

According to the International Monetary Fund's *World Economic Outlook*, the United States is slipping into a recession and world economic growth is likely to feel the effects during 2008. All IP owners should consider all options to maximize their bottom-line by managing their IP assets offshore to take pre-emptive steps to protect their most valuable assets. The offshore management structure will include incorporating a new company in the world's corporate domicile of choice, the British Virgin Islands and transferring the IP assets to the BVI holding company.

While taking the IP management structure offshore is important for tax purposes, the next step is making the IP holding company independent from the group to start raising capital. The IP holding company should be "bankruptcy remote" so that the insolvency of the group will not affect the IP holding company's revenue stream from the IP assets. The transfer normally takes place under a global assignment deed which would not be subject to stamp duty in the BVI.

With about 70% of global business' net worth being derived from their IP assets, there are significant opportunities for securitizing IP assets to raise finance and lower interest rates. This lower interest then generates annual interest savings and raises the business' earnings before interest, taxes, depreciation and amortization (EBIDTA).

Once all the IP assets are localized in the IP holding company, it can then issue bonds or other securities which would normally attract a favourable credit rating that allows for the effective securitization of the IP assets. The bond issue need not be subject to BVI law and would not be subject to BVI taxes. Where the IP assets yield fixed-rate interest, but the bonds or other securities are issued at floating rate, then an interest rate and/or currency swap will arise to hedge the income streams from the IP assets with the IP holding company's funding costs. The securitization of IP assets will be more attractive than conventional corporate bonds because they can have different credit ratings for different tranches of debt to appeal to different classes of investor.

After the IP holding company starts to generate income there are various options available to repatriate those funds to the group. Repatriation can take place in the usual structures, such as distributions in the form of dividends to the parent company of the IP holding company, or parallel loans and swaps to other members in the group. However, it is worth considering a variable service and management agreement to provide for special fees to move the income of the IP holding company to take advantage of accounting treatment of payments to the group.

Using a BVI corporate vehicle to manage IP assets is a proven and useful tool, but as global businesses are being threatened by an imminent global recession, it is imperative that new funding mechanisms be used. The securitization of IP assets using a BVI corporate vehicle is advantageous to reduce the overall cost of the transaction which can ultimately raise EBITDA to levels of much needed corporate buoyancy.

This article was first published on Mondaq in May 2008. If you would like further information on the subject matter, please contact the author Jamal Smith at our BVI office or your usual Harney Westwood & Riegels lawyer. Alternatively, you may visit our website at www.harneys.com.

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