

CHAPTER 26

ESTABLISHING ETHICAL PARAMETERS FOR AN OFFSHORE LEGAL PRACTICE: A CASE STUDY IN CORPORATE SOCIAL RESPONSIBILITY

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Introduction – career background	589
Establishing an ethical structure in an offshore environment – ISIS approach	591
ISIS in the beginning	591
ISIS today	593
Management	595
Funding	595
ISIS Foundation's projects	596
Conclusion	598

INTRODUCTION – CAREER BACKGROUND

26.1 I am a co-founder of the ISIS Group which is based in Bermuda, Australia, Nepal and Uganda. The ISIS Group specialises in the provision of niche legal services, consultancy, corporate finance and fund administration and it also supports the ISIS Foundation, an international development organisation, working with communities and local partners to make a positive difference to the lives of women and children in Nepal and Uganda.

26.2 I first became familiar with Bermuda law in the latter part of the 1980s while I was working for Linklaters in Hong Kong. This was the result of the corporate finance transactions which included Bermuda companies and also due to Linklaters acting for a Hong Kong Stock Exchange listed company which

redomiciled its holding company to Bermuda. After returning to Linklaters' head office in London I had further involvement with finance transactions involving Bermuda. It was apparent from these transactions that Bermuda was a substantive offshore jurisdiction.

26.3 Following a 2-year break involving an extended cycling trip from the United Kingdom to Israel with another ex-Linklaters' lawyer (and subsequently the other co-founder of the ISIS Group, Audette Exel) and working for a short while with the South African law firm, Denys Reitz, in Johannesburg, I arrived in Bermuda in August 1992 by then pregnant with my son. I subsequently worked with a couple of law firms in Bermuda until 2000 when I was able (from a financial perspective as a single parent) to move full time to the growing ISIS Group which we started in late 1997.

26.4 Bermuda is the oldest self-governing British Overseas Territory and (like Hong Kong) has a legal system which has its origins in English common law and statutes and benefits from a final right of appeal to the Judicial Committee of the Privy Council. My years with Linklaters gave me invaluable skills, particularly as regards managing transactions and drafting, but I found that my understanding of the minutiae of corporate law has been enhanced by working in Bermuda. This was largely due (at the outset) to the absence of firm precedents, limited Bermuda case law and the breadth of corporate transactions on which I advised in a smaller law firm environment. I have also found Bermuda, with its sophisticated, physically based insurance and investment fund business, to be intellectually innovative.

26.5 I believe that smaller jurisdictions like Bermuda are invigorated by the entry of experienced non-Bermudian lawyers and the return of Bermudian lawyers after several years working overseas. In my case I was able to make a positive contribution to the development of Bermuda as an offshore financial centre as I arrived with enough experience to enable me to build a corporate legal business in a small firm and young enough to be eager to learn. Bermuda has also benefitted from a healthy working relationship between international business and the principal financial services regulator, the Bermuda Monetary Authority, and from the time and commitment of many professionals (both Bermudian and non-Bermudian) who participate on a voluntary basis to committees and marketing Bermuda as a whole and not merely their own businesses.

ESTABLISHING AN ETHICAL STRUCTURE IN AN OFFSHORE ENVIRONMENT – ISIS APPROACH

26.6 There are numerous ethical issues for lawyers to consider in the application of their legal practice, but the ethical issue which I wish to address is the extent to which an offshore law firm is able to incorporate ‘Corporate Social Responsibility’ as an integral aspect of its operation. At ISIS, we decided from the beginning to subscribe to Anne Frank’s view: ‘How wonderful it is that nobody need wait a single moment before starting to improve the world’. This does sound a rather presumptive statement and there is no doubt that we have made many mistakes over the years as we knew little about development work. However, we believe that the ISIS structure demonstrates that it really is never too early for a business to commit to Corporate Social Responsibility and it is not necessary to have made money before doing so.

ISIS IN THE BEGINNING

26.7 The concept of ISIS was established by myself and Audette in 1997 after several years of working together both in Hong Kong with Linklaters and then in Bermuda. ISIS had its roots in our travels in the third world over the years and our experience (during our extended cycling trip) of working in an orphanage in Romania for discarded and handicapped children. Those experiences affirmed our desire to try to improve the lives of children in need in the developing world. They also demonstrated how easily well-meaning charitable contributions and development could be misapplied and that the disciplines of transparency and accountability in business could be usefully applied to charitable work. From our Romanian experience, we learned a fundamental principle that we made an integral part of the philosophy of ISIS, namely that we needed to listen to the communities where we work and provide them with what they asked for, and not what we thought they needed.

26.8 Our belief was that we could create a business which had from the outset a commitment to contribution and that we could achieve the dual objective of creating a sustainable business and foundation. Audette and I were both structured finance lawyers and good friends, and though we had quite diverse personalities we found that we had complementary skills which were useful in developing the ISIS structure. We had no doubt that Bermuda was an ideal place to base the business and charity as the concept of Corporate Social Responsibility was in its early days, but Bermuda was open to innovative structures and had a strong intellectual and professional environment which was physically based here. At the same time both the domestic and international business community had a firm commitment to philanthropy. Lastly (and not

least) in a small community, one's reputation is key and the community was supportive of us as we battled financial crises and the suspicion of the 'onshore' not-for-profit sector which found it hard to reconcile a business organisation with genuinely altruistic motives.

26.9 On a 'wing and a prayer' and working from my dining room table we established the ISIS Foundation, which was registered in Bermuda as a charitable trust¹, with the mission of 'Making a positive difference to the lives of children in the developing world, specifically in Nepal and Uganda, particularly in the areas of health, education and community development projects'. At the same time, we established a corporate finance and legal consultancy business through our exempted company, ISIS Limited.

26.10 We had two primary aims at the outset in terms of structure. Firstly, we wanted to link the business and the Foundation by having the same management team so that, from day one, we would be intimately involved with the work of the Foundation. Further, we wanted to operate the Foundation in a manner which ensured transparency and accountability similar to the manner in which we expected to operate the business. We (at ISIS) believed (and continue to do so) that the business and non-profit sectors provide exponential benefits to each other when they work hand in hand. Secondly, we wanted to separate administration and project costs to ensure clarity on those costs centres and to provide third party donors with the assurance that their donated funds would be used wholly in project-related costs. We also wanted to enable the Foundation to be sustainable in the longer term by providing an 'engine' for the funding of management costs via the business.

26.11 We chose the name 'ISIS' as she is the Egyptian Goddess of fertility and motherhood and, in our view, concisely expressed our mission to assist children in need. As we stated in the Foundation's 2005 Operations Report on why we decided on the name 'ISIS':

She is the protector of children, wrapping her wings around them to keep them safe. In addition, ISIS the Goddess is usually depicted with one foot on land, and one in the water – she straddles two worlds. We at ISIS try to create a bridge between two worlds – the charity or non-profit sector, and the business sector. So often these sectors speak such different languages that they cannot understand each other, let alone utilise each other's strengths. We aim to bridge that divide, and show people that it is possible to link the two sectors in a meaningful way that benefits both, and most particularly benefits those communities that we seek to support in the developing world.

¹ Registration number 508.

26.12 This dual objective is reflected in our mission statement as a whole which is dedicated to the concept of linking business and non-profit with the same vision of making a positive difference to the lives of children in the developing world while acting with integrity and excellence in everything we do. We also concluded our mission statement by adding that 'Through rain, hail, snow, and those very very hot days, we will never stop laughing, and never stop having fun at work'. It has always been important to us that people who work with ISIS, whether on the non-profit or business parts of the ISIS Group, believe in our aims and also enjoy working with the ISIS Group.

26.13 We are often asked why we work in two countries so far away from each other and why not in more countries? There are many good reasons why children in Uganda and Nepal need our help – the human development indicators in both countries demonstrate that the needs are truly overwhelming. Whether you look at maternal or infant mortality, literacy rates, AIDS prevalence, access to safe drinking water, or any other of the international measures of a country's poverty and need, Nepal and Uganda can be shown to be truly disadvantaged. However, the real reason we work in both Nepal and Uganda is a result of the connections Audette and I have to the country/continent. Whilst our choices were based on personal connections, the Foundation, by being in two developing countries, is able to contribute more widely to the developing world. Conversely, given the needs of the developing world, the work of the ISIS Foundation was (and remains) a 'drop in the ocean', but at least we have made a start.

ISIS TODAY

26.14 We are very thankful to Bermuda and the people of Bermuda for enabling us to launch and then grow the ISIS Group from its early beginnings as a small, family-like organisation to the significant, international, non-governmental organisation it has now become. Today, the Foundation, as a global non-profit organisation, has its own global support hub based in Sydney, Australia and a senior management team controlling finance, governance, donor relations and compliance. The Foundation operates in a number of different jurisdictions and comprises the following charitable entities:

- the ISIS Foundation (Australia), a company limited by guarantee in Australia²;
- the ISIS Foundation (Bermuda), a charitable trust in Bermuda;

² Registration number 1098152 and registered as an international non-government organisation in Nepal (project agreement signed August 27, 2007 and amended on March 7, 2011).

- the ISIS Foundation (United Kingdom), a charitable trust in the United Kingdom³;
- the ISIS Foundation (United States), a company limited by guarantee in the United States⁴;
- the ISIS Children's Foundation, a non-governmental organisation in Nepal⁵.

26.15 The collective or group name for all of these charitable entities is The ISIS Foundation (Global) but for ease of reference in this chapter it is referred to as the ISIS Foundation or Foundation.

26.16 There is also an entirely voluntary group in Bermuda known as the Kathmandu Kids Club⁶ and many of its members (particularly its managers) give freely of their time and energy to organise events and other activities to raise funds (and awareness) predominately for the work of the ISIS Foundation in Nepal.

26.17 On the business side of ISIS, we have also expanded considerably over the last 14 years with the result that these businesses now include the following and are referred to as the ISIS Businesses:

- ISIS Limited, a Bermuda-based consultancy and management business
- ISIS Asia Pacific Pty Ltd, a Sydney-based corporate finance and private placement business (ISIS Asia Pacific)
- ISIS Law Limited, a specialist Bermuda law firm (ISIS Law)
- ISIS Fund Services Ltd and its subsidiaries being a group of fund administration businesses principally based in Bermuda and the United States.

26.18 In mid-2007 Audette moved to Australia and we restructured the then ISIS Businesses, with the result that the corporate finance and private placement business is now run by Audette from Australia under ISIS Asia Pacific. In 2008, I established ISIS Law⁷ with Marco Montarsolo, which was subsequently incorporated in 2010. I was fortunate to find in Marco a business partner who embraced the commitment to Corporate Social Responsibility at a time when the law firm was in its early stages of development. ISIS Law specialises in the provision of legal services in the areas of investment funds, structured finance,

³ Registration number 1098152.

⁴ Registered with 501(c)(3) status in the United States.

⁵ Registration numbers DDC: 618/064/065 and DAO: 565.

⁶ www.kathmandukidsclub.com.

⁷ www.isislaw.bm.

corporate adviser work, litigation and trust-related matters. We are proud that despite launching ISIS Law during the global economic crisis we have managed to expand ISIS Law and at the same time continue to provide some ongoing financial support to the Foundation.

MANAGEMENT

26.19 Without the flexibility provided to us by the Bermuda environment we would never have been able to launch the ISIS Group in its original structure, which enabled us to make the work of the Foundation such an integral part of our lives.

26.20 The need for a senior management team grew as handling the demands of the then ISIS Businesses and the ability to manage the daily requirements of the ISIS Foundation took their toll. Similarly, the complexities of the depth and range of work of the ISIS Foundation in Nepal and Uganda resulted in the need for a senior management team with expertise in international development and finance.

26.21 The need for an expansion of this management support and our decision to base the global support team in Sydney, Australia also resulted in the requirement under Australian law to separate the management team of the ISIS Foundation from the management of the ISIS Businesses.

26.22 In Bermuda, we have retained our involvement with the Foundation through our roles as director and/or trustee of different ISIS charities. It is a reflection of the growth of the Foundation from its family-like beginnings that we now have a total of 14 global directors and trustees for the charities based in Australia, Bermuda, the United Kingdom and the United States. These directors and trustees are volunteers who give freely of their time to the Foundation both during and outside of business hours. In Bermuda, we also work with the Foundation's global support team particularly with respect to the Foundation's donor base (which has expanded internationally as the Foundation has grown but remains strong in Bermuda, where it all began). We also visit Nepal and Uganda to keep in touch with the Foundation's local teams, see the work first hand and (biannually) attend strategy sessions in-country.

FUNDING

26.23 A great deal of criticism is levelled at the non-profit industry in comparing the rising 'administration' costs of organisations against the 'project'

costs of the development projects for which they are responsible. We see that debate from both sides. On the one hand, a not-for-profit organisation needs professional administration. Those costs are likely to be hard currency costs (such as US dollars or pounds sterling) and are thus very hard to balance against local currency project costs. On the other hand, donors want as much as possible of their hard-earned dollars to go directly to the projects they are trying to support.

26.24 Our solution to this issue was to endeavour to cover all of the general and administrative costs of the ISIS Foundation, from the revenues of the ISIS Businesses. However, as the needs of the Foundation grew we found that we became like 'rats on a treadmill' in trying to keep up with the work of the Foundation and it also impacted our ability to grow the businesses as we paid for the administration and infrastructure costs as a bottom line expense of the businesses. The result was that the financial commitments we had assumed in connection with the businesses created potential risks for the Foundation. These commitments, together with family obligations, subjected us in cumulative terms to considerable financial stress. As a result, and after much debate, we restructured in 2007 to enable the different ISIS Businesses, at that time, to continue to support the Foundation in a more sustainable manner given our respective family and business needs.

26.25 Accordingly, ISIS Limited and ISIS Law collectively provide both indirect and some direct financial contributions to the Foundation, while ISIS Asia Pacific has assumed the primary commitment for funding the administration and infrastructure costs globally. We are also fortunate to have very specific categories of third party donors whom we term our 'Administration and Infrastructure Partners' and who assist us in supporting the administrative and management overheads of the ISIS Foundation. This means that donors who support the project work of the ISIS Foundation can be assured that every cent of their donation goes directly to project and project-related costs.

26.26 Since inception to September 2011, the ISIS Businesses have donated over US\$4.6 million towards administration and infrastructure costs and some project-related costs. For the same period we have received over US\$8.7 million in project donations from donors in Bermuda and globally.

ISIS FOUNDATION'S PROJECTS

26.27 The ISIS Foundation's over-riding development philosophy is to: 'Always, always do what's best for the kids and families we support'. The

Foundation has created a detailed development philosophy to ensure we achieve this goal. We are additionally grateful for the privilege of supporting and partnering with the communities with whom we work and for our partners on the ground in Nepal and Uganda. Partnerships are integral to the success of ISIS at every level, from the support provided by the ISIS Businesses to the partnerships with our donors and the communities we work with in Nepal and Uganda.

26.28 The ISIS Foundation, 14 years on from its inception in late 1997, is now an international development organisation, working with communities and local partners to promote the wellbeing of children and families in Nepal and Uganda through health, education and community development projects.

26.29 A brief over-view of the work of the ISIS Foundation is set out below and more detailed information can be obtained at www.isisgroup.org:

Nepal: ISIS has worked in Nepal for over 13 years in both Kathmandu, the capital, and in Humla, a remote and highly disadvantaged region in the North West of the country. The Foundation's projects focus on health and education programmes for children and their families working in partnership with local partners. Projects, each driven by community needs, have ranged from the provision of smokeless stoves, pit latrines, clean drinking water, remote mobile health care services and anti-trafficking initiatives in Humla, to emergency relief, rescue and care of trafficked children and health care for disadvantaged communities in Kathmandu;

Uganda: In 1998, ISIS started working in Uganda, in the Nakaseke district, part of the Luwero region. The Luwero region was the epicentre of civil war in the 1970s and 80s. Through 13 years of partnership with a rural hospital, Kiwoko Hospital, the ISIS Foundation has focused on supporting community based health care initiatives, establishing a neonatal intensive care unit, strengthening the maternal health programme, and working with adults and children living with HIV/AIDS. ISIS also supports a small project focused on the rehabilitation of former street children.

The ISIS Foundation currently (directly or indirectly) funds the salaries of a total of 123 people in Nepal and Uganda.

26.30 The ISIS Foundation is also working towards a 3- to 5-year strategy which has at its heart the following three main pillars:

Service Excellence: Our number one priority is to support the communities with whom we partner, to the absolute best of our ability, in accordance with best practice worldwide. We are committed to continual review and monitoring of our work, and deepening of our service to our communities, to ensure we meet a standard of global excellence in our work;

Research: A central aspect of the work of the ISIS Foundation is research, and it informs all of the Foundation's projects. As ISIS grows, we plan to expand and strengthen our research teams, so that we can ensure that we understand over the short, medium and long term, the impact of our work: both positive and negative. As we build out our research focus over the next few years, we intend to share our learnings widely, so that others can learn from our mistakes, as well as our successes;

The ISIS Tool Kit – supporting others to undertake similar work: Our dream is to move from supporting tens of thousands of people in need, to hundreds of thousands of people in need. Our aim is not to run more projects, but to create a third pillar of our work – supporting others. Our focus will be to build our capacity to support others from different regions and countries who would like to provide similar services to those undertaken by the ISIS Foundation. This would be achieved through training, developing replication streams and the '*ISIS Tool Kit*'. We believe that if we can ... help others who wish to follow a similar path to ours, we can help many more people in need.

CONCLUSION

26.31 The ISIS model does not fit neatly into any known business or charitable model and the manner in which we structured the financial commitment from the ISIS Businesses may well be difficult to replicate but I believe that the concept of contribution can be replicated. In other words, at ISIS, we wanted to demonstrate that a business which paid its own way could be combined with an organisation devoted to good work right from the establishment of the business. I believe that a commitment to Corporate Social Responsibility (small or large in terms of financial support and/or time and energy) should be a fundamental part of any business, even a new law firm, right from the very beginning. The quantum of commitment is not the issue; rather the decision to make philanthropy an integral part of the business is the key factor. There are many benefits to the business (not least of which is that employees operate within an ethical framework) which creates a shared value and provides meaningful assistance to those in need. It is not necessary to establish one's own charity as there are many small charities which have the capacity to improve the lives of disadvantaged people but lack the funding and/or the skills of professionals to achieve their objectives. Law firms are well positioned to assist with carrying out due diligence on them and then either assisting with funding and/or providing assistance to the administration of the charity which is an essential part of a well-run, non-profit organisation.

26.32 We are very grateful for the original support given to ISIS by individuals and the business community in Bermuda and for the ongoing support we receive from partners such as Aspen Reinsurance, the ISIS Kids

Sponsors, the Kathmandu Kids Club and all of our donors globally. We are also deeply appreciative of the financial support which Brian Hall and his family gave both the Foundation and the ISIS Businesses from our early beginnings, and their continuing commitment. More recently the Foundation has benefited from the time, energy and financial support given by Derek Stapley. We are also very grateful to our families for being with us through so much. Finally, and most importantly, at the very centre of the ISIS Foundation, are the communities and people in Nepal and Uganda with whom the Foundation works on a daily basis. Their spirit and strength in the face of adversity inspires us and enables the Foundation to truly make a positive difference to the lives of children in need in their countries.

26.33 At ISIS we are fond of including in our reports and greeting cards quotations which we feel reflect our essential aims and, as I started with a favourite quote, I will therefore end with a few quotes that for me provide that reflection:

Three things in human life are important. The first is to be kind. The second is to be kind. The third is to be kind. – Henry James

Consciously or unconsciously, everyone of us does render some service or another. If we cultivate the habit of doing this service deliberately, our desire for service will steadily grow stronger, and it will make not only for our own happiness, but that of the world at large. – Mahatma Ghandi

There can be no keener revelation of a society's soul than the way in which it treats its children. – Nelson Mandela