notification process / assistance from Courts
    - risks?
    - where?
  
- **Using robust trust structures**
  - creditor protection trusts
    - what are they?
    - do they work?
    - how to structure?

# Anticipating an Expropriation

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# Anticipating an Expropriation

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## Negotiating with Government officials

- **Any issues?**
  - **FCPA/Bribery Act**
  - **Swiss approach**

# Anticipating an Expropriation

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THANK YOU

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